IN THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

CRL. A. No. 02 of 2020

Shri Sandeep Rai,
Aged about 20 years,
Son of Shri Rajen Rai,
Resident of Tikjeck,
Gyalshing, West Sikkim,
Presently lodged at
State Central Prison, Rongyek,
Gangtok, East Sikkim.

…APPELLANT

Versus

State of Sikkim

…RESPONDENT

BEFORE

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

For appellant : Ms. Sedenla Bhutia, Legal Aid Counsel.

For respondent : Mr. Sudesh Joshi, Public Prosecutor with
Mr. Sujan Sunwar, Assistant Public Prosecutor.

Dates of hearing : 27.11.2020, 30.11.2020, 04.12.2020 & 07.12.2020

Date of judgment : 07.12.2020

JUDGMENT (ORAL)

(ARUP KUMAR GOSWAMI, CJ)

This appeal is preferred against the judgment dated 29.08.2019 and the order of sentence dated 30.08.2019 passed by the learned Special Judge (POCSO), West Sikkim at Gyalshing in Sessions Trial (POCSO) Case No. 26 of 2018. By the impugned judgment, the appellant was convicted under Section 5 (l), 5 (m) and 5 (n) of the Protection of Children from Sexual Offences Act, 2012, for short, POCSO Act, punishable under Section 6 of the POCSO Act. The appellant was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default of payment of fine to undergo simple imprisonment for one month for the offence committed

under Section 5 (l) of the POCSO Act; to undergo rigorous imprisonment for a term 10 years and to pay a fine of Rs.5,000/-, in default of payment of fine to undergo simple imprisonment for one month for the offence committed under Section 5 (m) of the POCSO Act and to suffer rigorous imprisonment for a term of 15 years and to pay a fine of Rs.5,000/-, in default of payment of fine to undergo simple imprisonment for one month for the offence committed under Section 5 (n) of the POCSO Act. All the sentences are to run concurrently and the period of sentence already undergone during the investigation and trial was set -off under Section 428 of the Code of Criminal Procedure, 1973, for short, Cr.P.C. A sum of Rs.1.00 lakh was awarded to the victim in terms of Sikkim Compensation to the Victim or his Dependents Scheme, 2011, as amended in 2013.

2. The prosecution case is that based upon a written statement (Exhibit-7) given by a sister of the appellant, who was examined during trial as PW-2, Gyalshing P.S Case No.10/2017 dated 03.04.2017 under Section 376D IPC read with Section 6 of POCSO Act was registered against the appellant and another, who was later on tried by Juvenile Justice Board, for short, Board, constituted under Section 4 of the Juvenile Justice (Care and Protection) Act, 2015, for short, the JJ Act of 2015, he being a child in conflict with law as defined under Section 2 (13) of the JJ Act of 2015.

3. Charge sheet was filed under Section 376 IPC read with Section 6 of POCSO Act against the appellant on 13.09.2018 wherein the age of the appellant was shown as 18 years. At the time of filing of the charge sheet, the appellant was shown to be absconding.

4. While hearing the appeal, it was brought to our notice by the learned Counsel for the appellant that PW-2, in her cross-examination, had stated that as informed by her brother (PW-8), who is also the father of the victim,

the accused was around 17 years of age at the time of the occurrence. It was also brought to our notice that PW-8, who is the brother of the appellant, in his cross-examination on 13.05.2019, had stated that the accused was about 19 years of age at that point of time. On the basis of the aforesaid evidence of PW-2 and PW-8, it was submitted that the accused being below 18 years of age at the time of commission of offence was a child within the meaning of Section 2(12) of the JJ Act of 2015 and a juvenile within the meaning of Section 2 (35) of the JJ Act of 2015. Accordingly, it was submitted that the appellant ought to have been brought before the Board to face trial.

5. Having regard to the evidence of PW-2 and PW-8 relating to the age of the appellant and in view of Section 9 of the JJ Act of 2015, which provides that a claim that a person was a child at the time of commission of an offence can be raised before any Court and when such a claim is raised, the claim is required to be determined in accordance with the provisions of the JJ Act of 2015 and the rules made there under, this Court considered it appropriate to cause an enquiry to be made to determine the age of the appellant. Accordingly, by an order dated 15.10.2020, the Board at Gyalshing was directed to determine the age of the appellant in terms of Section 94 of the JJ Act of 2015 and to submit a report before this Court on or before 25.11.2020.

6. Section 94(1) of the JJ Act of 2015 provides that where it is obvious to the Board, based on the appearance of the person brought before it under any of the provisions of the JJ Act of 2015, other than for the purpose of giving evidence, that the said person is a child, the Board shall record such observation stating the age of the child as nearly as may be and then proceed with the inquiry under Section 14 or section 36, as the case may be, without waiting for further confirmation of the age. Section 94 (2) of the JJ

Act of 2015 provides that in case, the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination, by seeking evidence by obtaining (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof; (ii) the birth certificate given by a corporation or a municipal authority or a panchayat; (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Board .

7. As no document was available with the appellant as regards proof of age in terms of Section 94 (2) (i) and (ii) of the JJ Act of 2015, the Board took recourse to Section 94 (2) (iii) and ordered for an ossification test to be conducted on the appellant. Accordingly, ossification test was conducted at STNM Multi-Specialty (STNMMS) Hospital at Gangtok on 02.11.2020. Based on the report wherein it was opined that the accused was between 19 – 21 years of age at the time of test, the Board, by an order dated 12.11.2020 concluded that in the year 2017, the age of the appellant was between 16 – 18 years and thus, the appellant was a child within the meaning of Section 2 (12) and a juvenile within the meaning of Section 2 (35) of the JJ Act of 2015.

8. At this stage, it will be relevant to note that the report was signed by the Consultant-cum-HOD Radiology, STNMMS Hospital and such report was given on the basis of X-ray of right chest AP, X-ray of right elbow, X-ray of right knee , X-ray of right shoulder and X-ray of right pelvis.

9. In the case of ***Jaya Mala vs. Home Secretary, Government of Jammu & Kashmir and Ors.***, reported in ***(1982) 2 SCC 538***, the

radiological age was given as between 18 – 19 years. The aforesaid petition was filed for a writ of habeas corpus for release of a detenu under the J & K Public Safety Act, 1978. The Hon'ble Supreme Court had observed that one can take judicial notice that margin of error in age ascertained by radiological examination is two years on either side. In ***Ram Suresh Singh vs. Prabhat Singh***, reported in ***(2009) 6 SCC 681***, the Hon'ble Supreme Court had observed that an error of two years in determining the age by radiological examination is possible.

10. In ***Darga Ram alias Gunga vs. State of Rajasthan***, reported in ***(2015) 2 SCC 775***, the Hon'ble Supreme Court had observed that general rule about age determination is that the age as determined through medical opinion can vary plus minus two years.

11. From the cross-examination of PW-8, i.e. the father of the victim, which had taken place on 13.05.2019, it appears that a suggestion was given by the Counsel for the accused that the accused , at that point of time, was aged about 19 years. The FIR came to be lodged on 03.04.2017 and the incident had taken place, according to the FIR, about 15-20 days before. Thus, it appears that according to the projection of the accused himself, he was about 17 years at the time of occurrence. In the circumstances of the case, the age of the appellant has to be taken as 17 years at the time of occurrence and possible variation of plus minus two years need not be taken into consideration.

12. The JJ Act of 2015 takes note of three kinds of offences: petty offences, serious offences and heinous offences. 'petty offences', as defined in Section 2 (45) include the offences for which the maximum punishment under the Indian Penal Code, 1860, for short, IPC, or any other law for the time being in force is imprisonment up to three years. 'serious offences' as

defined in Section 2 (54) include the offences for which punishment under IPC or any other law for the time being in force, is imprisonment between three to seven years. 'heinous offences', as defined in Section 2 (33) include the offences for which the minimum punishment under IPC or any other law for the time being in force is imprisonment for seven years or more.

13. At this juncture, it will be relevant to note that there are many offences for which the maximum punishment is more than seven years, but for which the minimum sentence is less than seven years or for which there is no minimum sentence prescribed. In ***Shilpa Mittal vs. State of NCT of Delhi & Anr.,*** reported in (***2020) 2 SCC 787***, the Hon'ble Supreme Court placed reliance on the word 'minimum' as appearing in Section 2 (33) of JJ Act of 2015 and held that an offence which does not provide a minimum sentence of seven years cannot be treated to be a heinous offence. However, as JJ Act of 2015 does not deal with the kind of offences for which maximum sentence is more than seven years imprisonment, but for which no minimum sentence or minimum sentence of less than seven years is provided, the Hon'ble Supreme Court ruled that such offences shall be treated as serious offences.

14. However, there is no dispute in the present case that the offences for which the appellant had been convicted, come within the definition of heinous offence, as minimum punishment for offences under Section 5 (l), 5 (m) and (5 (n) is 10 years.

15. In ***Shilpa Mittal*** (supra), the Hon'ble Supreme Court had observed that the scheme of JJ Act of 2015 is that the children should be protected and that to treat children as adult is an exception to the rule. From the Scheme of Sections 14, 15 and 19, the Hon'ble Supreme Court observed that legislature felt that before a juvenile is tried as an adult, a very detailed

study must be done and the procedure laid down has to be followed and that even if a child commits a heinous crime, he is automatically not to be tried as an adult.

16. Though a passing reference is already made to Section 9 of the JJ Act of 2015, it will now be appropriate to reproduce the same for better understanding of the scope of the provision. Section 9 of the JJ Act of 2015 reads as follows: -

> "9. Procedure to be followed by a Magistrate who has not been empowered under this Act.- (1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.
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> (2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:
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> Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made there

under even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."

17. Perusal of Section 9 of JJ Act of 2015 goes to show that the legislature has used the expression "person alleged to have committed the offence" in Section 9 (1) and Section 9 (2) in contrast to Section 9 (3) when it uses the expression "if the Court finds that a person had committed an offence". Section 9 (1) deals with a situation when a child is brought to the Magistrate who is not empowered to exercise the powers of the Board under the JJ Act of 2015 and if he is of the opinion that the person alleged to have committed the offence is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

18. Section 9 (2) of JJ Act of 2015 provides that in case a person alleged to have committed an offence claims before a Court other than a Board, that he is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the Court shall make an inquiry by way of taking such evidence as may be necessary, but not by way of an affidavit, to determine the age of such person, and shall record a finding on the matter,

stating the age of the person as nearly as may be. Section 9 (2), thus, envisages a situation when a claim as noted above is made when no judgment is passed as the word 'alleged' would refer to a proceeding where no final order is passed and the matter is sub-judice.

19. There is a proviso to Section 9 (2) of JJ Act of 2015 which provides that a claim that a person was a child at the time of commission of offence may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and in case such a claim is raised, the claim shall be determined in accordance with the provisions of the JJ Act of 2015 and the rules made there under even if the person has ceased to be a child on or before the date of commencement of this Act.

20. Section 9(3) of the JJ Act of 2015 provides that the Court shall forward the child to the Board for passing appropriate orders in the event the Court finds that a person has committed an offence and the person was a child on the date of commission of such offence. Thus, two condition precedents, namely, a finding has to be recorded that a person has committed an offence and the person was a child on the date of commission of such offence, are required to be fulfilled before the child is forwarded to the Board for passing appropriate orders. In other words, even when the Court comes to a conclusion that the person on the date of commission of the offence was a child, the Court has to record a finding that the person had committed an offence, or to put it differently, the Court will have to examine the merits of the case. In this connection, it is, however, relevant to note that Section 8(2) of the JJ Act of 2015 provides that the powers conferred on the Board by or under the JJ Act of 2015 may also be exercised by the High Court or the Children's Court when the proceedings come before them under Section 19 or in an appeal, revision or otherwise.

21. As a logical corollary, we are of the opinion that if the Court finds on examination of the case on merits that the accused had not committed an offence, it will be permissible for the Court to acquit the accused notwithstanding the fact that the child had not been tried in accordance with the provisions of the JJ Act of 2015.

22. It is in the above context, consequent upon the finding arrived at that the accused was a child of 17 years at the time of commission of the offence, it will be necessary for this Court to evaluate the evidence and record a finding as to whether the accused had committed an offence.

23. Ms. Sedenla Bhutia, learned Counsel appearing for the appellant has submitted that the prosecution has miserably failed to establish the guilt of the accused beyond reasonable doubt. She submits that evidence of PW-1 does not establish that there was any aggravated penetrative sexual assault. It is contended by her that even though her statement under Section 164 Cr. P.C. was exhibited, it has not been stated that such statements are correct and true and in that view of the matter, no reliance can be placed on her statement under Section 164 Cr. P.C., which in any view of the matter, is not a substantive piece of evidence. Learned Counsel submits that the word "*chara*" has many connotations and in this connection, refers to paragraph 9 of a decision rendered by this Court on 19.08.2020 in ***Crl. A. No. 20 of 2019, Dil Kumar Bahun vs. State of Sikkim***. It is also contended by her that though victim was stated to be a child of 5 years, the medical report does not even remotely indicate that the victim was subjected to penetrative sexual assault.

24. Mr. Sudesh Joshi, learned Public Prosecutor, while not disputing that the word "*chara*" has many connotations, submits that it can also mean penetrative sexual assault, as noted by the learned trial Court. He submits

that, may be, from the demeanor of the witness, the learned Judge had recorded that the witness meant penetrative sexual assault. He, however, admits that the Medical Report, Exhibit-6, is totally silent with regard to any penetrative sexual assault on the child.

25. We have considered the submissions of learned Counsel for the parties and have perused the materials on record.

26. The statement (Exhibit-7) of the paternal aunt of the victim, based on which the FIR was registered, is, essentially, to the effect that the mother of the victim had left the child and accordingly, the victim, who is five year old, used to stay with her father but as the father hardly resided at home, the informant was advised by the villagers to bring the victim to her house and that, accordingly, the victim was residing with her for the past 15-20 days. One day, while she was bathing her niece, she noticed a lot of whitish/yellowish discharge from her private parts. She made inquiries with PW-4 as to whether her children also release discharge and on being told in the negative, she became suspicious that something might have happened to her niece and accordingly, she asked her niece as to whether anybody had done anything to her but she did not tell anything. It is further stated that when the same question was asked two days back, she had replied that the appellant would beat her if she disclosed anything. On being pressed, her niece told her that the appellant had sexually assaulted her (*chara garyo*) multiple times at her house as well as by one Nawraj uncle. Her elder sister-in-law being informed about the incident, she advised the informant to take her niece to a doctor and also to inform her father. She, accordingly, brought the child to Gyalshing Hospital in the evening of 03.04.2017 and when the Doctor asked the child as to what had happened to her, she had told that the appellant and Nawraj Chettri had sexually assaulted her.

27. The prosecution case basically hinges on the evidence of PW-1, the victim; PW-2, the informant; PW-8, the father of the victim and PW-9, the Doctor, who had examined the victim on 03.04.2017.

