

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. (SB) 123 of 2023

***Amal Baidya
versus
The State of West Bengal & others***

For the Appellant : Mr. Kajal Mukherjee,
Mr. Bikash Chakraborty.

For the State : Mr. Rana Mukherjee.

For the *de facto* complainant : Mr. Satadru Lahiri.

Heard On : 18.09.2024.

Judgement On : **18.09.2024.**

Tirthankar Ghosh, J. :

The present appeal has been preferred against the Judgment and Order of conviction and sentence dated 02.06.2023 and 03.06.2023 passed by the learned Judge, Special (POCSO) Court, Barasat in connection with Sessions Trial Case No. 11(12), 2021, wherein the learned Trial Court was pleased to convict the appellant under Section 354A of the IPC and Section 8 and 12 of the POCSO Act, 2012. The learned Trial Court, thereafter, proceeded to sentence the appellant as follows:

- i) For the offence under Section 8 of the POCSO Act – rigorous imprisonment for five years and fine of Rs.25,000/-, in default, to undergo simple imprisonment for a further period of six months.
- ii) For the offence under Section 12 of the POCSO Act- rigorous imprisonment for three years and fine of Rs.10,000/-, in default, to undergo simple imprisonment for a further period of three months.

The learned Trial Court was further pleased to observe that as the accused/appellant has been held guilty under Section 8 & 12 of the POCSO Act and under Section 354A of the IPC, he is not separately convicted and sentenced for the offence under Section 354A of the IPC, as the incident is covered under Section 12 of the POCSO Act.

That New Town Police Station Case No. 347/2021 dated 27.09.2021 was registered for investigation under Sections 323/354/354A/506 and Section 12 of the POCSO Act on the basis of a complaint submitted by 'A' – mother of the victim girl with the officer-in-charge of New Town Police Station.

The allegations made in the letter of complaint were to the effect that on 24.09.2021 at about 7 am, accused Amal Baidya attempted sexual harassment by touching the complainant's daughter, namely, 'B' (aged about 14 years). It is alleged that the accused has also committed the same offence earlier and threatened her daughter that if her daughter disclosed it to anyone she would have to face dire consequences. When she along with her family members

protested the offensive act of the accused they were assaulted and threatened, as such, out of desperation, the complaint was filed by her. She, therefore, requested the police authorities to take steps and punish the offender.

On receipt of such complaint dated 27.09.2021, the Inspector-in-charge of New Town P.S. endorsed the case to Sub-Inspector Jibesh Das, who on conclusion of investigation submitted charge-sheet before the learned jurisdictional Court under Sections 323/354/354A/506 of the IPC and Section 12 of the POCSO Act. The learned Trial Court after compliance of all the provisions relating to Section 207 of the Code of Criminal Procedure proceeded to consider the charges as per the materials collected by the investigating agency and, on 10.12.2021 framed charges under Sections 354A/323/506 of the IPC and Sections 4 and 12 of the POCSO Act. The contents of the charges were read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case has relied upon as many as 11 witnesses which included P.W.1-‘A’, mother of the victim girl/complainant; P.W.2-‘B’ (Victim Girl); P.W.3-‘C’, aunt of the victim girl; P.W.4-‘D’, brother of the Victim Girl; P.W.5- Dr. Asish Roy, Medical Officer of the Sub-Divisional Hospital Bidhannagar; P.W.6- ‘E’, husband of P.W.3; P.W.7 –Dr. Malay Kumar Dasgupta, Medical Officer of Salt Lake Sub-Divisional Hospital; P.W.8-‘F’, cousin aunt of the victim girl; P.W.9- Sudhangshu Roy, neighbour; P.W.10 – Ruhul Amin Purkite, ASI, New Town Police Station, who filled up the formal

FIR and registered the case; P.W.11 – SI Jibesh Das, New Town P.S. and the Investigating Officer of the case.

P.W.1- 'A' is the mother of the victim girl. In her deposition before the Court, she stated that the accused/Amal Baidya resides next to her room and she identified the accused in Court. She accused the appellant for committing rape on her daughter (the victim girl). She proceeded to depose that she had one son and a daughter and she used to work as a cook. On 26.09.2021, she came to know about the incident and the same was informed over phone to her by the wife of the accused, who saw the accused laying over the body of her daughter. The wife of the accused had quarrel and physical fight with the accused, then she left the house and went to her father's home. When she went to the accused, the accused pleaded for pardon. Thereafter, she went to the police station and filed the complaint. She identified her signature which was admitted in evidence. She also deposed that she was examined by the police in connection with the present case. It was further narrated by her that her daughter/the victim girl at the relevant point of time was aged about 15 years and she handed over the document relating to the age of her daughter/the victim girl to the police authorities. The victim girl was taken to Salt Lake Hospital for medical examination, where, she gave her consent in writing. She identified her signature which was admitted in evidence. In cross-examination, she replied that the place where she resides is a crowded locality and all her neighbours used to work and are labours. She also replied that her husband expired in the year 2020 and the house of the accused is situated adjacent to

her house. She also stated that prior to the incident, she had a good relationship with the accused and his family. Her daughter/victim girl used to call the accused as uncle and the accused had affection for her daughter/victim girl, as niece. The witness also accepted that at times she used to take shelter in the house of the accused and she lodged the complaint after speaking with her daughter/victim girl. In respect of a specific question in cross-examination, she replied that she did not narrate in the complaint regarding the wife of the accused having informed her over phone and that the wife of the accused had quarrel with her husband and left for her father's house. She also admitted that in the complaint, she did not state of the accused having committed rape on the victim girl for a considerable period of time as she came to know such fact after lodging the complaint.

P.W.2-'B' is the victim girl, who in her deposition before the Court stated that on 24.09.2021 in the morning at about 7.00 am, she was in the house of the accused when the accused climbed on her body, removed her dress, touched her breasts and inserted his penis in her private parts. The accused has done such act on previous occasions also. The victim also deposed that the accused informed her that he had taken videography and will release the same online and also threatened her that he would kill her by throttling and nobody would come to know. However, on that date she picked up courage and told her mother about the incident, as such, she along with her mother and aunt went to the police station. She was also taken to Salt Lake Sub-Divisional Hospital for medical examination. She also narrated that she was also

examined by a Judge, who recorded her statement wherein she signed. She identified her signatures which were admitted in evidence. In cross-examination, she deposed that her father expired in the year 2020 and during the lifetime of her father, they had a good relationship with the accused and his family members, who were staying next door. She admitted that the accused/Amal Baidya is a carpenter by profession and used to work outside for his work. She also admitted that she was a student of Class-VIII at the relevant point of time when the incident took place and, as it was lock down, she was studying at home. She also admitted that everything of her house can be seen from the house situated in front of her house. She also stated that she could also see everything in the house situated in front of her house. She admitted that her family did not have any financial crisis. She replied in her cross-examination that in absence of her mother and elder brother she used to go to her neighbour's house for watching cartoon and also denied that she did not tell the police authorities that the accused inserted his penis in her private parts and also denied that she did not state to the police that the accused told her that he has taken videography, which he would release online. She, however, denied before the Court that it would be incorrect to say that the incident did not take place on 24.09.2021.

P.W.3-‘C’ is the aunt of the victim girl, who identified the accused in court and deposed that the complainant is her elder sister. She proceeded to state that on 24.09.2021 at about 7.00 am in the morning the incident occurred. At the relevant point of time, there was heavy rain, as a result, the

room of the complainant got flooded with water. She also stated that her elder sister took shelter in the house of the accused at night along with the victim girl. The complainant returned from her work at about 2.00-2.30 pm at the afternoon and heard that the accused called her niece (victim) at his house and offered the victim girl to see his mobile phone. In the room of the accused, the accused removed her dresses and inserted his penis in the private part of the victim girl. Thereafter, the victim girl started shouting. The wife of the accused created fuss and informed the people that such things happened. The accused, thereafter, prayed for apology from her sister and her, as he did wrong thing. She also stated to the Court that on many occasions such incident took place prior to the said date. However, the accused threatened the victim girl of not disclosing anyone regarding such incident. In cross-examination, she deposed that it is a fact that she used to work as a cook in the house of different persons and she left home at about 10 am and returned back by 12 noon. The elder brother of the victim girl used to work as a labour. She knew the accused/Amal Baidya for the last 10 years and admitted that the accused has constructed a concrete building at Sulangiri colony. She denied that she did not state to the police regarding the accused having inserted his private parts into the private part of the victim girl and reiterated her contentions as was stated by P.W.1 and P.W.2.

