

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

Present:

**The Hon'ble Justice Joymalya Bagchi**

And

**The Hon'ble Justice Gaurang Kanth**

***C.R.A. 453 of 2019***

***With***

***C.R.A.N. 2 of 2024***

***Dharmendra Chowdhury & Ors.***

***Vs.***

***The State of West Bengal***

***With***

***C.R.A. 451 of 2019***

***Asha Nag @ Priyanka Chowdhury***

***Vs.***

***The State of West Bengal***

**For the Appellants**

: Mr. Fazlur Rahman, Adv.,  
Mr. Debapriya Majumder, Adv.  
Mr. Fasiur Rahman Molla, Adv.,  
Md. Babul Hussain, Adv.,  
Ms. Sahana Akhtar, Adv.

**For the State**

: Mr. Madhusudan Sur, Ld. A.P.P.  
Ms. Trina Mitra, Adv.

**Heard on**

: 13.01.2025

**Judgment on**

: 13.01.2025.

**Joymalya Bagchi, J. :-**

1. Both the appeals are directed against judgment and order dated 18.07.2019 and 19.07.2019 passed by the learned Additional District & Sessions Judge, 1<sup>st</sup> Court, Sealdah, South 24-Paraganas cum Special Judge under POCSO Act, 2012 in Special Trial No.4(4) of 2019 convicting and sentencing the appellants in the following manner:-

(i) **Dharmendra Chowdhury**, (*appellant No.1 in CRA 453 of 2019*) and **Bijoy Sardar** (*non-appealing accused*) under Sections 120B/363/370/372 of the Indian Penal Code and under Section 17 of the POCSO Act and under Section 5 of the Immoral Trafficking Act;

(iii) **Jitendra Chowdhury** (*appellant No.2 in CRA 453 of 2019*) for commission of offence punishable under Sections 120B/363/370/372 of the Indian Penal Code and under Section 8 of the POCSO Act and under Section 5 of the Immoral Trafficking Act;

(iv) **Ashrafi Chowdhury** (*appellant No.3 in CRA 453 of 2019*) for commission of offence punishable under Sections 120B/370/372 of the Indian Penal Code and under Section 17 of the POCSO Act;

(v) **Asha Nag @ Priyanka Chowdhury** (*appellant in CRA 451 of 2019*) for commission of offence punishable under Sections 120B/363/370/372 of the Indian Penal Code and under Section 17 of the POCSO Act and under Section 5 of the Immoral Trafficking Act.

**Prosecution case:-**

2. The victims PWs 1 and 3 come from impoverished background. They used to live at Sealdah Railway Station. PW 2 is the father of one of

the victims (PW 1). On 28.08.2017 PW 2 made a statement before police alleging on 19.08.2017 his daughter (PW 1) and another girl (PW 3) had gone missing. Few days ago he had seen both the girls talking to one Bijoy Sardar. He suspected that Bijoy had kidnapped and trafficked them. PW 2's statement was reduced into writing and treated as FIR in Narkeldanga P.S. Case No. 203 of 2017 dated 28.08.2017 under Sections 120B, 363, 367, 370 of the Indian Penal Code. On the same day Investigating Officer (PW 14) recovered the two victims and arrested Bijoy Sardar. Victims were medically examined. Their statements were recorded before Magistrate. Medico legal examination to determine their age was also conducted.

3. Pursuant to the statement of the victims Investigating Officer raided Kancharapara and arrested Dharmendra Chowdhury and his wife Asha Nag @ Priyanka Chowdhury. He submitted charge-sheet. Second Investigating Officer (PW 15) conducted further investigation. During further investigation he went to Uttar Pradesh. He identified the place of occurrence which was under lock and key. Place of occurrence had been let out to a tenant. He went to the house of Jitendra Chowdhury and arrested him. During TI parade examination PW 1 identified Jitendra. He also arrested owner of the house, Ashrafi Chowdhury. He submitted supplementary charge-sheet.

4. Charges were framed against the appellants and one Bijoy Sardar. The accused pleaded not guilty and claimed to be tried. Prosecution examined 15 witnesses and exhibited a number of documents.

5. In conclusion of trial, trial Judge by the impugned judgment and order dated 18.07.2019 and 19.07.2019 convicted and sentenced the appellants and one Bijoy Sardar, as aforesaid. Hence, the present appeals.

**Evidence on record:-**

6. PWs 1 and 3 are the victims. PW 1 deposed she used to reside at railway platform. PW 3 was her friend. In 2017 she was introduced to Bijoy Sardar who is a trolley puller. Bijoy took her to the residence of Dharmendra Chowdhury and Asha Nag @ Priyanka Chowdhury on the pretext of working as a maid servant. Dharmendra and Asha forced her to cook. Thereafter, Dharmendra took her to Uttar Pradesh as a stage dancer. Spectators used to sexually assault her. One person whom she identified as Jitendra forced her to drink liquor and committed rape. She fled from the place. Her father lodged complaint. She was rescued from Sealdah Police Station. She made statement before Magistrate. During cross-examination, she stated she had no residential accommodation. She used to help her family by earning money. She stated she told police that a blind person had committed rape.

