



THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

Dated : 12th August, 2024

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.A. No.29 of 2023

Appellant : Bed Prakash Adhikari

versus

Respondent : State of Sikkim

Appeal under Section 374(2) of
the Code of Criminal Procedure, 1973

Appearance


Mr. Rajendra Upreti, Advocate for the Appellant.

Mr. Yadev Sharma, Additional Public Prosecutor for the State-Respondent.

ORDER ON SENTENCE

Meenakshi Madan Rai, J.

1. Heard Learned Counsel for the parties on sentence.
2. Learned Counsel for the Appellant prays that minimum sentence as prescribed for the offence, be imposed on the Appellant, for the reason that this is a first offence under which he was booked. That, he is the only earning member of his family which comprises of his wife and two minor children. That, his wife is unemployed in addition to which, she is suffering from various illnesses. That, on account of her illnesses and lack of income, her children are bearing the brunt of the incarceration of the Appellant as they are uncared for. To further aggravate the above circumstances, the Appellant had also obtained a loan for house construction, which neither he nor his family are able to re-pay in view of his incarceration.
3. *Per contra*, Learned Additional Public Prosecutor submits that in view of the gravity of the offence and the fact that the victim was barely six years old when the Appellant perpetrated



the offence on her, the sentence of imprisonment to be imposed on him be the maximum as prescribed by law, under Section 9(m), punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, the "POCSO Act"), i.e., seven years, and to pay fine of ₹ 5,000/-(Rupees five thousand) only, in default of which, he ought to be sentenced to imprisonment for one more month.

4. Having given due consideration to the submissions advanced, in view of the nature and gravity of offence and as correctly pointed out by Learned Additional Public Prosecutor that, it was perpetrated on a minor child of about six years of age, when the Appellant was a married adult at the relevant time, I am of the considered view that the following sentence will meet the ends of justice;

(i) The Appellant is accordingly sentenced to undergo simple imprisonment of five years for the offence under Section 9(m), punishable under Section 10 of the POCSO Act and to pay a fine of ₹ 5,000/-(Rupees five thousand) only, in default of payment of fine, he shall undergo further simple imprisonment of one month.

(ii) The period of imprisonment already undergone by the Appellant during investigation, as under-trial prisoner and on conviction by the Court of the Learned Special Judge (POCSO Act), Mangan District, Sikkim, vide the impugned Judgment and Order on Sentence, be set off against the period of imprisonment imposed on him today.

5. Appeal disposed of accordingly.



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

7. 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.

**(Meenakshi Madan Rai)
Judge**

12-08-2024

Approved for reporting : **Yes**

ds/sdl