

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Criminal Appeal Jurisdiction)

Dated : 5th August, 2024

DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Crl.A. No.22 of 2023

Appellant : Ealsona Rai alias Sonam**versus****Respondent** : State of SikkimApplication under Section 374(2) of the
Code of Criminal Procedure, 1973

Appearance

Mr. Jorgay Namka, Senior Advocate (Legal Aid Counsel) for the
Appellant.Mr. S. K. Chettri, Additional Public Prosecutor for the Respondent.
-----**ORDER ON SENTENCE**Meenakshi Madan Rai, J.

1. Heard Learned Counsel for the parties on Sentence.
2. Learned Senior Counsel for the Appellant/Convict submits that the minimum sentence under Sections 361/363 of the Indian Penal Code, 1860 (hereinafter, the "IPC"), may be imposed on the Appellant in view of the fact that he is a young man aged about twenty-six years, his wife has abandoned him and his children, who are minors and dependent on him. That, they are presently in the care and custody of their paternal aunt who herself is burdened with her own home and other issues to deal with. Hence, a sympathetic view be taken while meting out the sentence.
3. Learned Additional Public Prosecutor submits that the maximum sentence as prescribed under Section 363 of the IPC be meted out to the Appellant/Convict.



4. Having given due consideration to the rival submissions and the offence involved, we are of the considered view that the following sentence would meet the ends of justice;

(i) The Appellant is sentenced to undergo simple imprisonment of seven years' with fine of ₹ 2,000/-(Rupees two thousand) only, under Section 361, punishable under Section 363 of the IPC. In default of payment of fine, to undergo further simple imprisonment of one month.

5. The conviction and sentence imposed by the Learned Trial Court on the Appellant under Sections 3(a)/18 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, the "POCSO Act"), is not disturbed.

6. The sentences of imprisonment imposed on the Appellant under Sections 3(a)/18 of the POCSO Act and under Sections 361/363 of the IPC shall run concurrently. The period of imprisonment already undergone by the Appellant/Convict as an under-trial prisoner and on his conviction under Sections 3(a)/18 of the POCSO Act be set off against the period of imprisonment imposed on him today.

7. Appeal disposed of accordingly

8. Copy of this Order be forwarded to the Learned Trial Court for information along with its records.

9. A copy of this Order also be made over to the Appellant/Convict through the Jail Superintendent, Central Prison, Rongyek and to the Jail Authority at the Central Prison, Rongyek, for information and appropriate steps.

(Bhaskar Raj Pradhan)

Judge

05-08-2024

Approved for reporting : **Yes**

(Meenakshi Madan Rai)

Judge

05-08-2024