

Deepak Chettri Vs State Of Sikkim

Court: Sikkim High Court

Date of Decision: July 5, 2024

Acts Referred: Protection Of Children From Sexual Offences Act, 2012 " Section 3(a), 4, 5(l), 6, 8, 30, 35
 Indian Penal Code, 1860 " Section 363
 Code Of Criminal Procedure, 1973 " Section 164, 313

Hon'ble Judges: Meenakshi Madan Rai, J; Bhaskar Raj Pradhan, J

Bench: Division Bench

Advocate: Umesh Ranpal, Yadav Sharma

Final Decision: Dismissed

Judgement

Meenakshi Madan Rai, J

1. This Appeal pertains to the sexual assault of a six year old boy child, by a twenty-seven year old man, after alluring the minor with some edibles.

The Prosecution case is that the Appellant was working in the house of PW-5, the elder paternal uncle of the victim PW-1, as a domestic help since

two months prior to the incident. On the relevant day, the Appellant came to the house of PW-1, with eggs and "chips" and asked him to

accompany the Appellant to the nearby jungle. There, on the pretext of playing some game, the Appellant inserted his genital into the mouth of PW-1.

Later, he took him home and told him not to disclose the incident to anyone. PW-1 however told PW-6, his uncle, who paid scant attention. Later, he

told PW-2, his mother who in turn informed his father PW-8, which led to the lodging of Ext-2, on 05-08-2020, to the effect that on 03-08-2020, PW-1

disclosed to him that the Appellant took him to a nearby jungle and sexually assaulted him. The Police Station registered a case against the Appellant

under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, the "POCSO Act"), on the same date and endorsed it

to PW-10, the Investigating Officer (IO) for investigation, on completion of which he submitted Charge-Sheet against the Appellant under Section 8 of

the POCSO Act.

2. Charge was framed against the Appellant under Section 363 of the Indian Penal Code, 1860 (hereinafter, the "IPC") and Section 3(a)/4 and

Section 5(l)/6 of the POCSO Act. Ten Prosecution witness came to be examined to establish its case beyond a reasonable doubt. The Learned Trial

Court on analysing the evidence before it observed that PW-1 identified the Appellant as the offender, deposed of the way the incident was

perpetrated on him in his statement under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter, the Cr.P.C.) and in his deposition

before the Court. That, he could not be said to have been tutored and his evidence inspired the confidence of the Court. That, the Appellant for his

part failed to rebut the presumption as provided under Section 30 of the POCSO Act. That, no explanation was forthcoming in his response under

Section 313 of the Cr.P.C. Consequently, the Court of the Learned Special Judge (POCSO Act, 2012), at Namchi, Sikkim, in Sessions Trial (POCSO)

Case No.08 of 2021, (State of Sikkim vs. Deepak Chettri), vide its Judgment, dated 28-09-2023, convicted the Appellant under Section 3(a)/4 of the

POCSO Act and sentenced him to undergo simple imprisonment for a period of ten years, the fine imposed was half the earnings that would accrue

on his working in the prison, payable to the victim. A default stipulation followed. He was acquitted under Section 5(l) of the POCSO Act and Section

363 of the IPC.

3. Assailing the finding of the Learned Trial Court, Learned Counsel for the Appellant argued that there was a delay in the lodging of the FIR, the

offence was allegedly committed on 03-08-2020 but the FIR was lodged only on 05-08-2020, sans explanation for the delay. That, PW-1 in his

evidence stated that he told O dada, pusai (uncle) and his father about the incident, contrarily PW-2 his mother stated that the victim told her

about the incident. That, PW-1 deposed that he was going for his tuition when the incident took place, while PW-2 stated that it was when PW-1

returned from the tuition as told to her by PW-1. Neither O dada, nor pusai were listed as Prosecution witnesses to test the veracity of the

statements of PW-1. That, the informant of the details in the original school admission register to prove the date of birth of the victim was not

examined. In view of the foregoing anomalies, the Prosecution case deserves a dismissal and the Appellant an acquittal.

4. Per contra, supporting the finding of the Learned Trial Court, Learned Additional Public Prosecutor contended that the evidence of PW-1 has been

consistent regarding the incident. PW-2 and PW-4 have vouched for the veracity of the crime, having been told of it by PW-1. The evidence of these

witnesses are supported by the evidence of PW-5 another uncle of the victim and PW-6 the third uncle of the victim who was told by PW-1 that the

Appellant had inserted his penis inside his mouth. That, the date of birth of the victim has been duly established by furnishing the original school

admission register as also the birth certificate of the victim. PW-9 the doctor, who examined the victim was given a history of the offence by the

victim himself. Hence, in light of the cogent and consistent evidence, the impugned Judgment and Order on Sentence of the Learned Trial Court

brooks no interference.