P.W.4-‘D’ is the elder brother of the victim girl, who deposed that he used to work as a labour of Cable line and used to stay near the place of work sometimes. He identified the accused in Court and proceeded to state that the

incident took place on 24.09.2021 at 7.00 am in the morning, when he was outside his house at his place of work. He also stated that, as their room was flooded with water due to heavy rain, the accused permitted his mother and sister to stay at his house. He reiterated as other witnesses that when his mother left for work on 24.09.2021 and he was not at home, the accused undressed the victim girl and raped her. The wife of the accused saw the incident, created ruckus and left for her paternal home. He stated that prior to such date, the accused on several occasions have sexually abused his sister/the victim girl and threatened his sister/victim girl that he would kill her. For which his sister/the victim girl did not inform the incident. He also stated before the Court that he narrated the incident in court as he heard from his mother and sister (the victim girl). In cross-examination he replied that, at the time of the incident, he was a student of 3rd year Political Science Honours and he had to go for work after demise of his father, which he is still continuing. He also admitted that at the time of incident, he was away from home due to his work. However, he denied that he did not state to the police that the accused undressed his sister/the victim girl on the said date as also on prior dates. He also repeated the same facts on further cross-examination and reiterated regarding the incident as he heard from the other witnesses.

P.W. -5 Dr. Asish Roy is a Medical Officer attached to Sub-Divisional Hospital, Bidhannagar. On 28.09.2021 he examined the accused Amal Kumar Baidya, who was brought by the Constable Sasanka Sekher Singha in

connection with New Town P.S. Case No. 374 of 2021. He also opined that on examination he found as follows:

“No signs of injury scratch mark or any recent dressing on the private parts.

No foreign body or particles were found on the private parts.”

He opined that there was nothing to suggest that the accused was not capable of doing sexual intercourse. His report was marked in evidence.

P.W.6 -‘E’ is the husband of P.W.3 (uncle-in-law), who identified the accused in court and deposed that on 24.09.2021 the accused raped the victim girl in his house. He also deposed that it was the victim girl and her mother, who narrated the incident to him. In cross-examination, he replied regarding the issues which were confronted to him in respect of the sexual abuse/sexual assault in the same manner as other witnesses, who were his relations.

P.W.7 Dr. Malay Kumar Dasgupta is a Medical Officer attached to Salt Lake Sub-Divisional Hospital. He deposed that on 27.09.2021 the victim girl, namely, ‘B’ was examined in connection with New Town P.S. Case No. 347 of 2021 and on examination he found as follows:

“1. No injury was detected any where on the body of Vg including her private parts.

2. Hymen was intact.

Vaginal swab collected and handed over to the lady police personnel Pampa Ghosh of New Town P.S.”.

He identified the report which was prepared and signed by him, which was admitted in evidence.

PW-8 is the cousin aunt of the victim girl who identified the accused in court and deposed that father of the victim girl expired one year ago and her mother worked as a cook. The victim girl used to address the accused as uncle. However, the accused undressed the victim girl and did bad work with her. The accused also indecently and inappropriately touched the body of the victim girl. On 24.09.2021 as there was heavy rain, the victim girl and her mother and brother took shelter at night at the house of the accused and when the mother of the victim girl went out for her work and the victim girl was sleeping in her room, taking advantage of the same, the accused undressed the victim girl and raped her. The wife of the accused saw the incident and trouble started in their house. At the relevant time, the victim girl was 14 years old and was studying at Class-VIII. In cross-examination, she stated that she was a resident of Gouranga Nagar Ramkrishnapally which is about 10 minutes away from the house of the victim girl. She denied in her cross-examination that no such incident has ever taken place.

PW-9, Sudhanshu Roy, is a neighbour who identified the accused in court and proceeded to depose that the incident took place on 24.09.2021 at about 7 a.m. when the mother of the victim girl went for her work at about 6 a.m. in the morning. At about 7 a.m., he was informed relating to the incident. However, he went in the evening and took the victim girl and complainant to

New Town Police Station. He stated that he was informed that the accused outraged the modesty of the victim girl. However, he was not examined by the police in connection with the present case. In cross-examination, he denied of not going to New Town Police Station or not having stated correctly that he was called by the victim girl and her mother and was informed regarding the incident.

