

23.08.2024

Item No.26
Ct.No.35
dc.

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

C.R.A. 558 of 2019

**Ashis Mitra
versus
The State of West Bengal**

Mr. Shahjahan Hossain,
Ms. Sanjida Sultana,
Mr. Prithwiraj Biswas ... For the Appellant.

Ms. Sreyashee Biswas,
Mr. Ivan Roy ... For the State.

Mr. Saryati Datta ... For the Victim.

The present appeal has been preferred against the judgement and order dated 31.08.2019 passed by learned Additional District and Sessions Judge-cum-Special Judge under POCSO Act, 1st Court, Sealdah in Special Trial No. 04(08)2019 arising out of Ultadanga Police Station Case No. 164 of 2019 dated 14.08.2019 under Section 8 of the POCSO Act wherein the learned trial court on conclusion of trial was pleased to convict the appellant under Section 10 of the POCSO Act and sentenced him to suffer rigorous imprisonment for five years and fine of Rs.50,000/- in default rigorous imprisonment for three months more.

On consideration of the evidence which has been adduced by the prosecution, I find that the prosecution in support of its case has relied upon eight witnesses. This Court on perusal of whole of the evidence including the examination under Section 313 of the Code of Criminal Procedure finds that during the examination under Section 313 of the Code of Criminal Procedure, none of the

incriminating material which the victim has deposed before the court in evidence or in her statement under Section 164 of the Code of Criminal Procedure has been placed or confronted to the accused. In fact, the examination under Section 313 of the Code of Criminal Procedure is only on the basis of the version of the complainant who happens to be the father of the victim and the maker of the FIR. Until and unless the version of the victim is confronted and the accused granted an opportunity, the very purpose of incorporating Section 313 of the Code of Criminal Procedure which is in the nature of audi alteram partem is violated. Having regard to the same and without entering into the merits of the evidence of the case, I am inclined to set aside the judgement and order of conviction and sentence so passed in connection with Special Trial No. 04(08)2019 arising out of Ultadanga Police Station Case No. 164 of 2019 dated 14.08.2019.

The case is remanded back and the learned Special Court under POCSO Act would afresh from the stage of Section 313 of the Code of Criminal Procedure commence the proceedings and within a period of three months from the date of communication of this order pass judgement afresh after affording opportunity to all the affected parties.

It has been informed by the learned advocate for the appellant that the appellant is on bail. The appellant would continue on the same bail and bond provided he appears before the learned trial court on the 3rd week of September, 2024 (17th September, 2024 to 20th September, 2024).

It would be the discretion of the learned trial court if it intends to impose any condition on bail or continue with the same conditions which were earlier imposed.

All efforts be taken by the learned trial court to pass a fresh judgement on or before 31.01.2025.

With the aforesaid observations, the appeal being CRA 558 of 2019 is partly allowed to the extent as directed above.

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

Department is directed to send back the lower court records along with a copy of this order immediately to the learned trial court.

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

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

(Tirthankar Ghosh, J.)