

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

**Present:**

**The Hon'ble Justice Debangsu Basak**

**And**

**The Hon'ble Justice Md. Shabbar Rashidi**

**CRA (DB) 142 of 2022**

**With**

**IA No.: CRAN 1 of 2025**

**Bikram Mistry**

**Vs.**

**The State of West Bengal & Anr.**

For the Appellant : Mr. Pritam Chowdhury, Advocate  
Mr. Satyajit Mahata, Advocate

For the State :Mr. Madhusudan Sur, Ld. APP  
Mr. Manoranjan Mahata, Advocate

Hearing & Judgment on : September 9, 2025

**MD. SHABBAR RASHIDI, J.:-**

1. Appeal is directed against the judgment of conviction dated June 20, 2022 and the order of sentence dated June 21, 2022 passed by the learned Additional Sessions Judge-cum-Special Judge under POCSO Act, Baruipur, South 24 Parganas in connection with Special Sessions Trial No.11 of 2020 arising out of Special (CIS) No.125 of 2019.
2. By the impugned judgment, the appellant was convicted for the offence punishable under Section 376AB of the Indian Penal Code and Section 6 of the POCSO Act.

3. By the impugned order, the appellant was sentenced to rigorous imprisonment for twenty years with a fine of Rs.10,000/- and in default of payment of fine to undergo further rigorous imprisonment for two months for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act.
4. It is submitted on behalf of the appellant that there are material contradictions in the statements made by the prosecution witnesses at the trial. Referring to the depositions of the P.W.2 and P.W.8, it is submitted that the narration of the occurrence given by the aforesaid two witnesses who claimed to be eye-witnesses are contradictory to each other and, therefore, benefit of doubt should be extended to the appellant.
5. Learned Advocate appearing for the appellant submits that there are evidence led at the trial where it has come out that there were disputes between the appellant and the father of the victim and as such, the possibility of false implication cannot be ruled out.
6. It is submitted that the prosecution has not been able to substantiate the charges levelled against the appellant with the help of cogent and convincing evidence and as such, the impugned order is liable to be set aside.
7. On the other hand, learned Advocate appearing for the State submits that neither the victim nor the de facto complainant has placed P.W.8 at the place of occurrence at the relevant point of time. In view of the

fact, the testimony of P.W.8 cannot be relied upon. It is contended that so far as the sequence of the incident is concerned, the testimony of P.W.1, P.W.2 and the statement of P.W.2 recorded under Section 164 of the Code of Criminal Procedure are consistent and sufficient to secure conviction of the accused.

8. Referring to the definition of the offence under Section 375 of the Indian Penal Code, it is contended on behalf of the State that any penetration is sufficient to invoke the commission of offence. It does not require an injury.
9. Learned Advocate appearing for the State stood by the impugned judgment and order and submits that learned Trial Court was quite justified in convicting and sentencing the appellant.
10. On October 3, 2019, written complaint was lodged by P.W.1 stating, *inter alia*, that on the said date at about 5 P.M., the victim was playing at the place of occurrence by the side of the house. The appellant being a boy of his neighbour took away the victim in his arms to his house. It was further stated that there was no one present at the relevant point of time. The written complaint also disclosed that after taking the victim to his house, the appellant took out her panty and inserted her finger inside her private parts. When the victim started crying, the appellant also slapped her and gave her rupees 5 on the plea that she would not tell the incident to anyone and threatened that he will do again if she disclosed the incident to anyone else.

Thereafter, the victim was driven out by the appellant. After hearing about the incident from the mouth of his daughter, the de facto complainant went to the house of the appellant to enquire when the appellant denied everything. Thereafter, he came back and after talking to 5/6 local persons, he again went to the house of the appellant but none could be found. Following that the de facto complainant lodged a complaint with Bakultala Police Station.

11. On the basis of such written complaint, Bakultala Police Station Case No.512 of 2019 dated October 3, 2019 under Section 6 of the Protection of Children from Sexual Offences Act as well as Section 376(2)(i)/506 of the Indian Penal Code was started against the appellant.
12. Police undertook investigation and on completion of investigation submitted charge sheet against the appellant. Accordingly, on the basis of materials in the case diary, charges under Section 376AB/506 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act were framed against the appellant on February 12, 2020.
13. In order to substantiate the charges, prosecution examined 8 witnesses in all. In addition to the ocular evidence, prosecution also relied upon certain documentary as well as material evidence which were admitted in evidence and marked as Exhibits.