PW-10, ASI Ruhul Amin Purkite attached to New Town Police Station who deposed that on 27.09.2021, he received a complaint from the mother of the victim girl and started New Town Police Station Case No. 347 of 2021 dated 27.09.2021 under Sections 323/354/354A/506 of the Indian Penal Code read with Section 12 of the POCSO Act. He identified his endorsement in the written complaint as also the formal FIR which was prepared by him and admitted in evidence. He thereafter stated that the Inspector-in-Charge endorsed the case to SI Jibesh Das for investigation.

PW-11 is SI Jibesh Das of New Town Police Station and the Investigating Officer of the case. He deposed that on 27.09.2021, he was entrusted with the investigation of the case and after taking charge of the investigation, he visited the place of occurrence, prepared rough sketch map with index, examined the available witnesses and recorded their statement under Section 161 of the Code of Criminal Procedure. The statement of the victim girl under Section 161 of the Code of Criminal Procedure was recorded by LSI Tanusree Das. He also arranged for medico-legal examination of the victim girl at the hospital and collected report. He seized original birth certificate and Aadhar card of the

victim girl under a proper seizure list. The accused was also sent to hospital for medico-legal examination and his report was also collected. He made arrangements for recording the statement of the victim girl before the Magistrate under Section 164 of the Code of Criminal Procedure. Thereafter the accused was arrested and forwarded to the court and on completion of investigation, he submitted charge-sheet against Amal Baidya under Sections 323/354/354A/506 of the Indian Penal Code and Sections 4/12 of the POCSO Act. In course of investigation, he also collected semen of the accused and forwarded the same to FSL department and consequently a supplementary charge-sheet was also filed against the accused. In cross-examination, he replied that he did not seize the wearing apparels of the victim girl or the accused and on specific query in respect of certain statements/depositions made in court for the following witnesses, he answered as:

“I recorded the statement of elder brother (PW-4) of victim girl u/s.161 Cr.P.C who did not tell me that the accused removed the jama pant of victim girl and committed rape on her or that accused has committed rape on the victim girl prior date of the said incident or that accused threatened the victim girl of killing her or that I heard about the incident from my mother and victim girl.

I recorded the statement of Masi (PW-3) of victim girl u/s.161 Cr.P.C who did not tell me that accused inserted his penis into the private parts of victim girl or that accused used to call the victim girl in his house.

I recorded the statement of victim girl (PW-2) u/s.161 Cr.P.C who did not tell me that accused climbed on her body and removed her jama pant or that accused told her that he has taken video photograph and

released the same through online or that accused threatened her that he will throttle her neck and kill her or that nobody will come to know.”

Learned advocate appearing for the appellant submitted that the appellant out of humanity gave shelter to the family of the victim girl and he has been falsely implicated in connection with the instant case. According to the learned advocate, there are series of inconsistencies in the version of the witnesses and on every stage, the prosecution witnesses particularly the victim girl and her relations have improved their versions. It was pointed out that the case started on the allegations of the mother of the victim girl that the victim girl who was aged about 14 years was inappropriately touched by the accused. However, the same was converted into a case of commission of offence of rape. The attitude of the family of the complainant was such that were bent upon to see the appellant being severely punished and as such embellished the facts subsequently improved a case from inappropriately touching to a case of penetrative sexual assault. The medical evidence did not support the version of the prosecution and in fact, the evidence of three of the witnesses including that of the victim girl would go to show that they for the first time introduced the facts which were not stated to the Investigating Officer. Additionally, it was stated that the inconsistencies in the version of the prosecution witnesses demolished the foundational facts of the case and the testimony of the prosecutrix is such that the same cannot be relied upon to arrive at a conclusion of guilt and as such, the Appellate Court should interfere in respect of the judgement delivered by the learned trial Court. As such, the learned

advocate prayed for setting aside the order of conviction and sentence so imposed and prayed for acquittal of the appellant.

