

HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

Date: 22.09.2015

S.B. : HON'BLE MR. JUSTICE S.P. WANGDI, JUDGE

Crl A No.8 of 2015

Appellant : State of Sikkim

Versus

Respondent : Surya Baraily,
S/o Damber Baraily,
R/o Charali, Hariya Budhubarey,
District Jhapa, Nepal,
A/P Upper Suldung, Mangalbaria,
West Sikkim.

**Application under Section 377 of the
Criminal Procedure Code, 1973.**

Appearance

Mr. Karma Thinlay Namgyal, Additional Public
Prosecutor with Mrs. Pollin Rai, Assistant Public
Prosecutor for the State-Appellant.

Mr. Udai P. Sharma, Legal Aid Counsel with Mr. Yok
Kumar Rai and Mr. Passang Tshering Bhutia,
Advocates for the Respondent.

J U D G M E N T (ORAL)

Wangdi, J.

[1] This Appeal is preferred under Sub Section (1) of Section 377 of the Code of Criminal Procedure 1973, against the sentence of the Respondent-Accused passed by the Learned Judge, Fast Track Court, South Sikkim at Namchi, in Sessions Trial (Fast Track) Case No. 26 of 2013.

[2] It is the case of the State-Appellant that the sentence for the offence under Section 376 of the Indian Penal Code (for short 'IPC') committed against the victim who was a minor of less than 12 (twelve) years, was inadequate in view of the minimum sentence prescribed under the statute. It is their case that under Clause (i) of sub section (2) of Section 376 IPC, the minimum sentence prescribed for such offence is 10 (ten) years but, in the present case, only 7 (seven) years has been imposed which calls for it being enhanced to bring in conformity with the express provision of the statute.

[3] In my view, it would not be necessary to go into this as we have finally heard the connected Appeal filed by the Respondent against his conviction and, by judgment passed today in Crl A No. 14 of 2014, the Appeal has since

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been allowed and the impugned judgment set aside
acquitting the Respondent.

[4] This Appeal having thus been rendered
infructuous is therefore, dismissed as infructuous.

(S. P. Wangdi)
Judge
22-09-2015

Approved for reporting : **Yes**

Internet : **Yes**

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