7. PW 3 is the other victim. She stated Bijoy had told her about a job in Uttar Pradesh. He took her to Kanchrapara. Thereafter, Bijoy forcibly introduced her to dancing but she refused. She was assaulted. She fled from the spot. She was medically examined. She made statement before Magistrate. She does not know the incident regarding PW 1.

8. PW 2 is the father of PW 1 and *de facto* complainant. He stated Bijoy Sardar took away PWs 1 and 3 for selling them. He lodged written

complaint. During cross-examination, he stated he had told Sealdah GRPS her daughter had been kidnapped but no action was taken. One Bidesh scribed the FIR.

9. PW 4 is the mother of PW 1. She corroborated her husband.

10. PWs 7 to 11 are the medical officers.

11. PW 7 (Dr. Suparna Datta) examined PW 1. She opined the victim was a deflorated woman. There was no recent genital or extra-genital injury. She also opined as per physical findings, dental data and radiological data, age of the victim was above 16 years but below 18 years.

12. PW 9 (Dr. Doyel Pradhan) also examined PW 1. She found her hymen was ruptured and multiple scratch injuries over her thigh. Her right breast also bore scratch marks. She proved the medical report (Exhibit 9).

13. PW 8 (Dr. Rames Ranjan Halder) examined PW 3. He did not find any bodily injury. Hymen of the victim was intact.

14. PW 11 (Sanchita Das Kundu) opined age of PW 3 was between 12 to 14 years.

15. PW 10 (Ankur Bhattacharyya) examined Jitendra. He opined he was capable of sexual intercourse.

16. PW 12 (Quiser Alam) held TI parade examination of Jitendra. He proved the report (Exhibit 11). Report states PW 1 had identified Jitendra.

17. PW 13 (Indranil Chakroborty) is the Judicial Magistrate who recorded the statements of PWs 1 and 3.

18. PWs 14 and 15 are the Investigating Officers. PW 14 (Samit Kumar Bera) deposed during examination he recovered the victims from Sealdah DRM Building Campus. He proved the rescue report. Victims were forwarded for medical examination. He forwarded the victims for recording their statement before Magistrate. He arrested Bijoy Sardar on the statement of the victim. He arrested Dharmendra Chowdhury and his wife Asha Nag @ Priyanka Chowdhury. He submitted charge-sheet. During further investigation PW 15 (Saran Lama) went to the place of occurrence in Uttar Pradesh. He visited the place of occurrence and found the room under lock and key. The room had been let out to a tenant. He arrested Jitendra Chowdhury . TI parade examination was held. Again he went to Uttar Pradesh and arrested owner of the house Ashrafi. He submitted supplementary charge-sheet.

**Analysis and findings:-**

19. PWs 1 and 3 are the victim. They were extremely poor and had no residential accommodation. They resided on the railway platform. Taking advantage of her poverty Bijoy enticed her to go to the residence of Dharmendra and Asha at Kanchrapara. She had been taken to their residence on the excuse she would work as a maid servant. Initially, she was forced to cook. Thereafter, Dharmendra took her to Uttar Pradesh for performing as a dance girl. She was sexually abused. Spectators pressed her breasts. One Jitendra forced her to consume liquor and committed rape. She escaped from their clutches and returned to Sealdah Railway Station. There she was recovered by police. She was medically examined

and made statement before Magistrate. PW 3 also deposed Bijoy had assured her a job in Uttar Pradesh. He took her to Kanchrapara. Bijoy tried to force her to dance. She refused and was assaulted. She fled from the place.

**(i) Recovery of victims:-**

20. Mr. Majumder and Mr. Rahaman challenged PW 1's deposition on various grounds. Though in the FIR it is alleged the victims had been kidnapped and were missing, but on the same day they were recovered from the Sealdah Railway Platform. This improbabilises the allegation of kidnapping. It is also argued PW 3, the other victim does not corroborate PW 1 with regard to sexual exploitation in Uttar Pradesh.

21. I have given anxious consideration to the aforesaid submissions. A deeper scrutiny of PW 1's deposition would show in 2017 she had been taken to the residence of Dharmendra by Bijoy on the pretext of giving employment as a maid servant. Initially, she was forced to cook. Then Dharmendra trafficked her to Uttar Pradesh for sexual exploitation as a dance girl. Spectators pressed her breasts. Jitendra committed rape. Then she fled away and returned home. Initially, her father who comes from the weakest strata of society orally reported the matter to Sealdah GRPS. Police did not take any action. On the day his daughter returned, his statement was recorded by police and she was rescued from Sealdah platform itself.

22. The aforesaid narration would explain how the victims came to be recovered from the Sealdah platform on the very day the FIR was registered.

23. PW 3 deposed Bijoy had tried to force her to dance but she escaped. As a result, she was not present when PW 1 was sexually exploited in Uttar Pradesh.

