

GAHC040002402022



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

CRIMINAL APP.(J) NO. 04 OF 2022

Shri Hok Hana Chakma (Convict),
S/O Shri Atul Kumar Chakma,
Aged about 21 years,
Village- Gunanagar,
PO & PS- Wakro, District- Lohit (Arunachal Pradesh)
Presently lodging at District Jail Tezu

--- Appellant.

Versus

1. The State of Arunachal Pradesh
to be represented by Public Prosecutor
Gauhati High Court,
Itanagar Permanent Bench.

--- Respondent.

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE
HON'BLE MR. JUSTICE BUDI HABUNG

For the appellant : Ms. S. V. Darang (Amicus Curiae)

For the respondents : Ms. L. Hage, Add.P.P
Ms. N. Danggen (victim)

Date of hearing : 12th April, 2024

Date of Judgment : 01st July, 2024.

:: JUDGMENT AND ORDER ::

[CAV]

(Budi Habung, I)

Heard Ms. S. V. Darang, learned Amicus Curiae appearing for the appellant. Also heard L. Hage, learned Additional Public Prosecutor for the State of Arunachal Pradesh and N. Danggen, learned Legal Aid Counsel representing the respondent No. 2 (victim).

2. This Criminal Jail Appeal is preferred by the appellant/convict, namely, **Shri Hok Hana Chakma**, against the judgment and order dated 31.05.2021 passed by the learned Special Judge (POCSO), Tirap, Changlang & Longding at Khonsa, Arunachal Pradesh, in Khonsa Special (POCSO) case No. 32/2020 arising out of Diyun P.S. Case No. 19/2020 under Section 376/366 IPC r/w Section 6 of POCSO Act, whereby, the appellant has been convicted and sentenced to undergo 20(twenty) years rigorous imprisonment with default clause for offence under Section 6 of POCSO Act; and 10(ten) years rigorous

imprisonment with default clause for offence of kidnapping or inducing woman to compel her marry under Section 366 IPC.

FACTS OF THE CASE

3. The brief fact of the case leading to the filing of this appeal is that on 28.06.2020, the father of the victim, PW-1 lodged an FIR before the O/C, P.S, Diyun alleging therein that his minor daughter (name withheld 'Victim') aged about 15 years has been kidnapped by accused Shri Hok Hana Chakma alias Dhananjay on 23.06.2020 and raped her. While they were searching for her, the victim on 27.06.2020 was handed over to them by one Shri Sushil Chakma, Gaon Burah of Chokham Chakma Basti (PW-2) and now the victim is behaving like mad. Thus, they suspected that the accused might have done black magic on her.

4. Basing on the above FIR, a case was registered being Diyun P.S. Case No. 19/2020 U/Ss 376/366 IPC r/w Section 6 of POCSO Act and investigated into.

5. During the course of investigation, the I.O examined the victim, got her medical examination conducted, examined and recorded the statement of other relevant witnesses, got her statement recorded u/s 164(5) of Cr.P.C, seized the age proof birth certificate of the victim girl and found her to be minor child and then arrested the accused person. On completion of investigation, the IO laid charge-sheet against accused to face trial for offence punishable U/Ss 366/376(2)(a) R/W sec. 6 of POCSO Act. Charges were explained to the accused to which he pleaded not guilty.

6. To establish its case, the prosecution has examined 9(nine) prosecution witnesses. After completion of evidence of the prosecution witnesses, the accused was examined and his statement recorded u/s 313 of Cr.P.C where the accused had admitted having taken away the victim and committed sexual intercourse on consent. However, the accused/appellant did not produce any witnesses in his defense.

7. On completion of the trial and upon consideration and hearing the parties the learned trial Court by the impugned judgment and order dated 31.05.2021 has convicted the accused and sentenced him to undergo rigorous imprisonment for 20(twenty) years and to pay a fine of Rs. 20,000/- (Rupees Twenty thousand) only for offence U/S 6 of POCSO Act. Further the accused has been convicted and sentenced to undergo rigorous imprisonment for 10(ten) years and to pay a fine of Rs. 10,000/- (Rupees Ten thousand) only for offence under Section 366 IPC with default clauses.