28. The appellant/accused had adduced the evidence of his the other sister as DW-1.

29. PW-3 and PW-7 are the witnesses of the Rough Sketch of the place of occurrence, Exhibit-5. Reference to PW-4 is already made and she stated in her evidence that she had advised PW-2 to take her niece to the hospital. Against PW-5 it is stated that "prosecution tenders the witness", which, it is submitted, that the witness was not examined. PW-6 is the Judicial Magistrate, who had recorded the statement of PW-1 under Section 164 Cr. P.C. PW-10 is an Investigating Officer, who had registered the FIR, Exhibit-8, and had conducted part of the investigation. PW-11 authenticated the date of birth of the victim as 08.06.2012. PW-12 also had conducted a part of the investigation and he had submitted the charge-sheet.

30. From the evidence of PW-12 it appears that Nawraj Chettri was convicted by the Board in JJB Case No. 01 of 2017 dated 30.06.2017 for committing an offence under Section 5 (m) of the POCSO Act and he was released on probation of good conduct under Section 18 (e) of the JJ Act of 2015.

31. PW-1 stated that the accused had committed "*chara*" with her on 3-4 occasions at her house. As rightly submitted by Ms. Sedenla Bhutia, the same is the only substantive evidence of PW-1 apart from the statement that she had given similar statement before the Court on earlier occasion, meaning thereby her statement under Section 164 Cr. P.C, which was exhibited as Exhibit-2. Against the word "*chara*", the Court recording

evidence, had written "penetrative sexual assault". In ***Dil Kumar Bahun*** (supra), this Court, at paragraph 9, had stated as follows:

> *"9. The victim identified the appellant in court. The victim deposed, "..... I do not remember the exact date and month but one Thursday, my appa (father) while I was sleeping with my sister took me to his room and committed "chara" (penetrative sexual assault) on me. This continued one month, i.e., from the month of December to January....."* The recording of the deposition does not make it clear whether the words in brackets after the word "chara", i.e., (penetrative sexual assault) was the statement of the victim or if it was the translation by the learned Special Judge. The word "chara" in Nepali may be used to describe a number of things vulgar, including, but not limited to penetrative sexual assault. If the victim had explained the word "chara" in Nepali it would have been advisable to record the depositions of the victim in her own words and then supply the translation. ……."

32. Today also, the learned Counsel for the parties submit that "*chara*" does not necessarily mean penetrative sexual assault and in local parlance, it may refer to any sexually offensive act.

33. PW-2 stated that while bathing PW-1, she noticed that some discharge was coming out from the private parts of PW-1. PW-1 having refused to say anything and as she was complaining of stomach pain, she was taken to Gyalshing Hospital and when the lady Doctor inquired from the victim, the victim had stated that the accused and Nawraj Chettri had committed penetrative sexual assault on her. In her cross-examination, PW-2 stated that after coming home from the hospital, she again inquired from PW-1 about the incident and then she told her that Nawraj Chettri had told her to

tell the name of the accused. While in the Exhibit-7 statement, PW-2 had stated that she was already aware that the appellant/accused and Nawraj Chettri had sexually assaulted the victim before taking her to the hospital, in her evidence she had stated that she had come to learn about the appellant and Nawraj committing penetrative sexual assault only when the lady Doctor inquired from the victim.

34. PW-8, the father of the victim, stated that PW-2 had informed him that PW-1 was not well and accordingly, he and PW-2 had taken PW-1 to District Hospital and only when PW-1 was examined by the Medical Officer, he came to know that his daughter had been a victim of sexual assault at the hands of his brother i.e. the appellant and a boy called Nawraj.

35. PW-9 had exhibited the Medical Report as Exhibit-6. Exhibit-6 does not reveal that on being examined by her, PW-1 had stated about the sexual assault, let alone penetrative sexual assault. Rather, it goes to show that she was brought with the history of sexual assault by two persons at her residence. Consent for examination was given by PW-2 and therefore, it is reasonable to hold that it was PW-2 who had given the history of sexual assault. Exhibit-6 discloses that scabies was present in the body of PW-1 and PW-1 had complained of itchiness for last 2-3 days. PW-9 stated as follows:

> "On local examination: Swelling and redness was present in the vulva. Foul smelling discharge was present over the vulva. Hymen was intact. Fourchette was normal. Redness and swelling was present over the anal region. Three vaginal swabs were taken and handed over to the police.
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> The findings were : Redness, swelling and discharge over the vulva and anal region was suggestive of infection. Lab report was awaited and the lab report of Namchi District Hospital shows absence of spermatozoa."

