

# Subash Gazmer vs State Of Sikkim on 29 May, 2026

**Author: Bhaskar Raj Pradhan**

**Bench: Meenakshi M. Rai, Bhaskar Raj Pradhan**

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

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DIVISION BENCH: THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE  
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE  
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CRL. A. No. 35 of 2023

Subash Gazmer,  
Aged about 33 years,  
Son of late Chandra Bahadur Gazmer,  
Resident of Dochum, Sirwani,  
District: Gangtok, Sikkim.  
At present: Rongyek Jail

....

versus

State of Sikkim

....

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

[against the impugned judgment dated 24.08.2023 & order on sentence dated 28.08.2023 passed by the learned Special Judge (POCSO Act, 2012) at Gangtok, in S.T. (POCSO) Case No. 37 of 2020 - State of Sikkim vs. Subash Gazmer ]

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Appearance:

Mr. Thupden Youngda, Advocate (Legal Aid Counsel) for the Appellant.  
Mr. Yadev Sharma, Additional Public Prosecutor with Mr. Sujan Sunwar, Assistant Public Prosecutor for the State Respondent.  
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## JUDGMENT

Date of Hearing : 13th May, 2026  
Date of Judgment : 29th May, 2026  
Date on which uploaded: 29th May, 2026

Bhaskar Raj Pradhan, J.

This is an appeal by the convict who has been found guilty under Sections 5(m) and 5(n) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) for having committed aggravated penetrative sexual assault on Subash Gazmer vs. State of Sikkim the victim who was three years and eight months old (i.e., below 12 years of age) and a relative.

2. The victim was medically examined on 13.7.2020 by the Medical Officer (PW-6) who noticed glaring signs of rape committed on the victim which was noted by her in her medical report (exhibit P-6/PW-6). The child victim's hymen was ruptured, blood stains were present and there was fresh tear at 6'O clock position in the vagina. The Medical Officer (PW-6) therefore opined that there was forceful sexual intercourse upon the victim.

3. The learned Counsel for the appellant argued that the Medical Officer (PW-6) has admitted that she had not mentioned the exact age of tear on the body of the victim; that the victim did not complain of pain; that such injury can be caused by other causes such as rigorous exercises; that the swelling on labia minora can be caused by allergy or infection; and that she could not say with certainty that the victim was subject of sexual assault without the report of the forensic expert. The learned Counsel, therefore, suggested that rape was not established by the prosecution.

4. The learned Additional Public Prosecutor submitted that the impugned judgment is correct and calls for no interference; that the prosecution has been able to prove the case against the appellant beyond reasonable Subash Gazmer vs. State of Sikkim doubt; that it has been proved that the victim was below 12 years of age; that the appellant had committed penetrative sexual assault upon her; and that the victim was related to the appellant.

5. The First Information Report (FIR)(exhibit P-4) was lodged by the victim's father (PW-3) on 13.7.2020 after having learnt that the victim had been raped by the appellant who was his relative. On the same day the victim was medically examined and the medical report (exhibit P- 6/PW-6) prepared by the Medical Officer (PW-6). The appellant was also arrested on the same day. The allegations against the appellant from the time of the lodging of the FIR till the trial have been consistent. There has never been any doubt that it was the appellant who was accused of the heinous act. The victim's father (PW-3) alleged that the appellant had raped his daughter in his house in the FIR lodged on 13.7.2020 after he saw the victim returning home with clothes in her hand. The victim named the appellant in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on 16.07.2020 of having raped her. The victim once again in her deposition named him of having made her lie on the bed, taken his and her pants off, climbed on top of her and touched her vagina from outside.

Subash Gazmer vs. State of Sikkim

6. The victim deposed that she was studying in the first standard. The victim's father (PW-3) deposed that her date of birth was 25.10.2015 and she was five years old when his deposition was recorded on 11.8.2022. The victim's mother (PW-4) also deposed that the victim was born on 25.10.2015. She identified the victim's birth certificate (exhibit-3) exhibited in the original which records her date of birth as 25.10.2015. The learned Special Judge had no doubt in his mind that the victim's date of birth was 25.10.2015 as per the birth certificate (exhibit-3) and deposed by both her parents.

7. The learned Special Judge was of the opinion that the medical report (exhibit P-6/PW-6) of the victim was a vital piece of evidence as it was conducted on the same day which show injuries on the

victim's genitals which corresponded to forceful sexual intercourse. The learned Special Judge was also of the opinion that although the Medical Officer (PW-6) admitted that such injuries might be caused due to reasons other than sexual assault but in the present context, it could be none other than vaginal penetration caused by the appellant. It was opined that the medical evidence corresponds to the statement of the victim making it evident that the appellant had indeed had Subash Gazmer vs. State of Sikkim penetrated his penis into the victim's vagina to an extent that it caused injuries.

8. The victim's father (PW-3) and the victim's mother (PW-4) both identified the appellant as their relative. The victim's mother deposed that when she had returned home from work the victim informed her that the appellant had told her that he would give her biscuits and taken her to his house where he had opened their trousers and laid down on top of her stomach. The victim's parents thereafter lodged the FIR (exhibit P-4/PW-3) scribed by the victim's mother and lodged by the victim's father. Santa Bahadur Gurung (PW-5) the Police Inspector posted at Singtam police station having received the FIR (exhibit P-4) registered the case against the appellant. The Investigating Officer (PW-9) confirmed having arrested the appellant after the case was endorsed to him.

9. We are unable to agree that the prosecution has failed to establish that the victim was raped merely because the Medical Officer (PW-6) admitted that she had not indicated the age of the injury. The medical evidence is glaring and clearly establishes rape upon the victim. The minor contradictions and inconsistencies pointed out in the evidence of the prosecution witnesses do not disturb the core of their case. We also see no reason to doubt the Subash Gazmer vs. State of Sikkim appellant's identification by the victim as the person who committed the heinous act upon her.

10. We, therefore, see no reason to disturb the impugned judgment rendered by the learned Special Judge. We, however, direct that the sentences under Sections 5(m) and 5(n) of the POCSO Act shall run concurrently. The appeal, therefore, fails and is rejected. A sum of Rs.4,00,000/- recommended to be awarded to the victim as compensation in terms of Schedule-II of the Sikkim Compensation to Victims (or their Dependents) Scheme, 2021, stands confirmed.

11. Copy of this judgment along with the Trial Court records be remitted forthwith.

(Bhaskar Raj Pradhan)  
Judge

(Meenakshi Madan Rai)  
Judge

Approved for reporting: Yes  
Internet: Yes

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