

**14.08.2023**

Sl. 12

Court No.29

Suvayan/

Sourav

**CRMSPL 43 of 2023**

In Re: - An application under Section 378(3) of the Cr.P.C.  
And

In the matter of: **The State of West Bengal**

....appellant/State.

Mr. Rudradipta Nandy, APP

Mr. Ranadeb Sengupta

...for the appellant/State.

1. Heard learned Counsel for the appellant/State.
2. This application for leave has been filed against the order of acquittal recorded by learned Special Judge (POCSO Act) cum Additional Sessions Judge, 1<sup>st</sup> Court, Sealdah, South 24 Parganas in Special Trial No. 01(11)2021, corresponding to Special Case No. 32/2021.
3. The victim is the uterine sister of the accused who is alleged to be her elder brother. The occurrence is alleged to have happened in a room of 80 square feet where eight persons were admittedly living including the victim and accused. The allegation in the FIR is to the effect that the accused has repeatedly ravished the victim whenever he found the victim alone in the house in absence of other family members. In her evidence, however, the victim has testified that in the night when all used to sleep in the spot room, the accused used to put his finger in her private part. There is no evidence, however, to the effect in what manner and in what fashion the accused was coming to her when eight persons were sleeping in such a small room. There is no positive evidence to show that the accused was sleeping beside the victim in the night.

4. The evidence of victim does not find any corroboration except the evidence of P.W. 2, a stranger before whom she had narrated the incident near Rabindra Sadan where she was sitting and crying. The accused has examined her father, mother and brother as D.W.s. From their version and the cross-examination of the prosecution witnesses it is found that one Ramjan with his family was living on the up-stair of the premises where the victim and her family were staying.
5. The victim had love affairs with that Ramjan. The family members including the accused were opposing such relationship of the victim with Ramjan as said Ramjan had two wives and one of his wife had already committed suicide. The victim also did not pay heed to advise of the family members including the accused. Thereafter, the victim has brought this false allegation against the accused.
6. From the entire evidence on record, we find many suspicious features which cannot be explained, even if, an appeal is entertained. Secondly, the evidence which has already been recorded cannot in any way be improved in the appeal proposed to be filed against the acquittal of the accused.
7. Regard being had to the aforesaid discussion made herein above, we refuse the leave and accordingly, the application being CRMSPL 43 of 2023 is dismissed.

**(Chitta Ranjan Dash, J.)**

**(Partha Sarathi Sen, J.)**