



THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Appeal Jurisdiction)

DATED : 4th June, 2025

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

Crl.A. No.12 of 2024

Appellant : Karna Bahadur Biswakarma alias Karnay

versus

Respondent : State of Sikkim

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

Appearance

Mr. Sunil Baraily, Advocate (Legal Aid Counsel) for the Appellant.

Mr. S K. Chettri, Additional Public Prosecutor and Mr. Sujan Sunwar,
Assistant Public Prosecutor for the State-Respondent.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The only challenge in the instant Appeal is to the sentence meted out to the Appellant, which was for a period of twenty years each, under Sections 5(l) and 5(j) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012, as amended in 2019 (hereinafter, "POCSO Act"), vide the impugned Order on Sentence dated 08-09-2023.

2. Learned Counsel for the Appellant submits that, the FIR Exbt-9 was lodged on 26-02-2020 and the child was delivered by the victim of sexual assault, on 30-03-2020. If the dates are computed backwards it is evident that the child was conceived in the month of July, 2019. That, such a circumstance would indicate that, the offence took place before the amendments were inserted in the Protection of Children from Sexual Offences, 2012, vide the Amendment Act, 2019, w.e.f. 16-08-2019. That prior to the said amendment, the penalty provided under Section 6 of the POCSO Act



for the offences under Sections 5(l) and 5(j) was ten years, whereas the amendment of 2019 has enhanced it to twenty years. That, in view of the fact that the Prosecution failed to specify the exact date of the offence, and in view of the foregoing submissions, the penalty may be reduced to ten years in terms of the POCSO Act, 2012, instead of twenty years as meted out by the Learned Trial Court, in terms of the 2019 amendment to the Act.

3. *Per contra*, Learned Additional Public Prosecutor submits that there is no error in the findings and the penalty imposed by the Trial Court.

4. We have heard the Learned Counsel for the parties and perused the documents on record.

5. Vide the impugned Order on Sentence dated 08-09-2023, in S.T. (POCSO) Case No.17 of 2020, the Court ordered as follows;

"3. I have considered the rival submissions and have taken into consideration the facts and circumstances of the case. In the facts and circumstances of this case, I find that the purpose of justice would be served by sentencing the convict as follows:-

(i) to undergo rigorous imprisonment for a term of twenty (20) years and fine of ₹ 5,000 for the offence under Section 5(l) punishable under Section 6 of the POCSO Act, 2012. In default of the payment of fine, he shall undergo additional term of two (2) months simple imprisonment;

(ii) to undergo rigorous imprisonment for a term of twenty (20) years and fine of ₹ 5,000 for the offence under Section 5(j)(ii) punishable under Section 6 of the POCSO Act, 2012. In default of the payment of fine, he shall undergo additional term of two (2) months simple imprisonment; and

(iii) to undergo rigorous imprisonment for a term of five (05) years and fine of ₹ 5,000 for the offence under Section 9(l) punishable under Section 6 of the POCSO Act, 2012. In default of the payment of fine, he shall undergo additional term of two (2) months simple imprisonment.

4. The period of imprisonment already undergone by the convict during investigation and trial shall be set off against this sentence.

5. The fine, if recovered shall be made over to the victim as compensation. Further, in terms of Schedule-II to the Sikkim Compensation to Victims (or their Dependents) Scheme, 2021 a sum ₹ 6 lakhs (Rupees Six



Lakhs only) is recommended to be awarded to the victim as compensation.”

6. The Prosecution case in the instant matter was that the Appellant, aged about fifty-four years had sexually assaulted the minor victim, aged about fifteen years, resulting in her pregnancy and delivery of a child on 30-03-2020. We find that the evidence of the victim, PW-1, is to the effect that “*The incidents relating to this case took place in August, 2019 onwards*”. This evidence stood undecimated in her cross-examination. There is no other evidence to establish that the offence took place prior to the month of August, 2019.

7. In such circumstances, we are not inclined to consider the arguments put forth by the Learned Counsel for the Appellant as there is no error in the term of penalty meted out to the Appellant in the impugned Order on Sentence under Sections 5(l) and 5(j) punishable under Section 6 of the POCSO Act, which is accordingly upheld.

8. We however notice that in Paragraph 3(iii) of the Order on Sentence, the Trial Court has erroneously recorded *inter alia* that “..... *for the offence under Section 9(l) punishable under Section 6 of the POCSO Act, 2012*”. By no stretch of the imagination is an offence under Section 9(l), punishable under Section 6 of the POCSO Act, which is rather erroneously recorded by the Trial Court. However, considering that the penalty for the offence has been handed out as five years, as prescribed under the correct provision, i.e., Section 10 of the POCSO Act, we say no further.

9. The POCSO Court has also failed to clarify whether the sentences imposed under Section 6 of the POCSO Act for the offence under Sections 5(l) and 5(j) shall run concurrently or consecutively.



In *State of Sikkim* vs. *Ram Nath Choudhary*¹, one of us sitting singly (Meenakshi Madan Rai, J.) had *inter alia* observed as follows;

"6. This Court while upholding the Judgment and Order on Sentence of the Learned Trial Court modified the sentence to the extent that the various sentences of imprisonment imposed on the Appellant shall run concurrently and not consecutively relying on the ratio of the Hon'ble Supreme Court in *O.M. Cherian alias Thankachan v. State of Kerala* [(2015) 2 SCC 501] wherein it was held as follows;

"17. This Court in *Mohd. Akhtar Hussain v. Collector of Customs* [(1988) 4 SCC 183], recognised the basic rule of conviction arising out of a single transaction justifying the concurrent running of the sentences. The following passage in this regard is relevant to be noted: (SCC p. 187, para 10)

"10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different."

....."

10. We now turn to the provisions of Section 386 of the Code of Criminal Procedure, 1973, which deals with powers of the Appellate Court which at Section 386(e) provides as follows;

"386. Powers of the Appellate Court.—.....

.....

(e) make any amendment or any consequential or incidental order that may be just or proper;

....."

The role of the High Court as an Appellate Court is to mete out even handed justice and in such circumstances where errors are detected in the Judgment of the Learned Trial Court, purely in the interest of justice, the errors can be rectified. Hence, sentences imposed under Section 5(l) and Section 5(j) punishable under Section 6 of the

¹ 2018 SCC OnLine Sikk 181



POCSO Act vide the impugned Order are hereby ordered to run concurrently.

- 11. Criminal Appeal dismissed and disposed of accordingly.
- 12. No order as to costs.
- 13. Copy of this Judgment be forwarded to the Learned Trial Court for information, along with its records.
- 14. A copy of this Judgment be made over to the Appellant/convict through the Jail Superintendent, Central Prison, Rongyek and to the Jail Authority for information.

(Bhaskar Raj Pradhan)
Judge
04-06-2025

(Meenakshi Madan Rai)
Judge
04-06-2025

Approved for reporting : **Yes**

ds/sdl