8. It is the said conviction and the order of sentences which has been assailed in this criminal appeal. It is pertinent to note that the appellant has not set out or stated any ground of appeal against the impugned conviction and sentenced order in his appeal memo. However, at the time of hearing, the learned Amicus curiae for the appellant has put forward 4(four) points in support of the appellant for setting aside the impugned judgment and order dated 31.05.2021. The grounds taken by the learned counsel for the appellant are as follows:

- (i) That the applicant has not committed any forceful sexual intercourse upon the victim girl and had not kidnapped her. The victim accompanied the accused/appellant on her own free will and had also resided at the residence of the accused along with his family and had agreed to entered into matrimonial relationship with him since they were in love with each other.
- (ii) That the prosecution has failed to establish the age of the victim girl as 15 years, as the prosecution failed to bring on record the birth proof of the victim girl from her first attended school, as such her age was disputed.
- (iii) That the convict/appellant was not defended properly during trial of the case before the Special Judge, POCSO Act, in as much as he was represented by the State defense counsel who was not having 10 years of standing practice.
- (iv) That the appellant was wrongly convicted under Section 6 of POCSO Act and under Section 366 of IPC in as much as the victim had willingly accompanied the appellant at her own will. That the conduct of the victim girl that she had willingly accompanied with the appellant is clear from her statement under Section 161 as well as 164(5) of Cr.P.C statement wherein she had categorically stated that their relationship started through phone a friend. That after going out from her parental home she was staying in the house of parent of the appellant/convict where she was introduced by the

appellant to his parent as his wife and staying in the adjacent room and did not complain or make any hue and cry before the parents of the appellant amply suggests that the victim acted responsibly like matured person.

9. Further, the learned Amicus curiae submitted that although no offence was made out against the appellant for offence under section 6 of POCSO Act and under section 366 of IPC, however, the learned Special Judge, POCSO Act has wrongly convicted the appellant solely based on the ground that the victim child was minor aged about 15 years 3 months at the time of commission of offence.

SUBMISSION OF THE LEARNED COUNSEL FOR THE APPELLANT

10. The learned Amicus for the appellant in support of her submission has placed a reliance on the decision of the High Court of Delhi in bail application No. 2729/2022 wherein the Court has observed that in POCSO cases, the Special Court would also factor in certain real-life considerations, which would tilt the balance against or in favor of the accused/appellant: (a) the age of the minor victim: the younger the victim, the more heinous the offence alleged; (b) the age of accused: the older the accused, the more heinous the offence alleged; and (c) the comparative age of the victim and the accused: the more their age difference, the more the element of perversion in the offence alleged.

11. It is submitted that in the instant case, at the time of incident the age of the victim was about 16 years and the age of the accused was also only about 21 years. The victim behaved matured as both victim and accused became

friend through phone a friend. On the question as to whether the offence alleged involved threat, intimidation, violence and/or brutality; it is submitted that in the instant case, the victim in her statement under section 161 as well as 164(5)(a) Cr.P.C stated that she went out with the accused/appellant at her own will, but in her deposition before the Special Court she stated that she was threatened and intimidated by the accused. Thus, the victim has improved her earlier statement before the Court. Therefore, her statement cannot be trusted and relied upon for conviction u/s 6 of POCSO Act and u/s 366 of IPC.

12. The learned Amicus Curiae for the appellant fairly submitted that the evidences of the prosecutrix and other witnesses otherwise seems reliable to hold the accused guilty of committing the offence under Section 6 of the POCSO Act and Section 366 of IPC, and as the prosecution has proved its case beyond reasonable doubt, the accused has been convicted and sentenced to imprisonment. However, she submitted that the appellant was at his young age and does not have any other criminal antecedents. She further submitted that the appellant did not know that the victim was minor as they became friend through phone a friend and he loved her. He has been convicted and sentenced to undergo rigorous imprisonment for 20 years only because the age of the girl was found below 18 years of age at the time of incident and under such circumstances her consent is immaterial. She further submitted that the appellant and the victim were at the stage of adolescent at the time of incident and the said incident has untenably occurred without understanding the implication of severity of the enactment of law. Therefore, the learned Amicus Curiae prays that 20(twenty) years rigorous imprisonment is very harsh punishment and it may be considered for reducing the sentence from RI for 20

years to undergone in order to secure the interest of justice and for ends of law.