14. The de facto complainant himself deposed as P.W.1. He stated that, the victim was his daughter. The incident happened on October 3, 2019 at 5 PM in the house of the appellant. He further stated that at the time of the incident his daughter was aged about six years. He produced the birth certificate of his daughter which was admitted in evidence.
15. P.W.1 further stated that after returning from the house of the appellant, his daughter reported to P.W.1 that when she was playing in the Khamar, appellant took her to his house lifting her in his lap and then he inserted his finger into her private parts. She also reported to the P.W.1 that the appellant threatened her and also assaulted by slapping. The appellant also gave her Rs.5/- and threatened not to disclose the incident to anyone.
16. P.W.1 further stated that being so informed he went to the house of the appellant but he could not find anyone in the house. Thereafter, he informed the matter to local people and lodged a complaint with the police. He proved his signatures on the written complaint as well as the formal FIR which were marked as Exhibits 4 and 5/1.
17. P.W.1 also accompanied his daughter for medical examination at Baruipur SD Hospital at the time of recording her statement before the learned Magistrate. The medical examination of the victim was held in presence of the daughter-in-law of P.W.1. He further stated that, he was present when the statement of the victim was recorded by the

learned Magistrate. He proved his signature on such statement marked as Exhibit 6/1.

18. P.W. 1 was cross-examined at length on behalf of the appellant. In his cross-examination, although P.W. 1 denied that he had any dispute with the father of the appellant, but in the very next line, he has admitted that there were dues relating to fare of the school van of the father of the appellant for which the father of the appellant refused to take the daughter of P.W. 1 to the school.
19. The victim was also examined as P.W. 2. In her deposition, she has stated that the incident took place about a year ago (from January 18, 2021) at about 5.00 p.m. in the house of the appellant. She further stated that just before the incident, she was playing and was standing beside the road alone. The appellant took her to his house and removed her pant and inserted his finger in the private part of the victim. She further stated that she got pain because of insertion of finger. Thereafter, she returned home, narrated the incident to her father as well as her sister. Thereafter, her father went to the house of the appellant. P.W. 2 stated that at the time of incident, she was aged about 7 years. She further stated that after the incident, she went to the hospital for medical examination accompanied by her kakima. She also recorded her statement before the learned Magistrate. She proved her signature on such statement (6/2). In her cross-examination, P.W. 2 stated that she knew that her father could not pay the due fare of the

- school van to the father of the appellant and thereafter her father arranged for another school van. Although, she denied that there was any dispute between her father and the father of the appellant.
20. The uncle of the victim deposed as P.W. 3. He stated that the victim was his niece and was aged about 6 and 1/2 years at the time of incident. P.W. 3 came to know about the incident from his brother, P.W. 1. Thereafter, P.W. 3 has narrated the incident as stated by P.W. 1 and 2.
21. Wife of P.W. 3 deposed as P.W. 4. She is also a hearsay witness of incident. She came to know about the incident from her husband, P.W. 4. She also stated about the incident as stated by P.W. 1 and P.W. 2.
22. The Medical Officer who examined the appellant deposed as P.W. 5. He stated that on October 4, 2018, he examined the appellant at Ram Krishna Rural hospital. He found no injuries from the body and genitalia area of the said person. No foreign body was detected around the genitalia area. P.W. 5 prepared a report of such examination which was admitted in evidence and marked as Ext. '8'.
23. Investigating Officer of the case deposed as P.W. 6. He narrated the steps taken by him in course of the investigation of the case. After taking over the investigation of the case, P.W. 6 visited the place of occurrence and prepared hand sketch map with index. He also recorded a statement of available witnesses under Section 161 of the