Mr. Rana Mukherjee, learned advocate appearing for the State resisted the submissions advanced on behalf of the appellant and submitted that the evidence would go to show that the mother of the victim girl was working as a cook and she is the complainant of the present case. She narrated the incident as was represented to her by the victim who is a girl of tender age. It was also submitted that in offence of such nature, the aspect of societal embarrassment should also be taken into consideration and should not be compared with ordinary offences where the version is subsequently improved. Additionally, the learned advocate submitted that the prosecution witnesses have corroborated their versions and the wife of the accused having left him goes to show that she was also a witness to the sexual abuse committed upon the victim. Learned advocate for the State therefore prayed for confirming the order of conviction and sentence so imposed by the learned trial Court.

Mr. Lahiri, learned advocate appearing on behalf of the *de facto* complainant also resisted the submissions advanced on behalf of the appellant and drew the attention of the Court to the evidence of PW-1, PW-2, PW-3 and others to demonstrate that the version of the victim relating to penetrative sexual assault has been corroborated by others. Learned advocate submitted that the victim's version was consistent both before the court as well as before the learned Magistrate when her statement under Section 164 of the Code of

Criminal Procedure was recorded. The only contradiction which has surfaced is because of the medical report which runs contrary to any offence of penetrative sexual assault being committed at the instance of the appellant. The narration of facts which has been considered to be improvement made by the victim is restricted to penetrative sexual assault, subsequent videography of the said assault and threatening for murdering her in case she discloses the incident to anybody. It was also argued that medical evidence or medical report has hardly any bearing for determining the issue relating to sexual assault as defined under the provisions of the POCSO Act. The proposition of law is settled that medical evidence and the improvements made if any would be redundant for forming any opinion as to commission of sexual assault. In order to elaborate his submission learned advocate for the *de facto* complainant submitted that an improvement in such case at best creates some doubt in the version of the prosecutrix for which her sole testimony may not be discarded for convicting the appellant for commission of offence relating to penetrative sexual assault. However, that do not exonerate the version of the victim so far as the offence of sexual assault as defined under the Act is concerned and the learned trial Court has correctly convicted the appellant under the relevant provisions of law. By referring to Sections 29 and 30 of the POCSO Act, learned advocate submitted that culpable mental state of the accused is to be believed by a court in respect of such offences and Sub-section (2) of Section 30 is a presumption of law wherein the onus is shifted to the accused to prove his innocence by way of adducing evidence where the standard of proof is required to be established

beyond reasonable doubt. Further it was contended that the victim having lost her father, in the fact and circumstances of the instant case was under foster care and as such, the provision of Section 9 of POCSO Act is attracted. As such, the alleged improvement, inconsistencies and/or non-corroboration of the allegations of penetrative sexual assault by independent evidence do not dislodge the prosecution version so far as the aggravated sexual assault is concerned and as such, adverse presumption being available under the law, the accused is bound to suffer the consequences. Even if a witness cannot be considered to be solely reliable but in cases of partial reliability, the consistencies and corroboration of the witnesses is to be taken into consideration and so far as the factual circumstances of the present case is concerned, the factum of sexual assault is consistent. As such, no interference is called for in respect of the order of conviction and sentence so passed by the learned trial Court and the judgment of the learned trial Court should be affirmed.

I have considered the submissions advanced on behalf of the learned advocates for the appellant, the *de facto* complainant and the State and also the evidence of all the witnesses cited by the prosecution. Apart from the evidence which was deposed in court orally, the statement of the victim girl recorded under Section 164 of the Code of Criminal Procedure marked as an exhibit as well as that of the medical report of the victim requires consideration. In her statement under Section 164 of the Code of Criminal

Procedure before the learned Judicial Magistrate, 1st Court, Barasat, the victim girl narrated the incident, the relevant part of which is as follows :

“He resides beside our house. I call him as uncle. He raped me two months ago. He also does many times before that. On the morning of the 24th, his wife woke up while I was sleeping. This guy keeps putting his hand inside my pants. He began to touch my chest. Also touched by mouth. I immediately got up and left. His wife comes to know about this and starts quarreling. Dare to tell the mother that Kaka puts her hand on my chest. Yesterday I admit that he also raped me. I want him to be punished severely. He threatened to kill me if I told anyone. He showed me nude videos. He also said to spread my photos in internet.”