SUBMISSION OF THE LEARNED ADDITIONAL PUBLIC PROSECUTOR:

13. Ms. L. Hage, learned Additional Public Prosecutor, on the other hand submits that the accused/appellant knew it from the very beginning that the victim was a minor studying in school, but he started contacting in her mobile phone causing lot of disturbances by calling her repeatedly. He introduced himself to be belonged to a rich family having lots of money and car of his own and lured the innocent victim child with a promise to keep her happy if she marries him. The appellant by calling her repeatedly had convinced the minor victim to come at Govt. Secondary School Sompoi, Diyun to meet him on 23.06.2020 at 4 PM. And when the victim went and met him, the accused took her to his home at Chokham Chakma Basti III. On the way itself the accused took the victim to the shed and then to the community hall where he had committed forceful sexual intercourse with the victim against her will. The victim cried for help due to pain but as it was night and there was nobody around, no one came to rescue her. Moreover, at the time of commission of sexual offence, the accused threatened the victim not to create any noise. On the same night the accused had committed forceful sexual intercourse with the victim for 4(four) times. On the next morning the accused took the victim to his resident. And at his home also the accused had committed forceful sexual intercourse with the victim at night despite of her resistance. The victim was kept confined in the house of the accused for 4(four) days where every night the accused had committed forceful sexual intercourse with the victim.

14. The evidence reveals that the accused took the victim to his house on 23.06.2020 and kept her confined in his room till 27.06.2020. During those days the accused continuously had sexual intercourse with the victim daily during sleeping time and at early in the morning. And as the victim's family were searching for their missing daughter; on 26.06.2020 in the evening hour, the Gaon Burah of Chokham Chakma Basti III came to the house of the accused and while informing that the parent of the victim was looking for her, had directed the accused and his father to come at the resident of Gaon Burah and to hand over the victim. But the accused refused to do so. The accused rather had taken the victim to Baba Mandir and removed the tabiz worn by the victim and gave a new tabiz by putting it around her hip. Thereafter, the victim was taken to Gaon Burah of the village from where the victim was taken back by the parents.

15. The Additional Public Prosecutor further submits that the victim is minor aged about 15 years; the age of the victim has been proved by the birth certificate seized and exhibited as Exh-2. However, the learned Amicus Curiae doubted the said birth certificate, hence this Court called for the documents pertaining to the admission of the victim in the school first she had attended. And accordingly, the record was produced before this Court. As per the said record, the date of birth of the victim is same as it has been recorded in the birth certificate issued by the Department of Economics and Statistic (Exh-2). In both the above documents, the date of birth of the victim girl is shown as on 04.03.2005. Thus, it is established that the victim was a minor child at the time of incident. On the other hand, the accused was a major who lured the victim and induced her and thereby kidnapped her with intend that she may be

compelled to marry him against her will and or she may be forced or seduced to illicit intercourse with him and thus committed the offence punishable under 366 IPC.

16. The learned Addl. PP further submits that the evidence of the victim that she was taken by the accused to his residence and on the way, she was taken to the hut where the accused had committed a forceful sexual intercourse with her and thereafter, she was taken to the residence of the accused where she was kept continuously for 4 days and subjected to forceful sexual intercourse every night despite of her resistant, and that in the last night of their stay the accused had committed forceful penetrative sexual intercourse with her although she was having a menstruation has not been rebutted by the defense side during the trial. Moreover, as per the Section 29 of the Protection of Children from sexual offence Act, 2012, there is a reverse burden upon the accused to prove his innocence. Under the said provision, in case of the victim being minor child, the special court shall presume that the accused has committed the offence unless the contrary is proved. However, in the instant case, the defense side has miserably failed and has not been able to disprove the evidence against the accused that he had committed a penetrative sexual assault upon the victim.

17. For the reasons stated above, the learned Addl. PP submits that the charged against the accused person has been proved beyond reasonable doubt and there is no infirmity in the judgment and order of the Special Judge POCSO Act convicting and sentencing the accused for commission of offence punishable under Section 6 of POCSO Act and 366 IPC. Hence, pray for dismissal of the

appeal.

18. Ms. N. Danggen, the learned legal aid counsel appearing on behalf of the victim while defending the impugned judgment and order has submitted that in the instant case the accused/appellant has fairly admitted that he had taken away the victim girl to his residence where he had committed sexual intercourse with her on consent; the accused has also admitted that he and the victim loved with each other and he wanted to marry her. However, since the victim is a child below the age of 16 years and as per the POCSO Act the consent of the victim child is immaterial. Hence, the plea of the accused cannot be the defense for his exoneration from punishment for offence under Section 6 of POCSO Act. And since the minor victim was taken away by the accused without permission from her lawful guardian, the accused has also committed an offence punishable under Section 366 of IPC. As such, the learned legal aid counsel for the victim prays for dismissal of the present appeal.

