

GAHC040005882024



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

Case No. : Crl.A./13/2024

Ganga Sidasow
Son of Shri Gejang Sidasow, resident of Yayung Village, PO and PS Yayung, West
Kameng District, Arunachal Pradesh

VERSUS

The State of AP and Anr
represented by the PP of AP 2:XXX
Age: 0
Occupation :
Victim of Rupa Police Station Case No. 17/ 2023
resident of Khazallang Village
PO and PS Nafra
West Kameng District
Arunachal Pradesh

Advocate for the Petitioner : Gallen Taloh,

Advocate for the Respondent : P P of AP, Tsering Gyatso

Linked Case : IA(Crl)/43/2024

Ganga Sidasow
Age: 48
Occupation :
Address: Son of Shri Gejang Sidasow
resident of Yayung Village
PO and PS Yayung
West Kameng District
Arunachal Pradesh

VERSUS

The State of AP and Anr

Age: 0
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Occupation :
Address:Victim of Rupa Police Station Case No. 17/ 2023
resident of Khazallang Village
PO and PS Nafra
West Kameng District
Arunachal Pradesh

Advocate for : Gallen Taloh
Advocate for : Ms. T. Jini, Addl. P P of AP appearing for The State of AP and : Mr. T. Gyatso, Advocate , appearing for 2, respectively.

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

DATE : 11.09.2024

(Vijay Bishnoi, CJ)

The matter has come up for consideration of the Interlocutory Application (Crl.), preferred on behalf of the applicant/appellant under Section 389 Cr.P.C. with the prayer for suspending the sentence awarded by the Trial Court vide judgment and order dated 28.02.2024, passed by the learned Special Judge, (POCSO) for the District of East Kameng, West Kameng Pakke Kessang and Tawang, at Bomdila, in POCSO Case No.10/2023, convicting the appellant under Section 376 of the IPC, read with Section 6 of the POCSO Act, sentencing him to under imprisonment of twenty (20) years and to pay an amount of Rs.20,000/- (Rupees twenty thousand) as fine to the victim.

2. Learned counsel for the applicant submits that the learned Trial Court had erred in convicting and sentencing the accused/appellant vide impugned

judgment. It is submitted that the prosecution has failed to prove that at the time of incident, the victim was minor. It is submitted that the Trial Court had placed reliance upon a Transfer/Leaving Certificate (Ext.P/2), issued by the Government Middle School. However, the Headmaster of the school who had issued the said certificate has not been produced as a witness to prove the contents of the same Transfer/Leaving Certificate. It is further submitted that the Trial Court has also relied upon a birth certificate (Ext.P/3), issued by the Registrar of Births & Deaths, West Kameng District. However, it is to be noticed that the said birth certificate was issued in the year 2017, certifying that the date of birth of the victim is 10.02.2006.

3. It is submitted that admittedly the said birth certificate was issued after the time limit prescribed under the provisions of Registration of Births and Deaths Act, 1969. It is submitted that Section 13 of the Act of 1969, is validating condition of the delayed registration of births and deaths and Sub-Section (3) of Section 13 specifically provides that any birth or death, of which delayed information is given to the Registrar after one year of the occurrence, shall be registered only on an order made by the District Magistrate or the Sub-Divisional Magistrate or by an Executive Magistrate, authorized by the District Magistrate, having jurisdiction over the area. It is submitted that, in the present case, the prosecution has failed to prove that the birth certificate pertaining to the victim i.e. Ext.P/3 was issued pursuant to the order passed by the District Magistrate, Sub-Divisional Magistrate or by an Executive Magistrate, authorized by the District Magistrate. Learned counsel has submitted that it is also to be noticed that the victim (PW.1) and her mother (PW.2) in their deposition before the Trial Court have admitted that though the date of birth of the victim is mentioned as 10.02.2006, but the birth may be on previous of that date and the

victim may be older than that. Learned counsel further submitted that the PW.1 and the PW.2, in their Court statements admitted that the victim started living with the accused as per her own will and she lived with him for about three (3) years. It is submitted that as a matter of fact, the victim solemnized marriage with the accused/appellant and lived with him for about three (3) years, as his wife but on account of some matrimonial disputes between them, the false FIR has been filed. Learned counsel for the accused/applicant therefore, submitted that in the above facts and circumstances of the case, the appeal filed by him against the impugned judgment is based on strong grounds and therefore, during the pendency of the appeal, the award of sentence passed by the learned Trial Court may be suspended.

4. Per contra, learned counsel appearing for the State as well as the learned counsel appearing for the Respondent No.2 have vehemently opposed the suspension of sentence and have argued that the prosecution has proved the case against the accused/appellant. It is submitted from the evidence produced by the prosecution, it is proved that the accused/appellant has sexually assaulted the victim, who was minor when he forcibly took her away from her mother and exploited her for more than three (3) years. It is submitted that in view of the deposition of the victim as well as her mother, it is clear that the case of sexual assault of a minor is proved against the accused/appellant and therefore, the Trial Court has rightfully convicted and sentenced him vide the impugned judgment. It is therefore, prayed that no case for suspension of conviction and sentence is made.

5. Having heard the learned counsel appearing for the parties and after carefully scrutinizing the Lower Court Record and more particularly, taking into consideration the fact that the birth certificate on which the learned Trial Court

has placed reliance, was issued in the year 2017 certifying the date of birth of the victim as 10.02.2006. However, the prosecution has not produced any order either from the District Magistrate or Sub-Divisional Magistrate or by an Executive Magistrate, authorized by the District Magistrate to issue the said certificate and also taking into consideration the fact that the victim as well as her mother has also stated that the exact date of birth of the victim is not known to them and there is possibility that her birth may be of previously, without expressing any views on the merits of the case, we deem it appropriate to allow the application for suspension of sentence, filed on behalf of the applicant/accused. Hence, the same is allowed.

6. In view of above, the Interlocutory Application for suspending the sentence is allowed.

7. The applicant/appellant is allowed to go on bail on furnishing personal bond of Rs. 1,00,000/- (Rupees one lakh), with two sureties of Rs. 50,000/- (Rupees fifty thousand) each, to the satisfaction of the learned Trial Court, with further direction that the accused/appellant will appear before the learned Trial Court, in the event of dismissal of the appeal.

8. The Interlocutory Application (Crl.) stands disposed of accordingly.

JUDGE

CHIEF JUSTICE

Comparing Assistant