

THE HIGH COURT OF SIKKIM: GANGTOK
(Criminal Appellate Jurisdiction)
SKHC010001032025

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Criminal Appeal No. 21 of 2025

Buddha Raj Rai
Aged about 33 years,
Son of late Ram Bahadur Rai,
Resident of Lower Aho, Pakyong. Appellant

Versus

State of Sikkim.
..... Respondent

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

{Appeal against judgment dated 26/06/2025 and Order on Sentence dated 27/06/2025 passed by the Learned Special Judge (POCSO Act, 2012) Gangtok, Sikkim, convicting the Appellant for the offence under Section 9(l) of the Protection of Children from Sexual Offences Act, 2012 (POCSO)}.

Appearance:

Ms. Neha Gupta, Advocate for the Appellant.

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

Date of Judgment reserved : 10.06.2026
Date of Judgment Pronounced: 23.06.2026
Date on which uploaded : 23.06.2026

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The impugned judgment dated 26.06.2025 rendered by the learned Special Judge (POCSO Act, 2012) at Gangtok convicting the appellant for the offence of aggravated sexual assault on the victim under Section 9 (l), punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act) is sought

to be assailed by him. The learned Special Judge was of the view that as the offence of aggravated sexual assault on the victim would encompass the offence punishable under Section 12 of the POCSO Act and under Sections 74 and 75 (2) and (3) of the Bharatiya Nagarik Sanhita, 2023 (the BNS, 2023), he need not be convicted for the said offences. The order on sentence dated 27.06.2025 sentencing the appellant to undergo rigorous imprisonment for a term of five years and a fine of Rs.2000/- for the said offence is also challenged.

2. Ms. Neha Gupta, learned counsel for the appellant submitted that the prosecution had failed to establish the case beyond reasonable doubt as mandated by law. It was contended that there are numerous contradictions and unexplained circumstances which destroys the prosecution case. The learned counsel also submitted that the defence had been able to raise a reasonable doubt that the allegation against the appellant was due to a conspiracy. She drew my attention to the voluntary statement in cross-examination of the victim: *“until that time, nothing had happened”* and submitted that this would completely destroy the prosecution case. She elaborated this by submitting that the prosecution case was that the alleged incident had occurred when the victim and the appellant were travelling in a taxi and therefore, if nothing had happened until then, then it was unlikely that the incident happened at all. The learned counsel submitted that the fact that the victim had further said “thank you” to the appellant while alighting reinforces that the incident never occurred.

3. The learned counsel for the appellant took this Court through the various depositions of witnesses and the relevant portions of the

impugned judgment to emphasize that this case was in fact the case of acquittal. She relied upon Section 9 of the Bharatiya Sakshya Adhiniyam, 2023 (the BSA, 2023) as well as the judgments of the Supreme Court in ***Rai Sandeep alias Deepu vs. State (NCT of Delhi)***¹, ***Kannaiya vs. State of Madhya Pradesh***², and a judgment of this Court in ***Binod Pradhan & Anr. vs. State of Sikkim***³.

4. In ***Kannaiya*** (supra) the Supreme Court was examining a case of murder and not under the POCSO Act. It was reiterated that even as the guilt of an accused person may be proved by the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. It is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. It was reiterated that generally oral testimony in this context may be classified into wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable. It was reiterated in the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness. If it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. It was also reiterated that when genesis and the manner of the incident is doubtful, the accused cannot be

¹ (2012) 8 SCC 21

² (2025) SCC OnLine SC 2270

³ 2019 SCC OnLine Sikk 227

convicted. It was reiterated that once the court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant benefit of doubt to the appellants.

5. In ***Binod Pradhan*** (supra) this Court was of the view that the testimony of the victim lacks in both medical and forensic corroboration and there was an element of uncertainty in her deposition. It was held that the prosecution has failed to put forth credible evidence to establish the offences. It was held that when the court lacks confidence to rely upon the version of the victim alone without any corroboration faced with conflicting evidence it would not be proper to uphold the appellant's conviction. It was held that it was settled that even in a case of rape the prosecution is not excused from leading cogent and trustworthy evidence to establish the heinous evidence.

6. Mr. Yadav Sharma, learned Additional Public Prosecutor defended the impugned judgment as being unassailable. It was submitted that the prosecution had established the case beyond reasonable doubt by cogent and reliable evidence and therefore, this Court ought not to interfere with the impugned judgment which is clear both on facts and in law.

7. Seventeen witnesses were examined by the prosecution to establish the four charges framed by the learned Special Judge on 09.09.2024 under Section 9(l), Section 11 of the POCSO Act, Section 74 and Section 75 (1) (i) and (iv) of the BNS 2023.

8. The victim (P.W.3) deposed that she was 13 years old, her date of birth is 19.04.2011 and she was presently going to a Senior Secondary School in Class VIII. She identified the appellant in court as the same driver of the sky blue colour Alto taxi vehicle bearing registration number SK-01-TA-2031. She clarified that she came to know about the registration number later. According to her, on 19.07.2024 she had gone to school to practice for Independence Day celebration. After she left school around 5.30 p.m. she boarded the appellant's taxi from a taxi stand after he confirmed that he was going towards Ranipool. On the way the passengers i.e. one man in the front seat and two ladies in the second seat dropped at their respective destinations. At 5th mile the appellant told her to sit in the front seat as she was carrying a school bag. When they reached 6th mile petrol pump she noticed that it was 6.18 p.m. on her smart watch. The appellant stopped and smoked a cigarette. He then asked her about her family and personal details and came closer, touched her shirt's buttons and also her breasts. She pushed him and told him to go away. Thereafter, the appellant drove the vehicle and again stopped near LPG Godown. He went to a shop and purchased a packet of '*Bhuja*' which he offered her. At that moment the appellant once again touched her breasts. The victim requested him to reach her home as early as possible. When they reached Ranipool she alighted from the taxi that is when she received a call from her mother. She told her mother about the incident and the appellant's misbehaviour. The mother told her to catch a vehicle and come home. She also told others about the incident at the taxi stand. When she reached near her house she found her mother waiting for her. She narrated the entire incident to her mother who told her that they

should get hold of the culprit. They boarded a WagonR vehicle and at that moment, the victim saw the same taxi and the appellant pass by. They followed the taxi. As there was a traffic jam at Setipool, the victim's mother confronted the appellant and took out the keys of the taxi. The appellant said that he would park the taxi and they could talk as there was a traffic jam. As soon as the victim's mother gave the keys back, the appellant started the taxi and ran away. The victim noticed a lady in the appellant's taxi who got down at Setipool before they approached him. They thereafter, pursued the appellant but could not locate him. The victim's mother had noted the registration number of the taxi and on the advice of the victim's father they went to the police station where the father lodged the complaint.

9. The cross examination by the defence was concentrated on creating inconsistencies in the victim's deposition and bringing out contradictions which did not go to the root of the matter. The victim withstood the extensive cross examination by the defence. Therefore, the two issues repeatedly emphasised by the learned counsel for the appellant as pointed out above i.e. the voluntary statement and the "thank you" the victim said to the appellant while alighting from the taxi would not dislodge the prosecution case.

10. The voluntary statement read in its context makes it clear that the victim was first asked about whether the smart watch she was wearing had calling facility. Thereafter, the defence got her to admit that she could call her parents through the smart watch and also receive their calls. The defence then asked the victim as to whether while she was travelling in a taxi she had called her mother and informed about the incident. The victim admitted that she did not do

so. It is at this stage that the witness volunteered to say that until that time nothing had happened. This voluntary statement does not under any circumstances give an impression that she had admitted that the incident had not happened while she was in the taxi of the appellant.

