

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

Crl. A. No.01 of 2024

Ashok Subba
Son of Nar Bahadur Subba,
Resident of Aho Senti, Pakyong Sikkim
(presently at Rongyek Central Jail, Rongyek, Sikkim)

... Appellant

versus

State of Sikkim

... Respondent

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

Appearance:

Mr. R. C. Sharma, Legal Aid Counsel for the Appellant.

Mr. S. K. Chettri, Additional Public Prosecutor for the Respondent.

Judgment Reserved on : 16.09.2026
Judgment Pronounced on : 23.09.2026
Judgment Uploaded on : 23.09.2026

JUDGMENT

(A. Muhamed Mustaque, C.J.)

1. The Appellant has been convicted for an offence under Sections 5(m) and 5(n), punishable under Section 6 of Protection of Children from Sexual Offences (POCSO) Act, 2012. He has been ordered to undergo rigorous imprisonment for a period of twenty years, with a fine of ₹5000/- (Rupees five thousand only).
2. It is the prosecution's case that, on 21.07.2021, the victim who was eight years old, had gone to the house of the accused, who is the victim's uncle, to meet her grandmother, who lived with the accused.

However, the grandmother was not at home, and only the accused was present. Taking advantage of the circumstances, the accused committed the offence of penetrative sexual assault against the victim.

3. The victim's mother noticed blood stains in the toilet and, noticing that something was unusual, took the victim to the Pakyong Primary Health Centre for medical assistance. On examination, the Medical Officer informed the victim's mother that the victim had sustained an injury to her vagina and asked to inquire about the cause of such injury.

4. The victim's mother, with the help of her friends, namely Anita Subba (PW-4) and Renu Subba (PW-5), counselled the victim, and the victim revealed that the accused had raped her. She also narrated that similar incidents had occurred on previous occasions. Accordingly, the mother of the victim reported the incident to the Pakyong Police Station on 23.07.2021.

5. The Prosecution examined ten witnesses. The accused also in his defence examined three witnesses including himself.

6. The Learned Legal Aid Counsel for the Appellant raised a contention with regard to the proof of the age of victim. It was submitted that the person who had made the entry in the Birth Register or issued the birth certificate had not been examined as a witness, and therefore, the age of the victim was not duly proved. We have considered the submission but there is not much argument disputing the age of the victim. The age of the victim was sought to be established through the evidence of her parents, who were examined as PW-2(victim's mother) and PW-3(victim's father). Further, the Registrar of Births and Deaths, examined as PW-7, proved the date of birth of the victim as 31.01.2013 and the authenticity of the birth certificate being

issued from their office. The Headmaster of the school examined as PW-9 where the victim was studying also proved the same date of birth as recorded in the school admission register (Exhibit P-12). The mere fact that the particular person who made the original entry in the Birth Register was not examined cannot, in the facts of the present case, by itself render the evidence regarding the age of the victim unreliable, particularly when the official witness, namely the Registrar of Births and Deaths, had been examined and the date of birth was also supported by the school record. We therefore, find no merit in the contention raised by the Learned Legal Aid Counsel with regard to the age of the victim.

7. The next question is with regard to the medical evidence. Exhibit P-14 is the medical report of the victim. The medical report establishes the following:

- i. signs of previous sexual intercourse cannot be ruled out
- ii. hymen is ruptured and;
- iii. no other external injuries sustained.

The Doctor also deposed in accordance with the medical certificate issued by her.

8. The victim was examined as PW-1. During cross-examination, the victim stated that she knew the accused for a long time and that she used to call him *fapang/kaka*. As seen from the records, during her examination-in-chief, the victim was found crying and the Court gave her some time to relax before proceeding with her deposition. The victim categorically stated that the accused had forced his penis into her private part, the vagina, and that she felt pain at that time. She also narrated that the accused had committed the same act on two previous occasions.

9. In the cross-examination conducted by the accused, there were more suggestions put to the victim that the accused had not done so or denying the occurrence. However, nothing has emerged to discredit the testimony given by the victim that the accused had inserted his penis into her vagina.