POINTS FOR DETERMINATION

19. In view of the rival contentions made by the learned counsel for the parties, the points that so arises for our determination in the present case are:

(I) Whether the learned Special Judge has justified in convicting the accused for offence under Section 6 of POCSO Act and sentencing him to undergo rigorous imprisonment for 20 years and to pay a fine of Rs. 20,000/- with default.

(ii) Whether the learned Special Judge has justified in convicting the accused for offence under Section 366 of IPC and sentencing him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 10,000/- with default.

20. We have given our anxious thoughts and consideration to the argument advanced by the learned counsel for the parties and perused the entire material including the LCR. Since this Court being the First Appellate Court and it is a fact-finding Court; hence, in order to find out the truth, it has to appreciate the evidences. For the proper appreciation of the fact, we may now refer to the evidences and statements especially the evidence of the material witnesses which are crucial evidences in the case.

21. But before going to the evidences we would like to settle the dispute with regards to the age of the victim as the appellant has disputed the birth certificate of the victim issued by the authority. To start with, it is seen that from the very beginning, the father of the victim in his written FIR stated that his victim daughter was aged about 15 years and she had just appeared class 9th in the last session. After recovery of the victim, in her police statement, the victim also stated that she was about 15 years old being born on 04.03.2005. In her statement before the Magistrate u/s 164 (5) Cr.P.C also she had reiterated and stated that she was 15 years 4 months being born on 04.03.2005. And during her evidence also she has clearly deposed that the police has seized her birth certificate (Ext-2) and her date of birth is 04.03.2005. The record reveals that during investigation, the I.O had seized the birth certificate of the victim issued

by the Department of Economic and Statistic which is exhibited as Ext-2. As per the said birth certificate, the date of birth of the victim is shown as on 04.03.2005. Basing on the above evidences, the learned trial Court held that the victim at the time of the incident was minor child below the age of 16 years being born on 04.03.2005. During the proceeding of this appeal, the appellant again disputed the age of the victim stating that even though the prosecution has presented the birth certificate of the victim issued by the school authority, but the trial court did not rely on the same as it was not exhibited nor was it issued by the first admitted school of the victim girl. However, the trial Court placed reliance on the birth certificate (Ext-2) which was issued in the year 2017 whereas, the victim girl was stated to have been born on 04.03.2005, hence, the same cannot be relied upon as authentic. In view of the above submission made by the learned Amicus Curiae this Court had directed the learned Additional Public prosecutor to procure the documents pertaining to the admission of the victim in the school she first attended.

22. In compliance of the above direction, the learned Additional Public Prosecutor produced the original admission register book of Government Primary School Jyotsnapur-II established on 2010; the said register produced in a seal covered envelope was opened in the open Court and perused. As per the admission register which start from 2010-2011 from serial No. 1, the name of the victim Ms. XXX daughter of the informant resident of Dharmapur can be found in serial No. 152 and her date of birth is shown as on 04.03.2005. She was admitted in class-1 in Madakka Nala Primary School. Along with the admission register book, the seal envelope also contained the counter foil of the transfer/School leaving certificate issued. The counter foil bearing serial No.

1756 admission No. 152 dated 04.04.2016 was issued to the victim by the headmaster in-charge of Primary school Jyotsnatur-II Changlang District Arunachal Pradesh under the Government of Arunachal Pradesh, Directorate of Arunachal Pradesh. As per the said school leaving certificate the victim is shown to have passed class-V examination for promotion to class- VI and she took the certificate due to completion of Primary School course. And her date of birth is shown as on 04.03.2005.

23. Thus, the date of birth of the victim in the school record is in consistent with her date of birth in the Ext-2 i.e., on 04.03.2005. In view of the above, undoubtedly it stood proved that the victim was born on 04.03.2005. And as per the record the incident took place between 23.06.2020 to 27.06.2020, as such, the age of the victim at the time of the incident was 15 years 3 months 19 days. And as per the Section 2 of the POCSO Act, the victim was a child at the time of the incident. Accordingly, we hold that the victim in the present case was a child at the time of the incident as defined under POCSO Act.

