

THE HIGH COURT OF SIKKIM: GANGTOK
(Criminal Appeal Jurisdiction)

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

CRL. A. No. 9 of 2024

Rinzing Sherpa,
Aged about 29 years,
S/o Late Lakpa Tshering Sherpa,
Resident of Middle Tokdey,
Lingmoo, South Sikkim,
At present Rongyek Jail,
Gangtok,
Sikkim.

.... Appellant

versus

State of Sikkim

.... Respondent

Appeal under Section 374(2) of the Code of Criminal Procedure, 1973

[against the judgment dated 21.02.2024 & order on sentence dated 27.02.2024 passed by
the learned Judge (Fast Track), South & West at Gyalshing in S.T. (F.T.) Case No. 04 of 2022 –
State of Sikkim vs. Rinzing Sherpa]

Appearance:

Ms Gita Bista, Advocate (Legal Aid Counsel) for the Appellant.

Mr. Yadev Sharma, Additional Public Prosecutor, for the Respondent.

J U D G M E N T

Date of Hearing : 8th April, 2026
Date of Judgment : 29th April, 2026
Date on which uploaded: 29th April, 2026

Bhaskar Raj Pradhan, J.

In the present appeal, we are examining a judgment of conviction and sentence under Section 376(2)(I) of the Indian Penal Code, 1860 (IPC) rendered by the learned Sessions Judge, Fast Track Court (the learned Sessions Judge) after a trial.

2. The victim (PW-4) is a woman with intellectual or development disability and cerebral palsy.

3. She was identified as a person suffering from 70% “mental retardation” with permanent multiple disabilities. Section 2(r) of *the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* (the Disabilities Act) defines “mental retardation” to mean a condition of arrested or incomplete development of mind of a person which is specially characterised by subnormality of intelligence. The victim was also suffering from cerebral palsy. “Cerebral Palsy” has been defined in Section 2(e) of the Disabilities Act to mean a group of non-progressive conditions of a person characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, peri-natal or infant period of development.

4. The issues raised by the learned counsel for the appellant concerns how we should understand and appreciate statements of such victims of sexual offences and the corroborating evidences.

The appellant's case

5. The learned counsel for the appellant contended that the victim had not named the appellant and had alleged that the assault on her was at home and not at the playground. She contends that the medical opinion does not establish the appellant as the aggressor; that the evidence of the victim's niece (PW-5) is contradicted by her admission in cross-examination; and that no injury was seen on the body of the appellant during his medical examination. She relied upon two judgments of the Supreme Court, which we will now examine.

6. In *Raju & Others vs. State of Madhya Pradesh*¹, the Supreme Court was examining the testimony of the prosecutrix in a gang rape case where it held that though the testimony is believable on a par with an injured witness, it cannot always be presumed to be the gospel truth.

7. In *Santosh Prasad alias Santosh Kumar vs. State of Bihar*², the Supreme Court was examining a case of a conviction relying solely upon the deposition of the prosecutrix when material contradiction was present in her

¹ (2008) 15 SCC 133

² (2020) 3 SCC 443

deposition and neither independent witness nor medical evidence supported the prosecution case.

8. We are of the view that the facts of the present case are distinguishable to the facts of the above cases as discussed hereinafter.

The prosecution's case

9. The learned Additional Public Prosecutor relied upon the evidence of the victim's niece (PW-5) who was an eyewitness, victim's mother (PW-1), victim's sister-in-law (PW-2) also the mother of PW-5, and PW-5's cousin (PW-7) to establish the prosecution case. He submitted that the medical evidence confirms the prosecution story; that as per the RFSL Report human blood was detected in the vaginal swab as well as the vaginal wash of the victim. Thus, he submits that the RFSL Report confirmed the prosecution story as well.

10. In *Mange vs. State of Haryana*³ relied upon by the learned Additional Public Prosecutor, the Supreme Court held that conviction can be based on the sole testimony of an eyewitness though in this case his testimony stood corroborated by the blood stains and the clothes of the

³ (1979) 4 SCC 349

“dumb and deaf” prosecutrix and the medical evidence. The Supreme Court held that the medical examinations finding of torn hymen and bruises was sufficient to hold the accused guilty.

The facts

11. On 02.09.2022, the victim’s sister-in-law lodged an FIR (exhibit P-2/PW-2) stating that the victim who was 25 years old and “mentally unstable since birth” was witnessed by her daughter (PW-5) being sexually assaulted (raped) by the appellant who was 27 years old.

12. After investigation, the Investigating Officer (PW-12) filed the final report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) alleging commission of offence under Section 376(2)(l) IPC by the appellant.

13. On 06.03.2023, the learned Special Judge framed a singular charge against the appellant that in the evening of 02.09.2022 he had raped the victim who was a “specially abled” woman (hearing and speech impaired) at the school ground thereby committing an offence under Section 376(2)(l) of the IPC. The appellant pleaded not guilty and claimed trial.

14. During the trial, the prosecution examined 12 witnesses including the Investigating Officer. The appellant was thereafter, examined under Section 313 of the Cr.P.C. where he admitted that he had worked in the victim's house; stated that the victim was not completely "disabled" and could perform household chores.

The Disability Certificate

15. Dr. C.S. Sharma (PW-11) who had issued the Disability Certificate (exhibit P1/PW1) of the victim confirmed that she had multiple disabilities with "mental retardation" and cerebral palsy. The Disability Certificate proved by the victim's mother and Dr. C.S. Sharma states that the victim suffered from mental retardation with multiple disabilities to the extent of 70%. Sumit Dahal (PW-3) - the Special Educator, who had attended the Court during the recording of the victim's statement by the Magistrate found that she had "speech and mild intellectual disability" but was able to communicate and that someone had physically abused her on two occasions. The victim's mother (PW-1), the victim's sister-in-law (PW-2), the victim's niece (PW-5) and PW-5's cousin (PW-7) confirmed that the victim was differently abled. We do not have any doubt that

the victim was suffering from “mental disability” as envisaged under Section 376(2)(l) of the IPC.

Consideration

16. In *Patan Jamal Vali vs. State of A.P.*⁴, the Supreme Court held that the testimony of a prosecutrix with a disability, or of a disabled witness for that matter, cannot be considered weak or inferior only because such an individual interacts with the world in a different manner viz-a-viz their abled-bodied counterparts. As long as the testimony of such a witness otherwise meets the criteria for inspiring judicial confidence, it is entitled to full legal weight.

17. The victim was examined as a witness. She deposed that she knew the person who touched her and her niece (PW-5) had witnessed it. The victim who could not answer what her name was, when asked directly who is Rxxx (victim’s name redacted), she answered saying that it was her. Although, she correctly identified her mother and sister-in-law, she remained silent when asked whether she knew “Rinzing Sherpa” (the appellant). The victim was asked what happened to her or what was done to her. She showed her breasts and pointed to her crotch and said that her

⁴ (2021) 16 SCC 225

breasts and vagina/crotch were fondled. She was then asked what else happened. The victim remained silent. She stated that it happened at home when asked where it happened. She stated that she knew the person who touched her and that he had touched her twice. When the victim was asked if she would be able to identify him if she saw him today, she smiled. She was then asked if anybody had seen her being touched, she said yes and identified PW-5 as the daughter of her sister-in-law who had seen them. She further said she could identify the person on the screen but remained silent when asked to state his name or inform the Court about his profession.

18. During her cross-examination, the defence could not make her admit that she had made a false statement when she deposed that her breasts and crotch were fondled and that her neice (PW-5) had seen the incident.