36. In cross-examination, she stated that redness, swelling and discharge over the vulva and anal region of the victim were due to infection (scabies).

37. DW-1 stated that she had taken the victim to the house of PW-2 as her mother had left the house. She stated that she had taken the accused to Nepal in the year 2014 and he had returned in the year 2018. A question was put by the Court to her as to whether she was living with the victim and her family during the relevant period and she had replied that in the year 2017 she was not there and she was at the place of her in-laws. Her evidence is of no assistance to the accused.

38. In his examination under Section 313 Cr. P.C., the appellant had stated that the offence was committed by Nawraj and he had told the victim to implicate him.

39. In Exhibit-2, i.e. the statement of PW-1 under Section 164 Cr. P.C, she had stated that the appellant had forcibly put his tongue in her mouth and had put his private parts in her vagina and anus but then, the statements made under Section 164 Cr. P.C. is not substantive evidence.

40. Section 3 of the POCSO Act lays down that a person is said to commit penetrative sexual assault, if, amongst others, 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.

41. That the date of birth of the victim is 08.06.2012 is not in doubt and thus, at the time of occurrence, PW-1 was around 5 years old. In absence of any statement regarding penetration in the evidence of PW-1, coupled with the evidence of PW-9, we are of the considered opinion that prosecution has failed to prove beyond reasonable doubt that there was any penetrative sexual assault, the term which has been used by the learned Judge while

recording the statement against the word "*chara*". We have also taken note of the submission made by learned Counsel for the parties that "*chara*" does not necessarily mean penetrative sexual assault. This Court had also held in ***Dil Kumar Bahun*** (supra) that the word "*chara*" in Nepali may be used to describe a number of things vulgar including, but not limited to, penetrative sexual assault.

42. Section 7 of the POCSO Act states that whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration , commits sexual assault.

43. Section 9 of the POCSO Act deals with various forms of aggravated sexual assault. Section 9 (l) lays down that whoever commits sexual assault on the child more than once or repeatedly is said to commit aggravated sexual assault. Section 9 (m) lays down that whoever commits sexual assault on a child below twelve years is said to commit aggravated sexual assault. Section 9 (n) lays down that whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child, is said to commit aggravated sexual assault.

44. On the evidence on record we are satisfied that the prosecution has been able to establish that the appellant is guilty of aggravated sexual assault within the meaning of Section 9(l),9(m) and 9(n) of POCSO Act for which punishment is prescribed under Section 10 of the POCSO Act. Punishment prescribed being imprisonment of either description for a term which shall not be less than five years but which may extend to seven years

as well as imposition of fine, the offences come under the definition of serious offences.

45. In view of the above discussion, conviction of the accused under Section 5 (l), 5 (m) and 5 (n) of the POCSO Act is set aside and we hold that the accused had committed offences under Section 9 (l), 9 (m) and 9 (n) of the POCSO Act. Sentences passed by the learned Special Judge, POCSO Act, West Sikkim at Gyalshing in S.T. (POCSO) Case No. 26 of 2018, needless to say, shall have no effect. As the twin conditions under Section 9 (3) of the JJ Act of 2015 are satisfied, the accused is forwarded to the Board at Gyalshing for passing appropriate orders.

46. Consequently, the appellant shall be put up in a place of safety.

47. The appeal stands disposed of in the above terms.

48. Record of the Board at Gyalshing shall be returned forthwith.

(Judge) **(Chief Justice)**

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