

GAHC040000712024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND
ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : IA(Crl)/4/2024

Jitnyem Wangsu
 Age: 30 Occupation :
 Address: Wife Wangram Lowang
 Chasa Vilage PO Kapu PS Khonsa
 Tirap District AP

VERSUS

The State of AP and Anr
 Age: 0 Occupation :
 Address: represented by the PP of AP

2: Roksen Bangsia
 Age: 0 Occupation :
 Address: Wife of Manjay Bangsia
 Camp ALC Colony Deomali PO Deomali
 Tirap District AP

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE KARDAK ETE

For the petitioner/appellant(s) : Mr. Tabit Tapak, Advocate

For the respondent(s) : Mr. Token Ete, Addl. P.P.

10.09.2024
(Vijoy Bishnoi, CJ)

The matter has come up for consideration of the Interlocutory Application (Crl.) preferred on behalf of the applicant under Section 389 Cr.P.C. with the prayer for suspending the sentence awarded by the trial Court vide

judgment and order dated 07.12.2023, passed by the learned Special Judge (POCSO), Khonsa Division, Tirap District, Arunachal Pradesh in Khonsa/SC (POCSO) Case No. 04/2024 (corresponding DML P.S. Case No. 02/2023 under Section 376(3) IPC and under Section 4 & 6 of POCSO Act).

2. The Trial Court has convicted the applicant for the offence punishable under Section 376(3) IPC as well as under section 4(2) of the POCSO Act and sentence him in the following manner:

Section	Punishment	Remarks (if any)
376(3) IPC & Section 4(2) POCSO Act	20 years rigorous imprisonment with a fine of Rs. 30,000/-	In default in payment of fine, to suffer further period of 6 months.

3. Mr. Tabit Tapak, learned counsel for the applicant has submitted that, as a matter of fact, the trial Court has grossly erred in convicting and sentencing the applicant vide the impugned judgment. It is submitted that there are severe contradictions in the statement of the prosecution witnesses and the trial court has erred in relying on the evidence of the prosecution witnesses.

4. Learned counsel has further submitted that from the medical examination report as well as the statement of the doctor (PW 3), it is clear that on the date of the medical examination of the victim, i.e. 18.04.2023, she was pregnant by 7 weeks and 2 days. It is submitted that as per the complaint, the incident of the alleged sexual assault took place on 07.03.2023, and strictly speaking, 7 weeks' period was not over by 18.04.2023 when the victim

was medically examined. It is also submitted that the complainant (PW1- mother of the victim), in her cross-examination before the trial Court confessed that she had filed the complaint against the appellant/applicant because the accused had failed to pay Rs. 10,000/-, which he had promised to her victim daughter.

4. Learned counsel for the applicant has submitted that from the above facts and circumstances it is clear that the victim filed the complaint as the appellant had refused to pay Rs. 10,000/- to her. It is further submitted that the testimony of the victim is also not believable. However, the trial Court has illegally relied upon the same while convicting and sentencing the applicant vide the impugned judgment.

5. Per contra, Mr. T. Ete, learned Additional Public Prosecutor, Arunachal Pradesh, has vehemently opposed the application for suspension of sentence and has argued that the prosecution has proved the charges against the applicant by producing cogent and reliable evidence. It is also submitted that the minor contradictions in the testimony of the prosecution witnesses are of insignificant nature and, therefore, the trial Court has not committed any illegality in relying on the prosecution evidence. Learned Additional Public Prosecutor has further submitted that the case of penetrative sexual assault committed against the victim has been proved against the applicant/appellant solely on the basis of the testimony of

the victim itself, and it is well settled that conviction can be maintained on the basis of sole testimony of the victim.

6. Having heard the learned counsel appearing for the parties and after carefully scrutinizing the Lower Court Record and also taking into consideration the statement of the prosecution witnesses, particularly the statement of the doctor (PW3) as well as the victim girl (PW5), we are not inclined to suspend the sentence of the appellant at this stage.

Hence, this Interlocutory Application is dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant