

CNR No. SKHC010001092023

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

DIVISION BENCH: THE HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

CRL. A. No. 19 of 2023

Chewang Sherpa aged about 42 years,
S/o of Lakpa Sherpa,
R/o Alleytar,
Upper Hattaban,
West Sikkim.
*At present lodged at 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 and order on sentence dated 31.07.2023 passed by the Special Judge
(POCSO) West Sikkim at Gyalshing in S.T. (POCSO) Case No. 19 of 2021
in State vs. Chewang Sherpa]*

Appearance:

Mr. Thupden Youngda, Advocate (Legal Aid Counsel) for the
appellant.

Mr. S.K. Chettri, Additional Public Prosecutor with Mr. Sujan Sunwar,
Assistant Public Prosecutor for the respondent.

Date of Hearing : 24th June, 2026
Date of Judgment : 10th July, 2026
Date on which uploaded: 10th July, 2026

Bhaskar Raj Pradhan, J.

*“Feeling like a drop in the ocean
That don’t nobody notice
May be it is all just in your head
Feeling like you’re trapped in your own skin
And now your body’s frozen
Broken down, you’ve got nothing left*

*When you’re high on emotion
And you’re losing your focus
And you feel too exhausted to pray
Don’t get lost in the moment
Or give up when you are closest
All you need is somebody to say*

*It’s okay not to be okay
It’s okay not to be okay
When you’re down and you feel ashamed
It’s okay not to be okay”*

Demi Lovato and Marshmello 2020

Prologue

It must have been particularly a rainy week towards the middle of monsoons of August 2021 in Sikkim. On 20.08.2021, just like any other day, the victim left for school to submit her papers. There was lockdown during that time. The students had been asked to submit their papers that day. She was just 16 and ready to move out into the real world from the protected environment of her home and school. She met her father at home, some friends on her way to school, submitted her papers and returned home some time during noon. She then engaged her father into watching a Nepali movie on her phone, went back to her room and committed suicide by hanging herself on a beam of the ceiling with her own school sweater. What led the young 16 years old school going victim to commit suicide was the question tasked to be answered through the investigation.

The facts disclosed by investigation and trial.

2. After the victim returned home, her father (PW-1) oblivious of what was going on in his daughter's mind on that particular day, went to the kitchen, made her some tea and took it to her room. He found her writing in a notebook. At around 3 p.m., the same day, when he was in the kitchen, the victim gave him her phone and asked him to watch a Nepali movie which she had selected for him. He watched it for 15 minutes. The battery ran dead. He took the phone and went to the victim's room to find his daughter hanging from her school sweater tied to the beam of the ceiling. He caught hold of her body, shook her trying to wake her up, opened the school sweater, took her down and laid her on the table.

3. The Panchayat (PW-3) was informed. He then informed the Sxxx Police Station.

Investigation of unnatural death case

4. The first Investigating Officer (PW-2) after the registration of Sxxx PS UD Case No.07 of 2021 dated 20.08.2021 under section 174 of the Code of Criminal Procedure, 1973 (Cr.P.C.) found the body of the victim in a supine position on the table when he visited the place of occurrence. He also saw the school sweater (M.O-IV) tied to the ceiling beam and hanging loose. He took photographs of the place of occurrence (exhibit-4 collectively) and the rough sketch map (exhibit-P45). He then conducted the inquest over the dead body in the presence of witnesses and noted oblique and non-continuous ligature marks on the neck, abrasion measuring about 2.5 cm approximately on the left buttock in the inquest report

(exhibit-5). He also inspected the room of the deceased and found the notebook (M.O-II) with the red ink gel pen (M.O-VI) in which was scribed the suicide note (M.O-IIA). He seized the notebook and the pen and prepared the seizure memo (exhibit-6). He removed the school sweater from the ceiling and seized the same vide seizure memo (exhibit-7). He also found the school uniform of the victim kept on the sofa which was seized vide seizure memo (exhibit-17). Amongst them, the white school shirt, the black leggings and the navy blue school frock had muddy stains as noted by the Investigating Officer (PW-2) in the seizure memo (exhibit-17) dated 20.08.2021.

Autopsy

5. The victim's dead body was thereafter, forwarded to STNM hospital for autopsy. Dr. O.T. Lepcha (PW-9) - the Chief Medico Legal Consultant, conducted the autopsy over the body of the victim on 23.08.2021. He recorded the history of victim having been found hanging in her room with the help of school uniform.

5 (i). He noted that wearing apparels of the victim as (i) round collared black half T-shirt, (ii) dark bluish green track pant, (iii) print sports bra and pink panty.

5(ii). He noted severe cyanosis present over the lips and the finger nails, a small bruise over the lower lips but without any other marks or injury or violence found over the body, the genitals and the breasts of the victim, except for ligature impression over the neck.

5(iii). He noted ante mortem injury, i.e., ligature mark around the front of the neck measuring 31x0.8 cms placed just over and

above the thyroid cartilage running backwards and upwards placed 4.5 cms below left ear lobe and 8 cms below the right ear lobe.

5(iv). During the victim's internal examination he noted that the brain was congested and oedematous. He did not detect any abnormality in the chest, heart or abdomen nor found any injury or abnormality over the vulva and the vagina. He did not find any other associated injury over the body of the victim.

5(v). Based on his autopsy finding, Dr. O.T. Lepcha (PW-9) opined that the time since death was between 12-48 hours and the cause of death to the best of his knowledge and belief was due to asphyxia, as a result of antemortem hanging.

Registration of FIR

6. On completion of investigation of the unnatural death case, the Investigating Officer (PW-2) lodged the First Information Report (FIR)(exhibit-11) dated 20.08.2021 as the Station House Officer of the Sxxx Police Station against the appellant. On receipt of the FIR, the Investigating Officer (PW-32) registered Sxxx PS Case FIR No. 04/2021 dated 20.08.2021 under section 375, 376, 306, 339 and 341 of the Indian Penal Code, 1860 read with section 3/4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). Thereafter, on receipt of the autopsy report (exhibit-13) on 23.08.2021 and the dead body along with the apparels, vaginal swab, nail clippings and blood sample of the victim, the Investigating Officer (PW-2) handed over the documents, case exhibits and material objects to the Investigating Officer (PW-32).

Investigation

7. The Investigating Officer (PW-42) took over various items including the notebook (M.O-II) containing the suicide note and the writing pen from the Investigating Officer (PW-2). He visited the place of occurrence and drew the rough site plan (exhibit-P45). The rough sketch map (exhibit-P45) notes two places of occurrences. The first is the victim's bedroom in her house. The second is a place next to the ICDS centre close to the Axxx Gxxx. The first place of occurrence, i.e., the victim's room where she committed suicide was identified by the victim's father (PW-1), the Panchayat (PW-3) as well as the first Investigating Officer (PW-2). The second place of occurrence is the spot next to the ICDS school which is vividly described in the suicide note by the victim herself.

Charge-sheet

8. On completion of the investigation, the Investigating Officer (PW-32) filed his final report under section 173 of the Cr.P.C. indicting the appellant under sections 354/354A/354D/375/376/306/339/341 of the IPC read with section 3/4 of the POCSO Act.

The Charges

9. On 01.12.2021, the learned Special Judge framed five charges against the appellant. Firstly, he was charged under sections 354(D)(i) of the IPC for making unwelcome advances and gestures towards the victim on 20.08.2021 at a waiting shed near Axxx Gxxx, following her when she fled near the ICDS centre and chasing her. Secondly, he was charged for catching the victim's hand, restraining

her by not allowing her to proceed towards the house and committing offence under section 341 of the IPC. Thirdly, he was charged for chasing, catching and forcibly committing rape on the victim punishable under section 376(1) of the IPC. Fourthly, he was charged for committing forcible penetrative sexual assault on a minor victim punishable under section 4(1) of the POCSO Act. Finally, he was also charged for abetting the commission of suicide by the victim punishable under section 306 of the IPC.

The impugned judgment

10. On completion of the trial, the appellant stood convicted and sentenced for four offences. He was convicted and sentenced for the offence of sexual assault as defined under section 7 of the POCSO Act punishable under section 8 thereof and sentenced to rigorous imprisonment for a term of five years and a fine of Rs.10,000/-. He was convicted for abetment of suicide under section 306 of the IPC and sentenced to undergo rigorous imprisonment for a term of ten years and to pay a fine of Rs.20,000/-. He was convicted for the offence of wrongful restraint under section 341 IPC and sentenced to undergo rigorous imprisonment for a term of one month and to pay a fine of Rs.500/-. He was finally convicted for the offence of sexual harassment under section 354 A(2) of the IPC and sentenced to undergo rigorous imprisonment for a term of three years and to pay a fine of Rs.5000/-. In default of payment of fine in each of the sentences, the appellant was directed to undergo further simple imprisonment as stipulated therein. The sentences were directed to run concurrently and the period of detention already undergone

during investigation and trial was to be set off as provided under section 428 of the Cr.P.C. The learned Special Judge did not convict the appellant for the offence of rape though charges had been framed.

11. The learned Special Judge has held that the victim was a child as defined under section 2(1)(d) of the POCSO Act as she was aged only about 17 years and 3 months on the date of the incident, i.e., 20.08.2021. The learned Special Judge also held that the prosecution had proved that the suicide note was scribed by the victim and the victim had in fact committed suicide. The learned Special Judge opined that the victim had been sexually harassed and assaulted by the appellant, as a result of which unable to bear the sense of shame, disgrace, defilement and futility, she committed suicide and therefore he was also liable for abetment of her suicide.

The submissions

12. Mr. Thupden Youngda, learned Counsel for the appellant, submitted that the conviction and sentence of the appellant was based on faulty investigation and the deposition of witnesses were contradictory. It was his case that neither the age of the victim nor the contents of the suicide note were proved. The learned Counsel also drew the attention of this Court to the deposition of Surendra Subba (PW-31) - the Junior Scientific Officer-cum-Assistant Chemical Examiner, Questioned Document Division of RFSL Saramsa and his admission in cross-examination, that the question handwriting stamped (note book) marked as exhibit - Q1 to Q10 and the blue enclosed admitted handwritings stamped (i.e., two notebooks and

three pages) marked as exhibit A1 to A51 were not the exhibits received by their office. It was, therefore, contended that the Forensic Expert (PW-31) had failed to establish that the suicide note was written by the victim. For brevity we shall refer to Surendra Subba (PW- 31) as the Forensic Expert (PW-31) hereinafter.

13. The learned Additional Public Prosecutor submitted that the judgment and sentence rendered by the learned Special Judge was sound, based on evidence established by the prosecution and therefore, it called for no interference. It was submitted that both the documentary and oral evidence had been duly proved. He submitted that in this case last seen theory could also be applied. That, the proven fact that the appellant had reserved PW-8's vehicle in which he and a girl student wearing school uniform had travelled after payment of Rs.300/- and alighted at Axxx Gxxxx, clearly establishes it.

Consideration

14. As the learned Counsel for the appellant questions the finding of the learned Special Judge that the victim was a child and that the evidence produced by the prosecution established the guilt of the appellant beyond reasonable doubt, we propose to re-examine the evidence.

Re: the victim's age

15. The victim's father (PW-1) deposed that the victim was 16 years old, born on 21.05.2004 at Gangtok hospital and studying in Class XII. He further deposed that he had obtained her birth

certificate (exhibit-2) after 15 days of her birth. Nothing substantial came out during the cross-examination by the defence which would disprove the facts deposed by the victim's father.

15(i). The victim's mother (PW-5) also deposed that the victim was born on 21.05.2004 at Gangtok and her birth certificate was obtained from Sxxx Primary Health Centre. Both the parents of the victim identified the birth certificate, which was seized by the Investigating Officer from their house.

15(ii). The birth certificate (exhibit-2) is in the original signed by the Registrar and issued by the Government of Sikkim, Chief Registrar of Births and Deaths, Health & Family Welfare Department and carries with it the presumption of correctness as required under Section 35 of the Indian Evidence Act, 1872.

