

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Crl.A. No.28 of 2025

Appellant : Maita Singh and Another

versus

Respondent : State of Sikkim

Application under Section 415(2) of the
Bharatiya Nagarik Suraksha Sanhita, 2023

Appearance

Mr. Jorgay Namka, Senior Advocate (Legal Aid Counsel) with Ms. Mingma Lhamu Sherpa, Advocate (Legal Aid Counsel) for the Appellant.

Mr. Yadev Sharma, Additional Public Prosecutor with Mr. Sujan Sunwar, Assistant Public Prosecutor for the State-Respondent.

Date of hearing : 13-05-2026

Judgment reserved : 13-05-2026

Judgment pronounced & uploaded : 29-05-2026

JUDGMENT

Meenakshi Madan Rai, J.

1. The Learned Court of the Special Judge (POCSO Act, 2012), Namchi, Sikkim, vide its Judgment dated 29-04-2025, in Sessions Trial (POCSO) Case No.25 of 2021, convicted both Appellants as follows;

(i) The Appellant No.1, **[a]** under **Section 5(g)** punishable under **Section 6** of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), read with **Section 34** of the Indian Penal Code, 1860 (IPC) and **[b]** **Section 376DA** and **Section 506** of the IPC read with Section 34 of the IPC.

(ii) The Appellant No.2 was convicted under **[a]** **Section 5(j)(ii)** and **Section 5(g)** of the POCSO Act, both punishable under **Section 6** of the POCSO Act, read with **Section 34** of the IPC; **[b]**

Section 376DA and **Section 506** of the IPC read with Section 34 of the IPC.

(iii) Vide the impugned Order on Sentence, of the same date, the Appellant No.1 was sentenced to **[a]** undergo rigorous imprisonment for a period of twenty years and to pay a fine of ₹ 5,000/- (Rupees five thousand) only, under **Section 5(g)** punishable under **Section 6** of the POCSO Act, read with **Section 34** of the IPC; **[b]** Under **Section 376DA** of the IPC read with **Section 34** of the IPC, he was ordered to undergo rigorous imprisonment for life and to pay a fine of ₹ 5,000/- (Rupees five thousand) only; and **[c]** Simple imprisonment for six months under **Section 506** read with **Section 34** of the IPC.

(iv) The Appellant No.2 was sentenced to **[a]** undergo rigorous imprisonment for a term of twenty years and to pay a fine of ₹ 5,000/- (Rupees five thousand) only, each, under **Section 5(g)** and **Section 5(j)(ii)**, punishable under **Section 6** of the POCSO Act, read with **Section 34** of the IPC; **[b]** Under **Section 376DA** of the IPC read with **Section 34** of the IPC, he was ordered to undergo rigorous imprisonment for life and to pay a fine of ₹ 5,000/- (Rupees five thousand) only; and **[c]** Simple imprisonment for six month under **Section 506** of the IPC read with **Section 34** of the IPC.

(v) All sentences of fine hereinabove bore default stipulations.

2. Learned Senior Counsel for the Appellant submits that he does not assail the Judgment of Conviction handed out to the Appellants No.1 and 2, his grievance extends only to the sentence imposed against both the Appellants, as the offence under Section

376DA of the IPC provides for "imprisonment for life", however it does not mandate that the imprisonment shall be "rigorous imprisonment for life", the Learned Trial Court however while handing out sentence under Section 376DA of the IPC read with Section 34 of the IPC has sentenced the Appellants No.1 and 2 to "rigorous imprisonment for life".

(i) In the second leg of the argument of Learned Senior Counsel, it was concluded that the offence under Section 376DA of the IPC and Section 5(g) of the POCSO Act are similar offences and therefore in terms of Section 42 of the POCSO Act the punishment ought to have been only under one of the Sections, i.e., either "of the IPC" or "of the POCSO Act" and not under both. That, in such circumstances, the penalty imposed on the Appellants No.1 and 2 be limited to either one under the "POCSO Act" or under the "IPC".

(ii) It was finally urged that the sentence accordingly be reduced to the twenty years imposed on the convicts, in terms of Section 5(g) of the POCSO Act punishable under Section 6 of the POCSO Act. Should this Court not be inclined to do so, then the life imprisonment imposed on the convicts under Section 376DA of the IPC be modified to that of "simple imprisonment", instead of "rigorous imprisonment", imposed by the Learned Trial Court.

3. *Per contra*, Learned Additional Public Prosecutor submits that no error arises in the penalties imposed by the Learned Trial Court and hence, warrants no interference by this Court.