11. The deposition of the victim is detailed in material particulars as to time, places and the events. Read as a whole, there is no such statement which creates a doubt in my mind that the victim was not speaking the truth. How a child of 13 years would react to such an incident may differ from child to child. One child may make a hue and cry about it and yet another may choose to remain silent stunned by the incident. Another child in the same circumstances may act in a manner which in our perception, because of our circumstances, may not feel appropriate. The emphasis of the learned counsel for the appellant on the victim saying “thank you” to the appellant after the incident when she alighted his taxi to my mind should not be given undue emphasis to question the veracity of her statement which otherwise is truthful. There is no reason why a child of 13 years should blame the appellant for an act which he had not committed.

12. The learned counsel for the appellant also drew my attention with regard to a person by the name of Rxxx Sxxx. It was contended that there was enmity between Rxxx Sxxx and the appellant and as the victim’s father was Rxxx Sxxx’s friend he had filed a false case against the appellant in connivance with Rxxx Sxxx. The victim denied these suggestions as not being true.

13. Dr. Jennifer Caroline Thapa (P.W.4) posted as General Duty Medical Officer at the emergency ward of the hospital examined the

patient on the same day i.e. 19.07.2024 who was brought there by the police with a history of having been harassed and inappropriately touched. She examined her and gave opinion that the victim had no signs of being mentally unsound.

14. The victim's mother (P.W.1) was also cross-examined by the defence regarding Rxxx Sxxx. She admitted that she knew him as her husband's friend. She denied having any knowledge about another case filed by Rxxx Sxxx against the appellant. She also denied the suggestion that it was because of the enmity between Rxxx Sxxx and the appellant that they had conspired with Rxxx Sxxx and lodged a false complaint.

15. The victim's mother corroborated the narration of the facts as deposed by the victim in all material particulars. The cross examination by the defence could not detract the victim's mother from her deposition in court.

16. The victim's father (P.W.2) confirmed having learnt about the incident after the victim's mother called him on 19.07.2024 at around 6 to 7 p.m. He denied the suggestion that Rxxx Sxxx was his friend. He volunteered to state that Rxxx Sxxx was the driver of another vehicle in which his wife and daughter had chased the appellant's taxi. He denied any knowledge about Rxxx Sxxx having filed another case against the appellant and that it was because of the enmity between Rxxx Sxxx and the appellant that they had conspired to lodge a false complaint. The victim's father (P.W.2) also withstood the cross examination by the defence.

17. P.W.11 had also accompanied the victim and her father on 19.07.2024 to the police station where the police seized the appellant's taxi bearing the same registration number. He confirmed

the seizure of one empty packet of “Ranjan Bhujia” and one empty packet of “Rajni Gandha Pan Masala” from the taxi. The seizure of these two items from the appellant’s taxi corroborates the evidence of the victim to that extent and assures that it was the same taxi.

18. P.W.14 was the driver of the taxi WagonR in which the victim and her mother followed the appellant’s taxi. His deposition also corroborated the victim and her mother’s deposition about where and under what circumstances they had apprehended the appellant but he had managed to drive away.

19. P.W.15 the victim’s school teacher confirmed that the victim had in fact attended the school on 19.07.2024 as deposed by her to practice for Independence Day Celebration.

20. The learned Special Judge has considered the deposition of the victim’s mother (P.W.1) and P.W.14 to confirm that the blue coloured taxi they had chased that day was in fact the appellant’s taxi which would manifest from the testimony of the victim herself. The learned Special Judge also examined the victim’s testimony and concluded that there was no anomaly in the material particulars of the prosecution case and correctly differentiated the fact of the case in **Rai Sandeep** (supra) relied upon by the learned counsel for the appellant even before this Court. The learned Special Judge correctly appreciated the material inconsistencies in the facts of **Rai Sandeep’s** case, which led the Supreme Court to make the observations about what is a sterling witness.