15(iii). The Medical Officer In-Charge-cum-Registrar, Births and Deaths (PW-29), posted at Sxxx Primary Health Centre at the relevant time also produced the original birth register (exhibit-39) with the relevant entries and proved the same. She vouched for the correctness of the entries made in the birth certificate (exhibit-2).

15(iv). Dr. S.N. Adhikari (PW-30) who was posted as Medical Officer-cum-Registrar, Births and Deaths, at Sxxx Primary Health Centre at the relevant time was the authority who issued the birth certificate. He identified his seal and signature thereon and also identified the officers who had made the entry in the birth certificate (exhibit-2). Both PW-29 and PW-30 also proved that the date of birth of the victim as recorded in the birth register maintained by them and in the birth certificate was 21.05.2004.

15(v). Besides the above witnesses, the prosecution has also produced the Medical Record Technician at the Gangtok hospital (PW-22) to verify the birth certificate (exhibit-2) of the victim as per the records available with the hospital. He proved the register (exhibit-26) in which the relevant entries of the victim were made.

15(vi). The Principal (PW-21) of the school in which the victim was a student also proved the school admission register (exhibit-23) in which the victim's age was recorded as 21.05.2004.

15(vii). The Investigating Officer (PW-32) along with the seizure witnesses (PW-17 and PW-18) duly proved the seizure of the birth certificate (exhibit-2).

15(viii). We have no hesitation in upholding the finding of the learned Special Judge that the victim was in fact a child at the time of the offence.

Re- whether the prosecution had proved that the handwriting in the suicide note and the admitted handwriting were of the victim?

16. It is noticed that the Forensic Expert (PW-31) had duly proved that the suicide note (M.O-IIA) compared with the admitted handwriting of the victim in two notebooks and three pages (M.O-I, III, VII) was of one and the same person. However, during cross-examination, he deposed that the exhibits, i.e., red enclosed questioned handwritings stamped (notebook) marked by him as exhibit Q1 to Q10 and the blue enclosed admitted handwritings stamped (i.e., two notebooks and three pages) marked by him as exhibit A1 to exhibit A51 were not exhibits received by their office. Pointing out this anomaly, the learned Counsel for the appellant

submitted that therefore, the prosecution had failed to prove that the handwriting in the purported suicide note was of the victim.

16(i). During investigation, the Investigating Officer (PW-2) of Sxxx PS UD Case No. 07/2021 dated 20.08.2021 seized the notebook containing the suicide note as well as one writing pen from the room of the victim on 20.08.2021 in the presence of two witnesses (PW-3 and PW-4). The seizure was effected on the same day when the victim had committed suicide. The Investigating Officer (PW-2) and the seizure witnesses (PW-3 and PW-4) duly proved the seizure of the suicide note.

16(ii). The notebook containing the admitted handwriting of the victim was also seized by the Investigating Officer (PW-32) on 06.09.2021 from the house of the victim in the presence of two witnesses (PW-19 and PW-20). The Investigating Officer (PW-32) as well as the seizure witnesses duly proved the seizure of the notebook.

16(iii). The victim's brother (PW-6) confirmed and corroborated the fact that the suicide note was seized from their house. He identified the notebook containing the suicide note as well as the victim's handwriting thereof. The victim's brother also proved the seizure of the notebook containing the admitted handwriting of the victim and he identified the handwriting thereon as the victim's.

16(iv). The notebooks containing the suicide note as well as the admitted handwriting of the victim were thereafter forwarded by the Investigating Officer (PW-32) to RFSL Saramsa for analysis and expert opinion. He thereafter collected the expert opinion from RFSL Saramsa.

16(v). The Forensic Expert (PW-31) proved that on 10.09.2021 he had received both the notebooks which had been marked by him as Q1 to Q10 and exhibit A1 to A51 respectively. During his examination in chief, he identified these documents in Court. He also deposed that he examined them and gave a detailed opinion about the comparison and his conclusion that the handwriting in the suicide note and the admitted handwriting of the victim was of one and the same person. Therefore, we find no reason as to why Forensic Expert (PW-31) incorrectly stated during his cross-examination that the notebooks containing the suicide note and the admitted handwriting of the victim were not received by their office. However, we are certain that we cannot give the advantage of this to the defence.