10. We do not find any reason to disbelieve the testimony of the child witness, who is the victim. The identity of the accused is also not in dispute, as the accused is the victim's uncle.

11. The victim's mother (PW-2) stated that the accused is the brother of her husband. She recalled that the victim had reported having stomach pain to which she had not paid much attention. Thereafter, when she went to the toilet, she found blood stains. She then took the victim to the doctor. She subsequently narrated the incident to her friends and with their assistance, counselled the victim. It is the friends of the victim's mother PW-4 and PW-5, who enquired from the victim and, in presence of her mother the victim narrated what had happened to her.

12. These pieces of evidence lend credence and corroborate the testimony of the victim and of her mother.

13. The evidence of the child witness, when considered together with the medical evidence and surrounding circumstances, is sufficient in this present case to establish the guilt of the accused.

14. The victim and the accused are related to each other. The incident occurred when no other person was present in the house. Therefore, the absence of an eyewitness to the occurrence is not, by itself, material and no one can be expected to testify to the presence of the accused.

The accused was not a stranger to the victim. The circumstances afforded the accused an opportunity to commit the offence when no other person was present in the house. The medical examination also does not indicate any inability on the part of the accused to perform the sexual act.

15. Learned Legal Aid Counsel for the Appellant further vehemently submitted that there was a contradiction between the statement given by the victim's mother and the statement recorded by the police.

16. We do not find any material discrepancy in this regard, inasmuch as the victim's mother only stated that she was not aware of what had been recorded by the Police. In her cross-examination, she stated that the statement had not been scribed in her presence and that she was not sure who scribed it. She also stated that the contents of the statement were not read over and explained to her.

17. Such a trivial circumstance, in the facts of the present case, does not affect the core of the prosecution case or the credibility of the material witnesses.

18. The medical evidence and the testimony of the child witness, who is the victim, are sufficient to establish the guilt of the accused.

19. We, therefore, do not find any reason to differ with the findings of the Trial Court.

20. Before parting with this matter, we find it necessary to make certain observations regarding the conduct of the defence by the Legal Aid Counsel in the Trial Court.

21. We find that the Defence Counsel has substantially confined the cross-examination to putting suggestions and obtaining denials. The Defense Counsel plays a vital role in conducting cases on behalf of the accused, particularly in cases where the accused is represented through legal aid.

22. The Sikkim State Legal Services Authority (SSLSA), which engages Legal Aid Counsel, has the responsibility to supervise and monitor the manner in which Legal Aid Counsel conduct such cases. The SSLSA shall obtain a report from the Trial Court regarding the performance of all the Legal Aid Counsel of such cases. The SSLSA shall also undertake appropriate training and sensitisation of the Legal Aid Counsel, particularly with regard to effective cross-examination and the manner of defending an accused in a criminal trial.

23. Legal aid cannot be a mere formality. It is essential to ensure effective and qualitative legal aid to persons who are unable to secure legal representation on their own.

24. The SSLSA shall thereafter review the empanelment and engagement of Legal Aid Counsel and ensure that only competent Counsel are retained on its panel.

25. Learned Member Secretary of the SSLSA shall call for periodical reports from the Trial Courts regarding the performance of the Legal Aid Counsel and take appropriate steps whenever deficiencies in representation are brought to notice.

26. Another aspect which requires consideration is that, where the victim is a child below twelve years of age, unless an effective system put in place by the SSLSA to provide assistance and support in

appropriate form, such victims may face a bleak future, including fear, psychological trauma, difficulty in reintegration and reluctance to return to mainstream society. An adequate support and rehabilitation mechanism for the victim, therefore, requires to be established, with appropriate mechanisms to ensure continued care, assistance and support to the victim.

27. The Registry shall forthwith forward a copy of this Judgment to SSLSA for necessary actions in terms of the observations and directions contained herein.

28. With the aforesaid observations and findings, Crl. A. No. 01 of 2024 stands dismissed.

29. The Trial Court records shall be remitted back.

(Bhaskar Raj Pradhan)
Judge

(A. Muhamed Mustaque)
Chief Justice

Approve for Reporting : No
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