

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

DIVISION BENCH: THE HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Criminal Appeal No. 18 of 2025

Bishnu Chettri *Alias* Aditya
Aged about 26 years,
Son of Shri Amber Chettri,
Resident of Jaldhaka, Jholung Village,
P.O. Jholung, District Kalimpong,
West Bengal.

At present Rongyek Jail, Gangtok. Appellant

Versus

State of Sikkim. Respondent

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

*{Against the impugned judgment dated 29.04.2025 and Order on Sentence
dated 30.04.2025 passed by the Ld. Special Judge (POCSO Act, 2012)
Gangtok, in S.T. (POCSO) Case No.03 of 2023, State of Sikkim vs.
Bishnu Chettri @ Aditya.}*

Appearance:

Ms. Gita Bista, Advocate (Legal Aid Counsel) for the Appellant.

Ms. Pema Bhutia, Assistant Public Prosecutor for the
Respondent.

Date of Hearing : 16.09.2026
Date of Judgment : 23.09.2026
Date on which uploaded : 23.09.2026

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. P.W.6 (the survivor) was a student of Class VIII in a Senior
Secondary School. She met the accused in their village in October,

2021. He had come there to work as a mason. They developed romantic relationship and started meeting frequently. She started frequently staying with the accused in his rented room. In 2022 she eloped with the accused and came to Gangtok where they stayed together and had physical relationship. This is the survivor (P.W.6's) version in her deposition, which was not disputed by the survivor (P.W.6) when she was cross-examined. The survivor (P.W.6), however, admitted that the accused had *applied "sindoor potey"* on her as a symbol of marriage and physical relationship between them was consensual.

2. The criminal prosecution was initiated by P.W.2 (the survivor's sister) on her return from Agra on 20.12.2022 when she did not find the survivor (P.W.6) at home. After an inquiry, she learnt that the survivor (P.W.6) had eloped with a boy. She informed the police station regarding the same and on the next day lodged the First Information Report (the FIR) (exhibit P3/P.W.2) dated 22.12.2022.

3. The FIR led to investigation conducted by Sovit Khatri Chettri (P.W.10) (the investigating officer) who filed the charge sheet on 20.02.2023 under section 5 (j) (ii) punishable under section 6 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act) against the accused.

The Charges

4. Two charges were framed by the learned Special Judge on 31.03.2023 against the accused under section 5(j) (ii) and 5(l)

both punishable under section 6 of the POCSO Act. The accused pleaded not guilty and claimed trial.

5. During the trial 10 witnesses were examined by the prosecution including the Investigating Officer (P.W.10).

Submissions

6. Ms Geeta Bista, learned Counsel for the appellant contends that the prosecution failed to establish the minority of the survivor (P.W.6). It is submitted that the prosecution failed to establish who had informed the Registering Authority about the survivor's age. She further contends that the survivor (P.W.6's) parents having not being examined, the age of the survivor (P.W.6) has not been proved as is required to be proved in a criminal prosecution.

7. Ms Pema Bhutia, learned Assistant Public Prosecutor on the other hand submits that the impugned judgment rendered by the learned Special Judge calls for no interference as the prosecution has been able to prove the ingredients of the offences charged as well as the minority of the survivor (P.W.6) beyond reasonable doubt.

Birth Certificate of the Survivor

8. To establish that the survivor (P.W.6) was a child as defined under section 2(d) of the POCSO Act the prosecution exhibited the birth certificate (exhibit P2/P.W.2) which was proved by the survivor's sister (P.W.2) who was 22 years of age. She deposed that the survivor (P.W.6) was born on 01.05.2007 and identified her birth certificate (exhibit P2/P.W.2). The defence did not even question the P.W.2's deposition that the survivor (P.W.6) was born

on 01.05.2007 and that exhibit P2/P.W.2 produced in the original was the survivor (P.W.6's) birth certificate.

9. The survivor (P.W.6) deposed on 19.03.2024 that she was studying in class X and her date of birth was 01.05.2007. She also identified her birth certificate (exhibit P2/P.W.2). The defence did not question these assertions of the survivor (P.W.6) as well. The birth certificate (exhibit P2/P.W.2) was seized by the Investigating Officer (P.W.10) vide seizure memo (exhibit P5/P.W.3) in the presence of two witnesses one of whom i.e. P.W.3 was examined by the prosecution who proved the seizure of the birth certificate from the survivor (P.W.6's) father.

School Admission Register

10. The Principal of the Government Senior Secondary School (P.W.4) where the survivor (P.W.6) had earlier studied deposed that the School Admission Register (exhibit P8/P.W.4) which was produced in the original also recorded her date of birth as 01.05.2007. The defence did not question the correctness of the entries made in the School Admission Register.

Live Birth Register

11. The Additional Medical Superintendent-II at the STNM Hospital (P.W.5) examined the Live Birth Register (exhibit P11/P.W.5) and found that the date of birth of the survivor (P.W.6) was recorded therein as 01.05.2007. He proved the authentication of birth certificate (exhibit P10/P.W.5) and also identified the birth certificate (exhibit P2/P.W.2) of the survivor issued on 25.05.2007 by the then Registrar, Dr. R.N. Deokota. He produced the Live Birth

Register (exhibit P11/P.W.5) and exhibited the certified copy thereof.

Collection of Blood Samples

12. During investigation the accused was produced before Dr. Ajay Chettri, Medical Officer (P.W.7) for collection of his blood sample. He obtained the blood sample of the accused in a filter paper, sealed packed it and handed it over to the police while signing the blood sample authentication form (exhibit P.14/P.W.7).