16(vi). We have perused the two handwritings in the notebooks containing the suicide note and the admitted handwriting and we are satisfied that the two handwritings in the two notebooks are of one and the same person as opined by the Forensic Expert (PW-31). We are also of the view that the prosecution has been able to duly prove that the handwritings in both the notebooks were of the victim as identified by the victim's brother (PW-6) and their seizure duly corroborated by the victim's father (PW-1).

Re- Faulty investigation

17. The prosecution has been able to prove that:

(i) on 20.08.2021 the victim was with her father (PW-1) at their house and thereafter, she proceeded to school as she had to submit her papers as instructed by her teacher from the deposition of her father (PW-1).

(ii) she went to the school and submitted her papers from the evidence of the teacher (PW-7) and her classmates, i.e., PW-10, PW-11, PW-12, PW-13 and PW-26.

(iii) on her return, while she was waiting at the Sxxx taxi stand, the appellant who had hired PW-8's taxi stopped next to her, the appellant asked her to board the taxi, she did so and sat in the back seat while the appellant sat in the front seat next to PW-8. Thereafter, PW-8 dropped both the appellant and the victim near the Axxx Gxxx after the appellant paid Rs.300/-. It was drizzling then. PW-8 saw the appellant and the victim go towards the waiting shed. These facts have been proved from the deposition of PW-8.

(iv) PW-8 also identified the photographs of the waiting shed (exhibit-21).

18. We do not find, contrary to what has been argued before us, that the investigation was faulty. In fact, it was faultless. However, as the present case is based on circumstantial evidence, it was equally important for the prosecution to ascertain what transpired after the victim and the appellant was dropped near Axxx Gxxx by PW-8 on 20.08.2021. These facts are available in the suicide note of the victim.

The victim's story

19. What happened after the appellant and the victim alighted from PW-8's taxi and went towards the waiting shed is described vividly by the victim in her suicide note. She scribed it on 20.08.2021 after she returned home and thereafter committed suicide. This was also her last statement before her death by suicide and would be relevant as her dying declaration under section 32 of the Indian Evidence Act, 1872.

19(i). After school, as there was only one taxi, the victim boarded the taxi reserved by the appellant with him. She did not doubt the appellant as he belonged to the same village. When they reached Axxx Gumpa, they alighted from the taxi. The appellant paid the taxi fare. It was raining then. As she did not have an umbrella they went and took shelter in the waiting shed. In the waiting shed, the appellant started looking at her with ill intent. She ran away from the waiting shed. The appellant started chasing her. She continued running but she got tired. She sat down near the jungle and looked around but did not see the appellant. She felt that the appellant must have gone away. She started proceeding towards her house. The appellant, however, was around the jungle. She reached towards Cxxx Dxxx's house. The appellant did not stop chasing her. There was nobody around and her only option was to keep running. The victim kept running, but the path was slippery. She reached ICDS after slipping and falling several times. She could not run any further and the appellant caught up to her. The appellant put his hand all over her body. She wept and cried hoping that somebody would hear her but no one came.

19(ii). The suicide note contains details of the area, the terrain, the period, the path, the structures in the area and clearly reflects what happened to her without any confusion. Other evidences led by the prosecution corroborate the details in the suicide note. She has specifically named and described the appellant as the perpetrator of the crime. The fact that it was raining around the time as described by the victim in the suicide note when the incident took place is clear from the evidence of the driver (PW-8), PW-14 as well as PW-15. The

victim clearly describes how she was sexually molested by the appellant making her cry and scream for help. The medical report of the appellant (exhibit-31) dated 21.08.2021, shows that he had abrasion on his right elbow with swelling along with old clotted abrasion when he was examined the very next day of the incident. We have no hesitation to hold that the acts of the appellant compelled her to commit suicide. As correctly appreciated by the learned Special Judge, the acts of the appellant including the sexual assault upon the victim was found to be so despicable, humiliating, deplorable and intolerable, that she felt a deep sense of defilement and was unable to face anyone driving her to commit suicide by hanging. The language and the tenor of the suicide note does give an impression that the act of the appellant was beyond just sexual assault. However, as the learned Special Judge has thought it fit to convict the appellant for sexual assault and the medical evidence also does not give us an assurance, we propose to keep it at that.

