

**CRL. L.P. No. 11/2019**

STATE OF SIKKIM

PETITIONER (S)

VERSUS

DIPEN SUBBA

RESPONDENT (S)

For Petitioner : Mr. Sudesh Joshi, Public Prosecutor.  
Mr. Thinlay Dorjee Bhutia, Addl. Public Prosecutor.

For Respondent : Mr. B.K. Gupta, Legal Aid Counsel.  
Mr. Dipen Subba, Respondent-in-person through  
V.C.

**Date: 25/08/2021****CORAM :**

**HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.**  
**HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, J.**

...

*PER J.K. MAHESHWARI, CJ*

Seeking leave against the Judgment dated 30.10.2018, passed by the Fast Track Court, East and North Sikkim at Gangtok in Sessions Trial (FT) Case No. 01/2017 acquitting the accused from the charge under Section 376 (2) (j) and (l) of the Indian Penal Code, 1860, for short, IPC. This petition has been preferred under Section 378(3) of the Code of Criminal Procedure, 1973, for short, CrPC.

Indeed it is true that the prosecutrix is a deaf and dumb woman, aged about 50 years, and she has stated about commission of rape with her by the accused. But, as discussed by the Trial Court in paragraphs 35 and 36, it is clear that she is unable to answer any of the questions as put forth to her. However, the Court decided that her sole testimony is not safe to rely and to convict the accused. Considering the aforesaid, it is decided to corroborate the allegation of commission of rape. In this sequel the statement of PW-3 has been testified for the allegation as alleged being an eye witness.

**HIGH COURT OF SIKKIM**  
Record of Proceedings through Video Conferencing

The Court referred the statement of PW-3 in paragraphs 37 and 38 and recorded the finding in paragraph 39 of the judgment that her evidence cannot be taken as an evidence of an eye witness, more so, it is observed that there is no allegation in the testimony of PW-3 regarding the penetrative sexual assault.

In addition to the aforesaid, we have also seen the medical and scientific evidence that too are not supporting the case of prosecution proving the guilt and to prove the charge on the accused. In absence thereto, we are unable to accept the contention of learned Public Prosecutor pressing upon to grant the leave.

After perusal of the findings recorded by the learned Trial Court and evidence of the witnesses, we are satisfied that the findings so arrived at, is based on due appreciation of the evidence which do not warrant any interference. In view of the foregoing observation, Leave as prayed for, in this petition is refused.

Accordingly, this Criminal Leave Petition stands dismissed.

**Judge**

**Chief Justice**