4. We have heard the submissions of Learned Counsel for the parties and perused all records before us.

5. The Prosecution case in the instant matter, is that, the Appellant No.1, then aged about 46 years and the Appellant No.2,

then aged about 51 years, committed penetrative sexual assault on the victim, a 13 year old girl child at the time of the offence. It transpired that the victim was a student of Class 8 in a Government Junior High School and after her parents separated she and her elder sibling (sister) were living with their grandparents. During the month of August, 2020, both the Appellants visited the home of the victim. They were known to her and she addressed the Appellant No.1 as "Dewa" (elder paternal uncle) and Appellant No.2 as "Kopa" (grandfather). On finding the victim alone, both the Appellants took advantage of the situation and molested her by groping her breasts and touching her thighs. When she resisted the Appellant No.1 forcefully removed her clothes and undergarment, while the Appellant No.2 covered her mouth. The Appellant No.1 then committed penetrative sexual assault on her which was followed by penetrative sexual assault on her by the Appellant No.2. Both the Appellants threatened the minor with a similar assault on her elder sister if she disclosed the incident to any person. The traumatised victim therefore kept the incident to herself. Consequent upon the sexual assault, the child was rendered pregnant and gave birth to a girl child. The DNA profiling indicated that the baby born to the victim child was that of the Appellant No.2.

(i) Later, the child revealed the incident to the Members of the Child Welfare Committee during her counselling session on 14-06-2021 and that she was sexually assaulted by both the Appellants. During the counselling session, the victim also disclosed the name of one child in conflict with law (CiCL), a student of the same school that she attended who had also sexually assaulted her. A separate case was registered against the CiCL before the Juvenile

Justice Board of the concerned District and disposed of vide Judgment dated 09-08-2022 in JJB Case No.04 of 2021 (*State vs. Master S. R.*) acquitting him of the offences that he was charged with.

6. We may relevantly peruse the provisions of the POCSO Act with which the Appellants were convicted and reads as under;

"5. Aggravated penetrative sexual assault.—.....

(g) whoever commits gang penetrative sexual assault on a child.

Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or"

(i) Section 6 of the POCSO Act provides that;

"6. Punishment for aggravated penetrative sexual assault.—(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

(ii) Section 5(j)(ii) of the POCSO Act provides as follows;

"5. Aggravated penetrative sexual assault.—.....

(j) whoever commits penetrative sexual assault on a child, which—

.....
(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;
....."

The punishment for the offence is prescribed under Section 6 of the POCSO Act (extracted *supra*).

(iii) Section 376DA of the IPC provides as follows;

"376DA. Punishment for gang rape on woman under sixteen years of age.—Where a woman under

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sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim."

(iv) Section 42 of the POCSO Act provides as follows;

"42. Alternate punishment.—Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E, section 509 of the Indian Penal Code (45 of 1860) or section 67B of the Information Technology Act, 2000 (21 of 2000), then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code as provides for punishment which is greater in degree."

7. Having considered the submissions of Learned counsel for the parties and having carefully perused the applicable provisions of law in the first instance it is worthwhile remarking that there is no sentencing policy in the country. The Courts exercise discretion and largely adhere to the principle of "just deserts" which means that punishment should be proportionate to the gravity of the offence committed.

8. Despite a lack of sentencing policy the philosophy of sentencing is not only for ensuring deterrence, but also to ensure that punishment for crime corresponds to the harm done to the victim and the society, in other words that the accused receives their just deserts. Where a minimum sentence is prescribed the Court is to impose it without fail, whereas for a maximum punishment it is largely left to judicial discretion, justifying the punishment with reasonings given by the Court. Consequently,

there may be lack of uniformity in sentencing across the board as some Judges may appear to be lenient, while some may be harsh, depending upon a plethora of reasons for such sentencing.

9. In the matter at hand, no separate sentence appears to have been imposed against Appellant No.2 for the offence under Section 5(j)(ii) of the POCSO Act which is a distinct offence and calls for a separate penalty. However, from a holistic reading of the sentence it can well be assumed that Appellant No.2 was sentenced to twenty years under Section 5(j)(ii) of the POCSO Act. As this offence is distinct from an offence under Section 376DA of the IPC no such offence being defined under the IPC, it is ordered that the sentence under Section 5(j)(ii) of the POCSO Act of twenty years shall run concurrently with the sentence under Section 376DA for Appellant No.2. The fine imposed is also upheld.

10. Further, in view of provisions of Section 42 of the POCSO Act, we find that since the offence under Section 5(g) and Section 376DA of the IPC are similar and as Section 42 provides for penalty, which is higher, as extracted hereinabove, the penalty imposed on the Appellant under Sections 5(g) of the POCSO Act is set aside.

11. The sentence imposed under Section 376DA of the IPC against both the Appellants warrants no interference as it is commensurate to the gravity of the offence committed by two depraved grown adults on a hapless girl child.

12. In such circumstances, we are loathe to interfere with the sentence imposed by the Learned Trial Court on the Appellants No.1 and 2 for the offence under Section 376DA and Section 506 of

the IPC read with Section 34 of the IPC considering the facts and circumstances extracted hereinabove.

13. Consequently, the Appeal is rejected and disposed of accordingly.

14. Copy of this Judgment along with original records be remitted forthwith to the Learned Trial Court for information.

15. A copy of this Judgment be made over to the Appellants/Convicts through the Jail Superintendent, Central Prison, Rongyek and to the Jail Authority for information.

(Bhaskar Raj Pradhan)
Judge
29-05-2026

(Meenakshi Madan Rai)
Judge
29-05-2026

Approved for reporting : **Yes**

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