The medical evidence of the victim girl which was prepared by Dr. Malay Kumar Dasgupta, PW-7, reflected that her “hymen was intact as well as not attempted as hymen is intact”. “No injury detected anywhere on the body of ‘B’ including her private parts”.

Taking into account the version of the victim girl that she has been raped by the accused on several occasions which was narrated by her before the learned Judicial Magistrate as also deposed before the court and the medical evidence running contrary, I am of the view that with greater caution her evidence requires scrutiny. It would not be out of place to state that mother of the victim girl, PW-1 ‘A’ when she complained to the police station there was no allegation of rape. Subsequently she stated before the court that she came to know regarding the incident of rape after she lodged the complaint. So the series of incidents as is reflected from the FIR/written complaint to the

evidence of the last witness being the Investigating Officer, PW-11 are as follows :

- i) In the FIR/written complaint, the mother of the victim alleges that her minor daughter had been inappropriately touched by the accused.
- ii) In her deposition before the court, PW-1, mother of the victim girl and PW-2, victim girl, deposed that on several occasions the victim girl including the date of the incident just prior to the FIR was raped several times by the accused.
- iii) In her statement before the learned Judicial Magistrate, the victim girl also complained that on several occasions, she was raped and reiterated her stand so far as the threat given by the accused that he would circulate in online regarding the photographs of compromising situations of the victim.
- iv) In the medical report, PW-7 referred to features which rules out the possibility of having raped being committed on a 14/15 years girl by a matured person.
- v) In cross-examination, the Investigating Officer replied that the victim girl in her statement under Section 161 of the Code of Criminal Procedure did not tell her that the accused climbed on her body, undressed her or that the accused told her that he has videographed and would release the same through online or that

the accused threatened her that he will kill her by throttling and nobody would come to know.

The aforesaid factual circumstances fails to create a foundational fact in respect of offences under the POCSO Act in order to attract the provisions of Sections 29 and 30 of the said Act. The manner in which the victim girl has accused the appellant of having raped her on several occasions and the medical evidence not supporting the same and there being consistent improvement in the version of the mother of the victim girl, it would not be out of place to state that the victim do not qualify as a witness of 'sterling quality' on whose version it can be relied upon solely to convict the accused/appellant. In **Rai Sandeep Vs. State (NCT of Delhi)** reported in (2012) 8 SCC 21, the Hon'ble Supreme Court while reversing conviction held that a prosecutrix cannot be held to be a 'sterling witness' and in paragraph 22 opined as follows:

"22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any

doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

In **Krishan Kumar Malik Vs. State of Haryana** reported in (2011) 7 SCC 130, the Hon'ble Supreme Court was of the opinion that although the victim's solitary evidence in matters relating to sexual offences is generally deemed sufficient to hold an accused guilty, but the conviction cannot be sustained if the prosecutrix's version is found unreliable and insufficient due to identified flaws and lacunae. In paragraphs 31 and 32 of the said judgement, it was held by the Hon'ble Supreme Court as follows :

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the

case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.”

“32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant.”

In *Nirmal Premkumar and Another Vs. State Rep. by Inspector of Police* reported in 2024 SCC OnLine SC 260, the Hon’ble Supreme Court after reiterating the aforesaid judgements held that the Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt *qua* the prosecution's case. It was further observed that while a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.

Having regard to the settled proposition of law and the factual circumstances which have been narrated above which in fact has identified the flaw in the version of the victim as also her mother who is the complainant, I am of the view that the evidence in the present case do not inspire confidence to convict the present appellant.

Accordingly, the judgement and order of conviction and sentence dated 02.06.2023 and 03.06.2023 passed by the learned Judge, Special (POCSO) Court, Barasat, North 24-Parganas in Sessions Trial Case No. 11(12) 2021 arising out of Special Case No. 105 of 2021 relating to New Town Police Station Case No. 347 of 2021 dated 27.09.2021 is hereby set aside.

The appellant is acquitted of the charges.

It has been informed that the appellant is in custody. Accordingly, the appellant viz. Amal Baidya be released forthwith, if he is not wanted in connection with any other case.

The appeal being CRA (SB) 123 of 2023 is, thus, allowed.

Pending connected application, if any, is consequently disposed of.

Department is directed to send back the trial court records immediately to the learned trial court and also communicate this order to the learned trial court as well as the concerned jail authorities.

All concerned parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)