

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

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Crl. Appeal No. 21 of 2023

Saroj Pradhan,
Aged about 23 years,
Son of Shri Arjun Pradhan,
Sakyong Busty,
P.O. Pedong and P.S. Kalimpong,
West Bengal-734311.

..... Appellant

Versus

State of Sikkim

.....Respondent

Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 against the conviction under section 10 of the Protection of Children from Sexual Offences Act, 2012.

{Appeal against the impugned judgment and order of sentence dated 17.08.2023 passed by the Court of the Special Judge (POCSO Act, 2012) at Gangtok, Sikkim in S.T. (POCSO) Case No.21 of 2021 titled State of Sikkim vs. Saroj Pradhan}

Appearance:

Mr. N. Rai, Senior Advocate with Ms. Tara Devi Chettri,
Advocate for the Appellant.

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

Date of Hearing : 31.03.2026
Date of Judgment : 31.03.2026
Date on which uploaded : 31.03.2026

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. There is nothing in criminal law which prohibits accepting a minor victim's statement. Rule is of caution.

Caution against tutoring which some children may be susceptible to. In sexual offences one rarely finds evidence of eye witnesses. Statement of minor victim has to be cautiously examined by the Court. Corroboration of a minor victim's statement is not a rule. The Court however, examines the surrounding circumstances and the evidence available to assure itself that the victim's statement is truthful. It is only the victim who knows and understands what she has gone through and therefore weightage is given to victim's testimony. When the alleged act of crime is one of sexual assault and more so when the victim's age is below 12 years it becomes even more difficult for the court to find evidence in support of the victim's statement. Is it a tutored statement? Is it a statement made out of any other fear? These are questions, which have been sought to be provoked in the present appeal.

2. The learned Senior Counsel appearing for the appellant has contested the impugned judgment of conviction and sentence under section 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) on the following grounds:

- (i) He contends the fact that the father of victim (P.W.2) was a Head Constable in the jurisdiction of the same police station where the First Information

Report (FIR) (exhibit-1) was registered and hence questions the credibility of the investigation.

(ii) He contends that there has been exaggeration and embellishment in the victim's testimony and improvement in the statements made by the father (P.W.2) and the mother (P.W.9) and questions the sole testimony of the victim and these statements.

(iii) It is contended that the medical evidence of the victim does not support the case of the prosecution as the victim's mother during cross examination had stated that there was swelling in the victim's lips although when the medical examination was conducted on the same day, the medical report (exhibit-9) did not reveal the same.

3. The learned Assistant Public Prosecutor submits that the judgment of the learned Special Judge is sound, well reasoned and supported by evidence placed before the Court. She contends that although the victim's father (P.W.2) was a Head Constable the evidence brought out in cross examination by the defence itself clarifies that he was not posted at the police station but at another check post. To meet the argument of the learned Senior Counsel about

the victim making up the story as she did not want to attend the tuition classes, it is pointed out that in fact the evidence on record shows that the victim had been going for tuition only for one week and the day the incident took place was in fact the first day of her tuition at the residence of the appellant.

4. The learned Assistant Public Prosecutor also submits that the records reveal that the victim's statement has been consistent throughout.

5. The learned Special Judge authored the judgment of conviction on a close scrutiny of the evidence of the victim's mother (P.W.9), the victim's father (P.W.2), the landlord's wife (P.W.8) and the victim herself (P.W.1).

6. Insofar as the minority of the victim is concerned the learned Senior Counsel does not make an issue of the opinion of the learned Special Judge when he found that the victim was a child who was barely 10 years old at the time of the offence.

7. This Court has examined the deposition of the victim in detail as guided by the learned Senior Counsel and the learned Assistant Public Prosecutor. The allegation in the FIR (exhibit-1) lodged by the victim's father (P.W.2) who was not a witness of the incident is that his wife alleged that on 27.03.2021 the victim had disclosed to her mother

(P.W.9) that the appellant had put his hand on her chest and forcefully tried to kiss her. In her deposition recorded on 14.09.2021 several months later, the victim had deposed that the appellant had suddenly closed the door of the house and made her sit on his lap and kissed on her lips. She also deposed that he had put his hand on her chest underneath her clothes. She went to state thereafter that the appellant told her not to tell anyone about it. This is consistent with what the FIR has alleged. It is noticed that during cross examination of the victim it was put to her that the appellant had kissed her out of affection which was denied by the victim. The suggestion itself is an admission of the alleged act. Although the cross examination was a lengthy one the child victim withstood all of it and did not get swayed from the truth. The suggestion made to the father of the victim by the defence that the victim had narrated a false story of the alleged incident was denied.

8. The learned Special Judge confirmed the presence of the appellant at the place of occurrence with the victim from the deposition of the landlord's wife (P.W.8). She deposed that on 27.03.2021 she had sent her son for tuition to the appellant who was a teacher. Later she had taken him for a hair cut from the appellant's room at

around 8:30 to 9:00 a.m. and at that time she saw that the victim was in the room of the appellant. The victim's mother (P.W.9) deposed that after the tuition when the victim returned home and when she asked the victim she narrated about the fact that the appellant had kissed her and put his hand inside her vest.

9. The cross examination of the victim's mother (P.W.9) reflects that it was not the prosecution's story that the lips of the victim was swollen. It came in cross examination to the suggestion made by the defence that the lips of her daughter was not injured. To that suggestion the victim's mother volunteered to say that the victim's lips were swollen. The statement of the victim's mother (P.W.9) in cross examination may be true or may not be true. The medical evidence taken several hours later does not confirm it. As to why such a suggestion was given by the defence, they would have the necessary answer. This Court is however absolutely certain that such minor embellishment of the victim's mother (P.W.9) in her deposition should not dissuade this Court from the core of the prosecution's case which stands firm.

10. Sexual assault has been defined under section 7 of the POCSO Act. The alleged act found to have been committed by the appellant squarely falls within the

definition of the sexual assault. The age of the victim which has been confirmed by both the parents as well as the school authorities who came to the witness box and the original birth certificate (exhibit-3) placed on record through a proper seizure memo (exhibit-11) and seizure witnesses (P.W.6 and P.W.7) confirm that at the relevant time the victim was under the age of 12. Therefore, the sexual assault on the victim by the appellant would squarely fall under section 9(m) of the POCSO Act which is “aggravated sexual assault” on a child below 12 years.

11. It is noticed that the learned Special Judge had also recorded his observation on the physical appearance of the victim and confirmed that she was in fact a “child”.

12. Section 10 of the POCSO Act prescribes a minimum punishment for aggravated sexual assault for a term of 5 years which may extend to 7 years. It is noticed that the learned Special Judge has sentenced the appellant for the minimum period of 5 years and to pay a fine of Rs.5000/- for the offence under section 9(m) punishable under section 10 of the POCSO Act. In default of payment of fine the learned Special Judge directed that he shall undergo additional term of two months simple imprisonment.

13. On the fact of the present case this Court is of the view that the appellant was also chargeable under section

9(p) of the POCSO Act. However, since no charge was pressed during the trial, this Court lets that to rest.

14. The records reveal that the learned Special Judge had granted an interim compensation to the victim to the amount of Rs.30,000/-. As final compensation an additional amount of Rs.20,000/- is granted.

15. The impugned judgment of conviction and order on sentence dated 17.08.2023 is upheld. The appeal is dismissed. The appellant shall be taken into custody and he shall serve the sentence as ordered by the learned Special Judge.

16. The records of the learned Trial Court shall be remitted forthwith. A copy of this judgment shall be given to the learned Special Judge, appellant as well as the jail authorities.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
to/