- Cr.P.C. He took steps for medical examination of the victim and collected the medical report of the victim which was marked as Ext. '7'. He also arrested the appellant and seized birth certificate of the victim. He also collected the swab of the appellant and the victim and sent the same for chemical examination.
24. Another Medical Officer was examined as P.W. 7. He stated that on October 4, 2019, he examined the victim girl. On such examination, he did not find any superficial deep injury on her body. Her vulva and vagina were found not developed. No injury was detected. Fourchette and hymen were found intact by P.W. 7. He proved the medical report.
25. A child from the locality was examined as P.W. 8. She stated in her deposition that she had gone to Court to depose against the appellant. She further stated that on the relevant day of incident, she was playing with the victim in front of the house of the appellant. Thereafter, the appellant took the victim and P.W. 8 and while the victim was holding the hands of P.W. 8, the accused took the victim on his shoulder. They were taken to the house of the appellant. Thereafter, they were taken inside the room and door was closed. The appellant removed the pant of the victim and inserted his male genitalia organ into the female genitalia organ of the victim. P.W. 8 was cross-examined at length.
26. Upon conclusion of the evidence on behalf of the prosecution, the appellant was examined under Section 313 of the Cr.P.C. where the appellant denied his knowledge about the incident. He pleaded

innocence in such examination. Although, he expressed his intention to adduce defence evidence, but no such evidence was given.

27. From the materials on record including the evidence laid at the trial and also hearing the submissions made on behalf of the parties, it appears that the appellant is alleged to have committed penetrative sexual assault as against the victim, P.W. 2. It has been submitted that while the victim was playing outside her house beside the road, she was taken by the appellant to his house. Inside the house, the appellant committed penetrative sexual assault against the victim. The matter was alleged to be reported by the victim to her father who in turn reported it to the police and local people. Although, some of the local people have come forward to the Courts in support of the prosecution, but they appear to be the relatives of the victim and their knowledge about the incident is based on hearsay information. A friend of the victim was also deposed on behalf of the prosecution. However, the statement of such friend, P.W. 8 is together contradictory to the statement made by P.W. 1 and P.W. 2. P.W. 1 and P.W. 2 have stated that the appellant committed penetrative sexual assault upon the victim with the help of his finger whereas P.W. 8 has stated that it was by the male genitalia organ of the appellant. The victim was medically examined, but no injury whatsoever was found on the genitalia organ of the victim. Even her hymen was found intact. There is no allegation either in the evidence of P.W. 1. P.W. 2 and P.W. 8 that

the penetrative sexual assault was a part penetrative. Even a part penetrative sexual assault is not supported by the medical evidence. The appellant was also medically examined and no foreign body or injury was found on his genitalia organs.

28. In view of the contradictory, narration of the incident by P.W. 1, P.W. 2 and as well as P.W. 8, the appellant is entitled to benefit of doubt.
29. P.W. 2 stated that she was alone in the room with the appellant while P.W. 8 stated she along with the P.W. 2 was taken by the appellant into the room. This is a major contradiction.
30. Significantly, P.W. 1 remained present when P.W. 2 was recording a statement under Section 164 of the Cr.P.C. This allows an inference of tutoring.
31. It is trite law that in the event, the Court finds the testimony of the victim to be truth and trustworthy, Court can convict the accused on the basis of said testimony, notwithstanding the medical evidence or the forensic evidence brought on record.
32. In the facts of the present case, medical evidence does not support the version of P.W. 1 and P.W. 2 or of P.W. 8 with regard to the alleged penetrative sexual assault on P.W. 2. However, in any event, we do not find the testimony of P.W. 2 to be reliable or to inspire confidence so as to convict a person on the basis of such testimony of victim itself.
33. In the cross-examination of P.W. 1 and P.W. 2, it came out at the trial that there was an underlying dispute between the father of the victim

and the father of the appellant with regard to the fare for the use of the school van for the victim. Possibility of false implication cannot be ruled out.

34. Significantly, the appellant in his statement under Section 313 of the Cr.P.C. stated that he was falsely implicated due to political reasons.
35. In such circumstances, the impugned judgment and order is set aside.
36. The appellant be set at liberty to release 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 437A of the Code of Criminal Procedure.
37. The appeal, being **C.R.A. (DB)/142/2022** is **allowed**.
38. In view of the appeal being allowed, CRAN 1 of 2025 is disposed of.
39. Let a copy of the 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 upon completion of all formalities.

**(Md. Shabbar Rashidi, J.)**

41. I agree.

*(AD/SD)*

**(Debangsu Basak, J.)**