19. The learned counsel for the appellant highlights these silences of the victim and suggest that she had failed to identify the appellant or allege that he had raped her. We notice that the deposition of the victim was recorded when she could see the appellant on the screen. Although, the victim did not name or point out the appellant as the

perpetrator, the victim clearly deposed that the incident was witnessed by PW-5 and she knew the person on the screen. The victim was also clear that she was sexually abused.

20. To appreciate the victim's deposition and her silences, we examined the prosecution evidence including the medical and forensic evidence, which confirms rape.

Medical Evidence

21. Dr. Sonica Rai (PW-10) who was posted as a Medical Officer at the relevant time at the District Hospital deposed that on 03.09.2022, she had examined the victim with a history of sexual assault at her residence. On her vaginal examination, Dr. Sonica Rai noted "*fresh cut over inner labia, bleeding present, hymen torn, swollen labia majora with tenderness*" Her deposition in Court, which is based on her report (exhibit P-12/PW-10), also confirms it. During cross-examination, Dr. Sonica Rai confirmed that the bleeding that she had seen on the victim's private part was not menstrual bleeding. It is quite clear that the victim had been sexually abused due to which she had suffered the injuries as confirmed by Dr. Sonica Rai.

Forensic Evidence

22. The forensic evidence also confirms the prosecution story of rape of the victim. The RFSL report

(exhibit P-18/PW-12) was admitted as evidence through the Investigating Officer without any protest from the defence. The defence did not file any application to summon the expert for cross-examination. The RFSL report qualifies as a report prepared under Section 293 Cr.P.C. and therefore admissible regardless of the fact that the expert was not examined. [see **Santosh vs. State (NCT of Delhi)**]⁵ The RFSL report confirms having detected human blood on the vaginal swab and wash of the victim. Thus, the forensic evidence corroborates the medical evidence.

23. We are, therefore, certain that when the victim complained to the Court about her breasts and crotch being fondled, what she was actually indicating was the act of rape committed on her. Her inability or reluctance to identify the appellant as the perpetrator of the crime could be because of various reasons including that the appellant was on the screen when she was in the witness box facing him. Therefore, the victim's deposition does inspire judicial confidence as she had clearly stated that she was sexually abused and we find corroboration from the medical and forensic evidence.

⁵ (2023) 19 SCC 321

24. As the learned Sessions Judge has opined that the appellant was the one who committed rape upon the victim and her niece (PW-5) was an eyewitness, we need to re-examine the evidence to ensure that he was not wrongly convicted and sentenced.

The appellant's presence at the place of occurrence

25. The evidence of the victim's niece (PW-5) is detailed and descriptive. She stated the circumstances under which she was near the place of occurrence when the incident happened. The victim's niece confirmed seeing the appellant in a drunken state near her grandfather's house. She heard him ask the victim to get him alcohol and saw him handing over an empty Pepsi bottle for it. She saw the victim leave with the bottle and the appellant follow her. She also deposed that this made her uncomfortable and therefore, she followed them. To this extent, the deposition of the victim's niece is unquestionable having withstood the cross-examination.

26. Although, the victim's niece stated that when she reached the place of occurrence she had seen the appellant and her aunt having sex, however, during cross-examination she admitted that she had not stated so to the police.

Therefore, it would be important for us to look at other prosecution evidence to ascertain the truth.

The appellant's identity

27. The victim's mother (PW-1), the victim's sister-in-law (PW-2) who lodged the FIR, the victim's niece (PW-5) who was the eye witness, the victim's father (PW-9), all identified the appellant as the person who was working in the victim's house as a carpenter/mason. The victim's mother (PW-1), the victim's sister-in-law (PW-2), the victim's niece (PW-5) and the victim's father (PW-9) confirmed that the appellant was working at her house at the time of the incident. Evidently, the victim as well as her family members knew the appellant as he was working in their house and therefore, the identification of the appellant by them in Court cannot be doubted.

28. PW-7 was the next person in the sequence who heard the victim's niece (PW-5) shout at the appellant at the place of occurrence. PW-7 identified the appellant as his co-villager. According to him, when he and his friend approached the victim's niece (PW-5), she told them that she had seen the appellant having sex with the victim. PW-7 then took the appellant to the police station from the place of occurrence.