24. Now coming to the evidence of the victim (PW-8), the victim deposed that the incident took place during the years 2020. For about 1 month prior to the incident, she used to talk with the accused who asked her to come near the Shiv Mandir of Sompoi. She went there and met the accused at about 4 PM. The accused asked her to accompany him to which she agreed and then she was taken towards Siknir Nala on foot. It took whole night to reach the place. On the way, they took rest on one shed nearby the road Innao. Thereafter, she was taken to one community hall where the accused insisted her for sexual intercourse. She denied but he forcefully raped her. She cried for help due to

pain, but since it was night and there was nobody nearby, no one came for rescue. During that time, the accused threatened her not to create any noise. At night, the accused committed forceful sexual intercourse with her for 4(four) times. The area was covered by jungle, hence, due to fear she could not run away from the community hall. On the next morning, she was taken on foot, and reached Siknir Nala in the evening. She was then taken to the resident of the accused at Siknir Nala. In his resident, his father, step-mother, younger brother, one sister and three more kids were present. On the next morning, the accused took her to one Mandir where he forcefully took off her tabiz (ritual pendant) which was given to her by parents to protect her from any evil and he threw away the same on the river. Then the accused obtained another tabiz from the Mandir and tied the same on her waist. That night, the accused again committed forceful sexual intercourse with her. She resisted, but the accused had forcefully raped her. She was kept in his resident for 4 days. Every night accused committed forceful sexual intercourse with her. On the last night she was having menstruation, even then the accused had committed forceful rape on her. Her father was searching for her. He called the village headman who asked the parent of the accused to take her to the school where there was gathering of public. She was taken there by the accused and from there her father took her back to home. At home her parents told her that when the tabiz was put off by them she behaved unnaturally. In her cross-examination, the victim clarified that she met the accused for the first time, but the accused impressed her saying that he has everything to keep her happy and admitted that she went with the accused willingly. The victim while reiterating that the accused had committed a sexual intercourse with her stated that the mother of the accused told her that the accused was already married and he used to do

illegal activities.

25. The evidence of the victim clearly reveals that the accused had lured the minor victim child falsely stating that he has a vehicle and a bungalow and he would keep her happy. He influenced and made the victim child to believe that he is a rich man and then took her away from the lawful guardian without any information. Thereafter, the victim was subjected to forceful sexual intercourse against her will for about 4 days. Later on, the victim came to know that the accused was already a married man.

26. Section 3 of POCSO Act provides the definition of penetrative sexual assault. It provided that a person is said to commit penetrative sexual assault if he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person etc. Likewise, the offence of rape is defined under Section 375 IPC, which says that a man is said to commit "rape" if he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person against her will; without her consent; with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt; and with or without her consent, when she is under eighteen years of age.

27. In the instant case, admittedly the accused took the minor victim child from her lawful guardian without information and forcefully committed rape on her without her consent. The accused has been charged and convicted for offence under Section 6 of POCSO Act. Section 6 of POCSO Act will be

applicable when there is aggravated penetrative sexual assault as defined under Section 5(I) of POCSO Act which defines that whoever commits penetrative sexual assault on the child more than once or repeatedly he is said to have committed aggravated penetrative sexual assault punishable under Section 6 of POCSO Act. Similarly, Section 376(2)(n) provides for punishment where there is repeated rape on the same woman. In the instant case the accused was charged u/s 6 of POCSO Act as well as u/s 376((2) of IPC. However, as the offence under section 6 of POCSO Act provides for greater degree of punishment than 376 (2) IPC, the accused was convicted and sentenced for offence u/s 6 of POCSO Act.

28. To confirm the sexual offence the prosecution has examined the doctor Junton Mossang as PW-6, who had examined the victim on 28.06.2020. The PW-6 found that the victim was mentally disturbed during the time of her medical examination. During physical examination of her genitals, it was found that there was minor bleeding. There was tearing on the labia minora (on lower part). However, the PW-6 cannot say accurately as to whether the victim was subjected to rape or consensual intercourse.

29. On careful examination of the evidence of the victim, the learned Additional Public Prosecutor brought to the notice of this Court the demeanor recorded by the learned Special Judge. The demeanor recorded read as follows: *"when the witness was going out of the Court room, she has seen the accused and ran inside the Court crying with fear"*. This indicates that the victim was still in trauma. The accused in his examination under Section 313 Cr.P.C has fairly admitted that he had taken away the victim and took her to his residence. He

also admitted that the victim was subjected to sexual intercourse. However, the accused stated that he did not forcefully rape the victim, she performed sexual intercourse with him on her free will. The accused further denied having kidnapped the victim and stated that they were in love and affection and she went with him on her own will. These admission and statement of the accused seems to be nearly the true version of the fact of the incident and we have no reason to disbelieve the same.

