

**IN THE HIGH COURT AT CALCUTTA**  
**(CRIMINAL APPELLATE JURISDICTION)**

PRESENT:

**THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY**

**CRA 132 of 2020**

***PRADIP PATRA @ PRODIP PATRA @ BASU***  
**VS.**  
***STATE OF WEST BENGAL***

|                      |                                                                                   |
|----------------------|-----------------------------------------------------------------------------------|
| For the Appellant    | : Mr. Habibur Rahaman, Adv.                                                       |
| For the Respondent   | : Mr. Saswata Gopal Mukherjee, P.P.<br>Mr. B.K. Roy, Adv.<br>Ms. Rita Dutta, Adv. |
| Hearing concluded on | : 15 <sup>th</sup> November, 2022                                                 |
| Judgement on         | : 2 <sup>nd</sup> December, 2022                                                  |

**Siddhartha Roy Chowdhury, J.:**

1. A child aged about 6 years was sexually assaulted on 29<sup>th</sup> April, 2013 and her mother set the criminal administration of justice rolling by informing Khardah Police Station about the alleged incident. Since the information disclosed an offence, cognizable in nature Khardah P.S. Case No. 336 was registered on 2<sup>nd</sup> May, 2013. Police after completion of investigation submitted charge sheet under Section 354A/376(2)(G)(i) of the I.P.C. read with Section 4/8/12/18 of the Protection of Children from Sexual Offences Act, 2012.
2. After compliance of provision of Section 207 of the Cr.P.C., learned Additional Chief Judicial Magistrate, Barrackpore committed the case

and it was ultimately transferred to learned 1<sup>st</sup> Court of learned Additional District Judge, Fast Track Court, Barrackpore.

3. On 6<sup>th</sup> December, 2013 charge was framed under Section 376 (2)(i)(j) of the I.P.C. against the accused person and pleading his innocence the accused person stood trial. Prosecution examined 10 witnesses and after considering the evidence on record, learned Trial Court recorded an order of conviction against the accused person and sentenced him to suffer rigorous imprisonment of 7 years and to pay fine of Rs. 5000/- with a default clause.
4. The convict has preferred this appeal challenging the said order of conviction and sentence imposed upon him.
5. Before entering into the merit of the appeal, I consider it expedient to point some gross irregularities that crept in, since inception till conclusion of trial.
6. Trial of a case, where charge sheet was submitted under Section 4/8/12/18 of the POCSO Act, 2012 was transferred not to a Special Court, but to the Court of Additional District & Sessions Judge, Fast Track Court.
7. No charge, however, was framed under POCSO Act and learned Trial Court did not assign any reason for such omission. Perhaps learned Trial Court not being Special Court, did not frame charge under POCSO Act.
8. Learned Trial Court ignoring the direction given by Hon'ble Apex Court given in Sakshi & Ors. vs. Union of India (UOI) & Ors. reported

in AIR 2004 SC 3566 and without considering statutory provision of law as laid down under Section 228A of the I.P.C which says:-

*“[228A. Disclosure of identity of the victim of certain offences etc.—*

*(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.*

*(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—*

*(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or*

*(b) by, or with the authorisation in writing of, the victim; or*

*(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim: Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation. Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.*

*(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. Explanation.—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.]”*

9. But from the lower Court record I do not find that examination of the minor child was conducted following the aforesaid guideline, which subsequently found place in the POCSO Act, 2012 under Section 33 (2).

10. In **SAKSHI & ORS. VS. UNION OF INDIA (UOI) & ORS.** reported in **AIR 2004 SC 3566** Hon'ble Apex Court held:-

*"34. The writ petition is accordingly disposed of with the following directions:*

*(1) The provisions of Sub-section (2) of Section 327 Cr.P.C. shall, in addition to the offences mentioned in the sub-section, would also apply in inquiry or trial of offences under Sections 354 and 377 IPC.*

*(2) In holding trial of child sex abuse or rape:*

*(i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;*

*(ii) the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;*

*(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.*

*These directions are in addition to those given in State of Punjab v. Gurmit Singh."*

11. Learned Trial Court presided over the entire trial with stoic ignorance about the mandate of the statute or judicial pronouncement of Hon'ble Apex Court which is binding upon all Courts of the Country under Article 141 of the Constitution.

12. It is further found with shocking surprise that learned Trial Court failed to pass appropriate sentence while recording an order of conviction under Indian Penal Code.
13. The accused person was sentenced to suffer imprisonment of 7 years while minimum for committing offence under Section 376 (2)(i)(j) of the I.P.C., the prescribed punishment is of 10 years.
14. Mr. Habibur Rahaman, learned Counsel for the appellant strenuously argued that the judgement of learned Trial Court suffers from infirmities and deserves reversal order. I am not inclined to express any opinion on the merit of the appeal at this stage.
15. Learned Public Prosecutor, Mr. Saswata Gopal Mukhopadhyay submits and quite rightly that the mater may be sent back on remand.
16. In my view, the case should be remanded back to learned Trial Court for appropriate order of sentence.
17. Fact victim is a minor girl and POCSO Act, 2012 has been enacted to deal with this kind of cases where child is a victim of sexual assault. But learned Trial Court proceeded under the provision of Indian Penal Code.
18. Hon'ble Supreme Court in **STATE OF MAHARASHTRA & ANR. VS. SAYYED HASSAN SAYYED SUBHAN & ORS.** reported in (2019) 18 SCC 145 held:-

*“7. .... Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. The same set of facts, in conceivable cases, can constitute offences under two*

*different laws. An act or an omission can amount to and constitute an offence under IPC and at the same time, an offence under any other law. ....”*

19. In absence of plea of prejudice taken by the convict, for not being tried under POCSO Act, I am not inclined to remit the case for de novo trial after framing charges under POCSO Act, precisely because it would amount to exhumation of the ugly episode in the life of the child, who must be in her teen now.
20. Consequently the appeal is allowed but in part. Learned Trial Court is directed to admit the Sessions Case to its original file and after hearing the accused person on the point of sentence shall pass necessary order within two months from the date of receipt of lower Court record.
21. Let a copy of this judgement be sent down along with lower Court record to the learned Trial Court for information and necessary action.
22. Parties are to act on the server copy of this judgement.
23. Urgent photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

**(SIDDHARTHA ROY CHOWDHURY, J.)**