



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.33 of 2023

Appellant : Lalit Subba

versus

Respondent : State of Sikkim

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

Appearance


Mr. Sunil Baraily with Leada T. Bhutia, Advocates 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 submits that presently the Appellant is thirty-two years of age, he has no criminal antecedents and has been the only bread winner in his family. That apart, his wife who is working in a salon, earns a paltry income with which she is unable to maintain herself and her daughter, who is five year old and is suffering from mental health issues, including seizures. That, the child is under medical treatment, for which frequent outstation visits are required and an extended period of incarceration for the Appellant would in fact adversely affect the Appellant's innocent minor child. Hence, only the minimum sentence prescribed be imposed on the Appellant.
- 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 year old when the Appellant perpetrated the heinous offence on her, the maximum period of imprisonment



prescribed for the offences, i.e., Section 9(l) and Section 9(m), both punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, the "POCSO Act"), to be imposed on him, i.e., seven years, each. That, fine of ₹ 5,000/- (Rupees five thousand) only, each, also be imposed under each of the offences, with a default clause as deemed appropriate.

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

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

(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