30. In view of the above un rebutted evidences against the accused and his own admission of the true fact of the incident, it is now fully established that the accused had committed a sexual intercourse with the victim repeatedly for 4 days right from the day one when the accuse took the victim away from her lawful guardian on 23.06.2020 and till 26.06.2020. In view of the above, the prosecution has been able to prove the case against the accused beyond reasonable doubt for commission of penetrative sexual assault with the victim child. And since the victim was a minor child bellow 16 years of age at the time of incident, her consent is immaterial. Hence, the point No.1 is decided in affirmative.

31. Coming to the kidnapping from lawful guardianship, the Section 361 of IPC defines- "*whoever takes or entices any minor under 16 years of age if a male or under 18 years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnapped such minor or person from lawful guardianship*". In the instant case, the victim was a minor child aged about 15 years 3 months 19 days. As such, the accused had no right

whatsoever to allure her to accompany him in the pretext of love and affection. The consensual love and affection cannot be a defense against a criminal charge of kidnapping a minor girl under 18 years of age as according to law a minor is incapable of giving lawful consent. In such case, it is no defense for the accused to say that the victim girl went with him with her own will. The plea of the accused that the victim girl went with him on her own will is not sustainable in the eye of law as the consent of the minor is immaterial and not acceptable to create any liability against her. Moreover, the record shows that the accused had misled and lured the minor girl to take her with him; the evidence clearly reveals that the accused had enticed the victim girl to take her away from her lawful guardian. Thus, it is sufficiently proved that the accused had committed an offence of kidnapping defined under Section 361 of IPC.

32. Section 366 IPC will be attracted when the victim is kidnapped with an intention to compel her or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse. In the present case, the victim in her evidence has stated that the accused after taking her had committed sexual intercourse with her on several occasions for 4 days without her consent. Further in the instant case, the accused took away the victim girl without any permission or knowledge of her lawful guardian with an intention to marry her. However, there is no such evidence or any ingredients to show that marriage took place between the accused and the victim. But there is sufficient evidence that the accused had performed a sexual intercourse with the minor victim girl repeatedly which is nothing but can be termed an illicit intercourse as defined

under Section 366 of IPC.

33. The accused in his examination under Section 313 Cr.P.C has stated that he was in love and affection with the victim girl. He took the victim girl to marry her. When Gaon Burah PW-2 told him that the parent of the victim girl was coming, he thought that they might have come to discuss regarding their marriage. Accordingly, he took the victim girl near the Gaon Burah as asked by him. The above statement of the accused clearly indicates that he had kidnapped the minor girl with the intention to marry her. The records also reveal that for taking the victim girl and keeping her at his resident, the accused had lured and seduced her and after taking her away he had committed illicit sexual intercourse with her.

34. In view of the above evidence and materials on record, the learned Special Judge hold that the prosecution has proved the case beyond reasonable doubt and as such the accused has been convicted and sentenced for offence punishable under section 366 IPC and we do not find any infirmity in the above findings of the learned Special Judge. The point No.2 is also decided accordingly.

35. Further, in view of the above findings and the reasons stated above, we are of the considered opinion that the prosecution has proved the charges leveled against the accused beyond all reasonable doubt. The learned trial court has appropriately evaluated and appreciated the evidences and thus, convicted the accused/appellant sentencing him to undergo rigorous imprisonment for 20 years for offence under Section 6 of POCSO Act and also

convicted and sentenced the accused for rigorous imprisonment for 10 years for offence under Section 366 of IPC with default stipulation. Under the circumstance, we found that there is no need for this Court to intervene with the impugned judgment; and therefore, the criminal appeal is liable to be dismissed as it lacks merit.

36. As a result, this criminal appeal is dismissed. The judgment and conviction of the appellant (accused Hok Hana Chakma) dated 31.05.2021 for offence under Section 6 of POCSO Act and sentence to undergo 10 years for offence under Section 366 of IPC by the learned Special Judge, (POCSO) Tirap, Changlang & Longding at Khonsa in Spl/. (POCSO) Case No. 32/2022 is hereby confirmed.

37. Appeal stands disposed of in terms above.

JUDGE

JUDGE

Comparing Assistant