

State of Sikkim Vs. Binod Khawas and Another

State of Sikkim Vs. Binod Khawas and Another

SooperKanoon Citation : sooperkanoon.com/1115968

Court : Sikkim

Decided On : Sep-10-2012

Judge : S.P. Wangdi

Appeal No. : Criminal Revision Petition No. 12 of 2011

Appellant : State of Sikkim

Respondent : Binod Khawas and Another

Judgement :

Wangdi, J.

1. This Revision Petition is directed against the Order dated 20.08.2011 passed in Sessions Trial Case No.5 of 2011 by the Learned Sessions Judge, East and North Sikkim at Gangtok, by which the accused persons were discharged from the offence under Section 376 of the Indian Penal Code (for short IPC).

2. The Revision has been filed primarily on the ground that the impugned order is unsustainable and deserves to be set aside as being grossly perverse on the face of the evidence and the documents filed with the report under Section 173 Cr.P.C. that show that the Respondents/Accused persons were prima facie guilty of the offence under Section 376 IPC.

3. I have gone through the impugned order and carefully considered the findings contained therein and I am of the view that it cannot sustain, as it is clearly in

conflict and perverse to the material on record. The learned Trial Court appears to have completely overlooked the medical report which indicates that the age of the victim is 14 years and suggested recent penetration of the vagina. The learned Trial Court appears to have assumed, from the various facts and the circumstances appearing in the statements of the victim recorded under Section 161 Cr.P.C. that no offence was made out against the respondent no.2 as the intercourse was consensual. As already observed, the findings in the impugned order appear to be clearly perverse and unsustainable in law.

4. Mr. S. S. Hamal, the learned Legal Aid Counsel appearing on behalf of the Respondent No.2 also fairly concedes that the order deserves to be quashed and set aside and the Respondents/Accused persons be sent for trial in accordance with law.

5. In the facts and circumstances, the impugned order dated 20.08.2011 passed by the Learned Sessions Judge, East and North Sikkim at Gangtok is set aside. The Sessions Trial Case No.5 of 2011 shall be restored to its original number and the Learned Sessions Court shall try the case de novo in accordance with law.

6. In the result, the Revision Petition is allowed. No order as to costs.

7. Let a copy of this Order along with the original case records be transmitted to the Court of the Learned Sessions Judge, East and North Sikkim at Gangtok for compliance.

8. Mr. S. S. Hamal, learned Advocate appearing for the accused/Respondent No.2 who had been appearing as Legal Aid Counsel before this Court, prays that necessary directions be issued to provide legal aid to the Respondent/Accused No.2 also for the purpose of the trial. Mr. S. S. Hamal shall continue to defend the Respondent No.2 in the trial Court as Legal Aid Counsel.

9. A copy of this Order be also issued to the State Legal Services Authority for issuing necessary orders in this regard.