29. The depositions of PW-1, PW-2, PW-5 and PW-7 confirms that after the incident the appellant was taken to the police station along with the victim from the place of occurrence. PW-2 then lodged the FIR.

30. The evidence of the above witnesses also corroborates the prosecution story.

31. We notice that in her deposition, the victim's niece (PW-5) had stated that she had seen the appellant with one of his friends just before the incident. During arguments, the learned Counsel for the appellant suggested that there could be a possibility that someone else was the perpetrator of the crime. However, the victim's niece (PW-5) was certain that after the appellant asked the victim to fetch alcohol, it was he alone who followed the victim towards the place of occurrence, compelling her to follow the appellant. Therefore, there was no one else with the victim at the place of occurrence except the appellant. The victim, in her deposition, also confirmed that her niece had seen the incident.

32. Dr. Sonica Rai confirmed that when she had examined the appellant on the same day she had found "defence marks" on the appellant's arm. She noted this in

the Medical Report (exhibit P-13). The appellant explained this “defence marks” by stating that it was due to the assault by PW-5’s brother while giving his statement under Section 313 Cr.P.C. During cross-examination, PW-7 admitted to have beaten the accused that day.

33. It could be possible that the “defence marks” in the right arm of the appellant was caused when he was beaten by the brother of PW-5. However, according to PW-7, he beat the appellant on the date of the incident at the place of occurrence. Therefore, the presence of the appellant at the scene of the crime is further confirmed. The defence has led no evidence to suggest anything else. In fact, the appellant himself confirms his presence while answering the circumstances against him under Section 313 Cr.P.C. Therefore, there cannot be confusion in our mind regarding the identity of the appellant and his presence at the place of occurrence when the crime was committed.

34. When the Court is to examine alleged crime committed on a differently abled victim it has to scrutinise every piece of evidence meticulously as the victim may not be able to describe the incident coherently in the manner we understand. This, however, does not mean that the

deposition should not inspire judicial confidence. Failure to name the appellant as the aggressor should not be given undue weightage lest truth gets suppressed in her silences. The inability of a differently abled victim in not being able to name the appellant as the aggressor, cannot be a ground to discard the prosecution version as the ocular evidence is corroborated by the medical and forensic evidence which confirms rape upon the victim. Our inability to understand the victim's language should not lead to a failure of justice. What is important is to know what she has to say more than how she says it. The prosecution evidence overwhelmingly confirms the presence of the appellant at the place of occurrence at the relevant time. It also confirms that it could not have been anyone else who had committed the offence.

35. We, therefore, have no hesitation in upholding the conviction of the appellant under Section 376(2)(l) of the IPC. Keeping in mind the nature of the injuries suffered by the victim who was a differently abled woman, we are of the view that the sentence of 10(ten) years of rigorous imprisonment and a fine of twenty-five thousand rupees is just and proper. The learned Sessions Judge has also directed that in default of payment of fine, the appellant shall undergo simple imprisonment for one year and the period of detention

already undergone by him during investigation and trial with effect from 03.09.2022 shall be set off against the sentence of imprisonment as provided under Section 428 Cr.P.C.

36. The learned Sessions Judge has also found that the victim has been traumatised as a result of the acts committed by the appellant and recommended compensation of Rs.4,00,000/- under *the Sikkim Compensation to Victims (or their Dependents) Scheme, 2021*.

37. We confirm the sentence, the directions, as well as the recommendation for compensation.

38. The appeal is dismissed and disposed of accordingly.

39. Copy of this judgment be sent to the learned Trial Court for information and records be remitted forthwith.

(Bhaskar Raj Pradhan)
Judge

(Meenakshi Madan Rai)
Judge

Approved for reporting: **Yes/No**
Internet: **Yes/No**

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