20. The prosecution has proved that cause of death was due to asphyxia, as a result of antemortem hanging. The autopsy has also proved that the victim had died by hanging on 20.08.2021.

21. The prosecution has successfully proved the chain of circumstances needed to be proved in the present case. We do not have any doubt on the prosecution story and the fact that it was due to the heinous acts of the appellant and the appellant alone that led the victim to commit suicide. There are no gaps in each of the circumstances proved by the prosecution to create doubt in our mind. The facts establishing the guilt of the appellant has been fully proven.

Each of the circumstances proved by the prosecution exclusively point towards the appellant's guilt. The evidence led by the prosecution is of conclusive nature and all reasonable hypothesis of innocence is excluded. A solid, unbroken chain of evidence has been established which confirms that it was the appellant who was guilty of the acts for which he has been convicted which led the victim to commit suicide.

22. The victim has clearly stated what transpired after she alighted with the appellant from PW-8's taxi. The narration in the suicide note clearly proves that the appellant had wrongfully restrained the victim from proceeding to her home. The narration also proves that the appellant had committed the act of physical contact and advances involving unwelcome and explicit sexual overtures and was guilty of sexual harassment. It is also clear that the appellant had touched the victim with sexual intent and committed sexual assault on the victim. The suicide note which describes the heinous act, the abrasion measuring 2.5 cms approximately on the left buttock of the victim noted in the inquest report (exhibit-5) and the small bruise over the lower lips noted in the autopsy report (exhibit-13) establishes the sexual assault committed by the appellant on the victim. The suicide note written on 20.08.2021, immediately after the incident and just before committing suicide, also makes it clear that the conviction and punishment of the appellant under section 306 for abetment of suicide by the learned Special Judge cannot be faulted.

23. However, we notice that the conviction of the appellant under section 354A IPC and section 8 of the POCSO Act must be examined in the light of section 42 of the POCSO Act and section 71 of the IPC as well while sentencing. As such, we set aside the sentence under section 354A(2) of the IPC.

24. The appeal is therefore, partly allowed. The impugned judgment of conviction is upheld but the order on sentence is accordingly modified. The sentences shall run concurrently. The appellant is in jail. He shall continue there to serve out the rest of his sentence.

25. We also uphold the grant of compensation to the parents of the victim as directed by the learned Special Judge.

Epilogue

26. What we now intend is to express our views on two important aspects which have troubled us in the facts of the present case.

27. Firstly, we notice that the appellant was previously convicted under section 458 of the IPC in the year 2011 by the learned Sessions Judge, South and West at Namchi in S.T. Case No. 23 of 2009 and was directed to serve imprisonment for a term of twenty-five months. However, we notice that he has gone and committed another crime again and more heinous than the previous one. We express our concern about the effectiveness of the rehabilitation scheme in the State Central Prison at Rongyek.

28. Secondly, we express our deep sense of worry on the issue of mental health of our children after reading the laments of the victim in her suicide note which we hesitate to reproduce here. The mental health of a child, and in this case a girl child, is a matter of serious concern. Although, we are aware that the State is conducting various programs for assuring that the mental health of our citizens are well taken care of, if there is any possibility to do more, the State must not hesitate to take proactive steps at all levels to ensure that the mental health of every child is protected. We draw the attention of the State to the mental health conditions of our children both in the rural as well as in the urban areas. We implore it to take not only substantive measures but have a structured plan keeping in mind that the healthy mind of a child is paramount for the growth of our State and our Country at large. There must be a process of scientific evaluation of the working of these schemes on a periodic basis. We say no further.

29. Copy of this judgment be forwarded to the Court of the learned Special Judge along with the records. Copy of this judgment shall be served upon the appellant free of cost forthwith. Copies shall also be forwarded to the Additional Director General of Police, State Central Prisons, immediately via email and to the Chief Secretary of the Government of Sikkim, for necessary steps.

(Bhaskar Raj Pradhan)
Judge

(A. Muhamed Mustaque)
Chief Justice

Approved for reporting: **Yes**
Internet: **Yes**

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