13. Dr. Sangey Pelzang Tamang (P.W.8) the Senior Consultant, Obstetrics and Gynaecology at the STNM Hospital collected the blood sample of the survivor (P.W.6) and her new born baby on 18.04.2023, sealed it and handed over to the police. The Investigating Officer (P.W.10) forwarded the blood samples obtained of the survivor (P.W.6), the new born baby as well as the accused for forensic examination.

Forensic Examination

14. Srijit Kumar Mallick (P.W.9) a Scientist at Central Forensic Science Laboratory, (CFSL) Kamrup, Assam since 2016 received the blood samples examined it and concluded that the genetic profile of the survivor (P.W.6) is consistent as the biological mother of the female new born baby and the genetic profile of the accused is consistent with the biological father of the female new born baby. He exhibited the report prepared by him (exhibit P17/P.W.9).

15. The accused maintained that the statements made by the prosecution witnesses against him were either not true or he did not know about it when examined under section 313 of the Code of

Criminal Procedure, 1973 (Cr.P.C.). He stated that he was innocent and falsely implicated in a case.

The Survivor was a Child

16. The learned Special Judge has returned a finding that the survivor (P.W.6) was 15 years old during the relevant time and therefore a child within the meaning of section 2(d) of the POCSO Act. The learned Special Judge has also concluded that the survivor (P.W.6) and the accused were in a romantic relationship and because of the physical relationship with the accused the survivor (P.W.6) became pregnant and delivered a baby girl on 18.04.2023. The learned Special Judge held that the physical relationship they had was consensual.

Considerations

17. Heard the learned counsel for the appellant as well as the learned Assistant Public Prosecutor.

18. Whenever an accused is charged for an offence under the POCSO Act, it is incumbent upon the prosecution to establish that the victim was a child at the time of the offence. The prosecution has established this fact by producing the original birth certificate (exhibit P2/P.W.2), which is a public document and carries with it a presumption of correctness. It is issued under section 12 of the Registration of Births and Deaths Act, 1969 read with Rule 8/13 of the Sikkim Registration of Births and Deaths Rules, 1999. The defence has led no evidence to rebut the presumption. The cross-examination by the defence also does not help them. In fact, it leads to a presumption that the accused was aware about the

minority of the survivor (P.W.6). The birth certificate (exhibit P2/P.W.2) has also been proved by the unquestioned evidence of the survivor's sister (P.W.2) as well as the survivor (P.W.6).

19. As P.W.2 was the survivor's sister, who was 22 years old, she would have special knowledge about the survivor (P.W.6's) birth as well as her birth certificate (exhibit P2/P.W.2). The relevant records from the STNM hospital and the deposition of the concerned authority also establishes the correctness of the date of birth recorded in the birth certificate (exhibit P2/P.W.2). This fact is further corroborated by the unquestioned documentary and oral evidence of the Head Master and the records of the Government Secondary School attended by the survivor (P.W.6). Therefore, we are unable to agree with the learned counsel for the appellant. Merely because Dr. Chintamani Sharma (P.W.5), the Additional Medical Superintendent-II at STNM Hospital who proved the entry of the survivor's date of birth in the Live Birth Register (exhibit P11/P.W.5) admitted that the entry therein was not entered by him, it cannot be held that the prosecution had failed to prove the Live Birth Register (exhibit P11/P.W.5). Dr. Chintamani Sharma (P.W.5) deposed that birth certificate (exhibit P2/P.W.2) was issued on 25.05.2007 by the then Registrar Dr. R.N. Deokota.

20. The Live Birth Register (exhibit P11/P.W.5) is a statutory register maintained by the hospitals to register the births that takes place at the hospital under section 16 of the Registration of Births and Deaths Act, 1969. It also carries with it a presumption of correctness of the entries made therein under section 35 of the Indian Evidence Act, 1872. These entries were made *ante litem*

motam and therefore, can be relied upon safely when such documents are admissible under section 35. (see **Murugan vs. State of Tamil Nadu**¹).

21. We have examined the evidence of the prosecution as well as the impugned judgment. We are of the view that the impugned judgment calls for no interference.

22. The learned Special Judge has sentenced the accused for rigorous imprisonment for 20 years and a fine of Rs.2000/- for the offences under section 5(j)(ii) and 5(l) punishable under section 6 of the POCSO Act. Both the sentences had a default stipulation on the failure of the payment of fine to undergo additional term of two months simple imprisonment. The survivor (P.W.6) was recommended a compensation of Rs.7 lakhs under Schedule II of the Sikkim Compensation to Victims (or their Dependents) Scheme, 2021.

23. Section 6 of the POCSO Act provides a punishment of rigorous imprisonment for a term "*which shall not be less than 20 years, but which may extend to imprisonment for life, which means imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.*"

24. We find that the learned Special Judge has imposed a minimum sentence prescribed under section 6 of the POCSO Act. We, therefore, confirm the sentence.

25. However, we are still faced with a situation, like in many such cases of an adolescent survivor (P.W.6) involved in a

¹ AIR 2011 SC 1691

consensual physical relationship with an adult accused who was around 22 years at the time of the offence. The survivor (P.W.6) admitted during her cross-examination that they had also performed customary "*sindoor potey*". The evidence establishes that they have a child out of this relationship. The sentences imposed upon the accused sends him to prison for 20 years which is almost a life time. We have no Plenary Powers akin to power of Supreme Court, to interfere with the conviction as this is a classic case of Romeo-Juliet as evident from the evidence in the matter.

26. Copy of this judgment be forwarded to the Court of the learned Special Judge, along with the records. Copy of this judgment shall be served upon the appellant free of cost forthwith. Copy shall also be forwarded to the Additional Director General of Police, State Central Prison immediately via email.

(Bhaskar Raj Pradhan)
Judge

(A. Muhamed Mustaque)
Chief Justice

Approved for reporting : **Yes**

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