**(ii) Age of the victim:-**

24. The other issue which the learned Counsels had strongly canvassed that the prosecution failed to prove the victims were minors. Mr. Majumder contends the school leaving certificate of PW 1 was not collected. Oral evidence with regard to her age is conflicting. Her father (PW 2) claimed his daughter was 14 years old whereas her mother (PW 4) claimed she was 16 years old. PW 7 medical officer who conducted ossification test and opined the age of PW 1 was above 16 years but below 18 years on the date of examination. Average age may be fixed as 17 years. Similarly, age of PW 3 had also not been determined beyond doubt.

25. Rule 12(3) (a) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short 'J.J. Rules, 2007') lays down the procedure for determination of age of a minor. The aforesaid Rule, inter alia, provides that age of the minor may be determined on the basis of:-

(i) *birth certificate;*

(ii) *in the event birth certificate is not available, school leaving certificate from the school where the victim first attended; and*

(iii) *in the event either of the documents are not available, through ossification test.*

26. Evidence on record shows PW 1 comes from an extremely poor background. She was surviving on the railway platform. In all probability she was not born in a hospital and there is no scope of obtaining a birth certificate. Though PW 1 deposed she was a student of a school, this is not corroborated by her parents. It is unclear whether PW 1 at all had the privilege of institutional education. PW 3 also hails from an extremely poor background. When victims of sexual offence come from impoverished background, it is most unlikely that prosecution would be able to produce their birth certificates or school leaving certificates. In absence of these documents as per Rule 12(3) (a) of J.J. Rules, 2007 prosecution is entitled to rely on ossification report to prove their age.

27. PW 7 (medical officer) opined on the basis of physical appearance, dental data and radiological data, PW 1's age was above 16 but below 18 years. This corroborates the deposition of her parents who also claimed that their child was around 14 to 16 years. No doubt medico-legal estimation of age is not exact but an approximate exercise. Medical officer has given the range of age of PW 1 between 16 to 18 years which corroborates the evidence of her parents as to age and proves PW 1 was a minor at the time of occurrence.

28. Similarly, PW 9 opined PW 3 was between 12 to 14 years of age as per radiological data. She herself claimed her age was 14 years. Hence, her minority has also been proved.

**(iii) Rape by Jitendra:-**

29. In light of the aforesaid discussion, I am of the opinion prosecution has proved that Bijoy Sardar recruited PWs 1 and 3 for trafficking. Dharmendra and his wife Asha were the recipients. Then, Dharmendra further trafficked PW 1 to Uttar Pradesh for sexual exploitation. There Jitendra committed rape on her. PW 1 identified Jitendra during TI parade examination as well as in Court. It is also apposite to note PW 1 told police she had been raped by a one-eyed person. Admittedly, Jitendra has difficulty in his eye. Identification of Jitendra as the person who raped the victim is proved beyond doubt.

**(iv) Owner of the brothel:-**

30. PW 15 is the second Investigating Officer. Pursuant to the statements of the victim and Dharmendra he went to Uttar Pradesh. He identified the place of occurrence. Place of occurrence was under lock and key. He was told it had been let out. He arrested Ashrafi Chowdhury as the owner of the brothel.

31. Mr. Majumder rightly argues no independent evidence with regard to the premises where prostitution was carried on has been adduced. It is true mere *ipse dixit* of the Investigating Officer that appellant Ashrafi Chowdhury was the owner of the brothel is insufficient. Though the evidence on record proved beyond doubt that PW 1 had been trafficked for sexual exploitation by Bijoy Sardar, Dharmendra and Asha to Uttar Pradesh and raped by Jitendra, fact that Ashrafi was the owner of the brothel where they had been kept has not been proved by leading

cogent and reliable evidence. It is unsafe to convict a man on the uncontroverted opinion of the Investigating Officer.

**Conclusion:-**

32. Accordingly, I am inclined to give the benefit of the doubt to appellant, namely, Ashrafi Chowdhury. His conviction and sentence is set aside.

33. Conviction and sentence of the other appellants, namely, Dharmendra Chowdhury, Jitendra Chowdhury and Asha Nag @ Priyanka Chowdhury are upheld.

34. The appellant, namely, Ashrafi Chowdhury shall be released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the trial court which shall remain in force for a period of six months in terms of section 481 of The Bharatiya Nagarik Suraksha Sanhita, 2023.

35. We are informed that appellant, Asha Nag @ Priyanka Chowdhury (in CRA 451 of 2019) has already served out the substantive sentence imposed upon her. In the event she deposits the fine amount she shall be forthwith released from custody, if not already released.

36. The appeals are allowed to the aforesaid extent.

37. Connected application being CRAN 2 of 2024 is also disposed of.

38. Period of detention suffered by appellants, Dharmendra Chowdhury and Jitendra Chowdhury (in CRA 453 of 2019) during investigation, enquiry and trial shall be set off from the substantive

sentence imposed upon the appellants in terms of Section 468 of The Bharatiya Nagarik Suraksha Sanhita, 2023.

39. Let a copy of this judgment along with the trial Court records be forthwith sent down to the trial Court at once.

40. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

**(Gaurang Kanth, J.)**

**(Joymalya Bagchi, J.)**