21. On examination of the victim’s testimony in the present case it is more than evident that it is of a sterling witness and of a very high quality and her version remained unassailable. There is nothing on record which allows this Court to question it. The deposition of the

victim corroborated by the testimonies of the other prosecution witnesses has a ring of truth unshaken by the aggressive cross examination of the defence.

22. In offences like the present one the victim's testimony is of paramount importance and central to the prosecution case. The victim is an injured witness and therefore the courts must give her deposition the due indulgence and respect. There was no reason for the victim to falsely implicate the appellant, call her mother, go back to the place of incident with her mother, chase and confront the appellant by her mother late in the evening. The suggestion of the defence about the conspiracy with Rxxx Sxxx remained only a suggestion emphatically denied by the victim and the other prosecution witnesses.

23. The learned counsel for the appellant did not raise any doubt with regard to the minority of the victim. The learned Special Judge has referred to the evidence of the victim's parents who deposed that the victim was born on 19.04.2011, the birth certificate (exhibit-P1/P.W.1), the Registrar of Births & Deaths (P.W.6), the former Registrar of Births & Deaths (P.W.8), the live birth register produced by P.W.5 for inspection of the court, the Vice Principal of the former School (P.W.5), the Director of the School (P.W.10) to confirm that the victim was in fact a child of thirteen years three months as on the date of the incident. I have no hesitation in agreeing with this finding of the learned Special Judge.

24. The learned Special Judge has held that P.W.12 and P.W.13 corroborated that the CCTV footage showing the appellant's taxi moving on that route was delivered by them to the investigating officer. The investigating officer (P.W.17) deposed that both the

vehicle as well as the appellant was captured in the CCTV footage in the CCTV camera installed by P.W.12. P.W.12 confirmed that he had installed a CCTV camera at his parking lot and the fact that the police had come and checked the CCTV footage after which he downloaded the clips in the pen drive and handed it over to them. P.W.12 identified the pen drive (M.O.4) which showed the CCTV footage of the parking lot in front of his house. P.W.13 the owner of the petrol pump located in the area also confirmed having played CCTV footage to the police where they saw the Alto taxi parked at the highway opposite the petrol pump and the fact that the description had also matched. Although both P.W.12 and P.W.13 confirmed that the CCTV footage did not clearly show the person inside the taxi and its registration number this on its own should not disturb the otherwise well proved prosecution case.

25. The investigation of this case and the trial, crucial in all criminal prosecution has been commendable. The foundational facts having been established cogently by the prosecution through the testimonies of the victim, the victim's mother (P.W.1), the victim's father (P.W.2) and the other prosecution witnesses, the presumption that the appellant had committed the offence alleged can be drawn. In such a situation therefore, it becomes the duty of the defence to prove the contrary as required under Section 29 of the POCSO Act. The use of the words "unless the contrary is proved" in Section 29 of the POCSO Act raises the requirement for the defence not only to create a doubt but to prove the contrary fact.

26. I am therefore, of the view that the impugned judgment dated 26.06.2025 and order on sentence dated 27.06.2025 passed by the learned Special Judge, Gangtok convicting the appellant under

Section 9(l) of the POCSO Act and sentencing him to five years rigorous imprisonment and a fine of Rs.2000/- should not be disturbed.

27. The conviction under Section 9(l) of the POCSO Act which is punishable under Section 10 carries a sentence *“which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.”* The learned Special Judge in his wisdom has sentenced the appellant to the minimum sentence which calls for no interference.

28. The impugned judgment dated 26.06.2025 of conviction and order on sentence dated 27.06.2025 is upheld. The compensation for a sum of Rs.50,000/- granted to the victim is also upheld. The appeal is dismissed.

29. The appellant is on bail and he shall be taken into custody immediately. The appellant shall serve the sentence as ordered by the learned Special Judge, Gangtok.

30. The records of the Trial Court shall be remitted forthwith. A copy of this judgment shall be given to the learned Special Judge, appellant as well as the jail authorities. A copy thereof shall also be forwarded by e-mail to the jail authorities.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**

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