5. The evidence on record has been carefully perused and considered by us and the submissions advanced by Learned Counsel for the parties also

afforded careful consideration. The only question that falls for consideration is whether the Learned Trial Court was correct in arriving at its finding of

conviction and handing out the consequent sentence.

6. While considering the question of the age of the victim, Ext-7 the birth certificate of the victim was handed over by his father PW-8, to the Police.

PW-8 did not disclose the contents of Ext-7 but stated that his son was aged about seven years when the incident occurred. No cross-examination

was conducted to test the veracity of the contents of Ext-7 or the evidence regarding the victim's age, consequently the contents of the document

is accepted in its entirety and his date of birth accepted as 28-02-2014.

7. The Learned Trial Court has correctly noted in Paragraph 14(c) of the impugned Judgment that;

“14(c). The defence could not demolish PW 8's evidence with regard to the handing over of the original birth certificate of PW 1

to the police, during PW 8's cross-examination the defence also could not disprove Exhibit 7 and Exhibit 8, and no cross-examination on Exhibit 7

and Exhibit 8 was conducted. As reiterated above, the defence has not disputed the age of the victim.

8. The Learned Trial Court also relied on the evidence of PW-7, who proved Exbt-3, the requisition for entries in the school admission register for age

of proof of the victim, received by him from PW-10. PW-7 furnished Ext-5, the entry details of the date of birth of PW-1. The Learned Trial Court in

Paragraph 14(c) of its Judgment was satisfied that the date of birth of PW-1 was 28-02-2014. Useful reference on this aspect is made to the

observation of this Court in Sancha Hang Limboo vs. State of Sikkim SLR (2018) SIKKIM 1, where it was held that a document having remained

unchallenged in cross-examination in the Trial Court cannot be challenged at the stage of Appeal. It was elucidated as follows;

“15. Therefore, can the authenticity of the contents of Exhibit 2 be raised now? The answer would have to be in the negative. In this context, we

may beneficially turn to the ratio in Sham Lal alias Kuldip vs. Sanjeev Kumar and Others [(2009) 12 SCC 454] where the Hon'ble Supreme

Court while considering whether there was a validly executed Will in favour of the Defendants No.1 and 2, discussed as follows;

“21. One of the documents relied upon by the learned District Judge in coming to the conclusion that the plaintiff is the son of the deceased Balak

Ram is Ext. P-2, the school leaving certificate. The learned District Judge, while dealing with this document has observed:

“On the other hand, there is a public document in the shape of school leaving certificate, Ext. P-2 issued by Head Master, Government Primary

School, Jabal Jamrot recording Kuldip Chand alias Sham Lal to be the son of Shri Balak Ram. In the said public document as such Kuldip Chand alias

Sham Lal was recorded as son of Shri Balak Ram.”

The findings of the learned District Judge holding Ext. P-2 to be a public document and admitting the same without formal proof cannot be

questioned by the defendants in the present appeal since no objection was raised by them when such document was tendered and received in

evidence.

22. It has been held in *Dasondha Singh v. Zalam Singh* [(1997) 1 PLR 735 (P&H)] that an objection as to the admissibility and mode of proof of a

document must be taken at the trial before it is received in evidence and marked as an exhibit.”

[emphasis supplied]

This ratiocination would aptly apply to the present circumstances and hence the Appellant cannot now bring to question the contents of Exhibit 2

before this Court, the issue having not been raised before the Learned Trial Court.”

9. Having examined the evidence on record with regard to the victim’s age, we find no reason to differ from the Learned Trial Court on this

facet.

10. So far as the occurrence of the incident is concerned, the minor discrepancies which do not affect the crux of the Prosecution case are to be

disregarded. This observation has been made by the Supreme Court in *Kalabhai Hamirbhai Kachhot vs. State of Gujarat* (2021) 19 SCC 555 as

follows;

“24. Further, in *Narayan Chetanram Chaudhary v. State of Maharashtra* [(2000) 8 SCC 457 : 2000 SCC (Cri) 1546], this Court has

considered the effect of the minor contradictions in the depositions of witnesses while appreciating the evidence in criminal trial. In the aforesaid

judgment it is held that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the

witnesses. Relevant portion of para 42 of the judgment reads as under: (SCC p. 483)

“42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission

his father about the incident. His evidence has been duly corroborated by PW-4 his uncle, who vouched for the fact that the victim had told him about

the incident, PW-6 another uncle was also told of the incident by the victim and PW-8 his father. Their evidence withstood the cross-examination.

13. In such circumstances, we find that there is no reason to doubt the veracity of the Prosecution case. The impugned Judgment and the Order on

Sentence, both are accordingly upheld.

14. Appeal dismissed and disposed of accordingly.

15. Copy of this Judgment be forwarded to the Learned Trial Court for information along with its records.