

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.A. (SB) 126 of 2023

Arun Mondal

-versus-

The State of West Bengal & Anr.

For the Appellant : Mr. Fazlur Rahman, Adv.,
Mr. Md. Babul Hussain, Adv.,
Mr. Rahil Rahman, Adv.,
Ms. Mousumi Sarkar, Adv.,
Ms. Dona Sanyal, Adv.

For the State : Mr. Debasish Ray, Ld. P.P.,
Mr. Saryati Datta, Adv.,
Ms. Sudeshna Das, Adv.

For the Victim/Respondent No. 2 : Ms. Sreyashee Biswas, Adv.

Reserved On : 11.11.2025

Judgement On : 25.11.2025

Tirthankar Ghosh, J. :-

The present appeal has been preferred against the judgment and order of conviction dated 15.06.2023 and the sentence passed on 16.06.2023 by the Learned Judge, Special Court under POCSO Act, Sealdah, South 24 Parganas in connection with Special Trial No. 02(03) 2023 corresponding to Special Case No. 43/2022 arising out of Tangra P.S. Case No. 295/22, wherein the Learned Trial Court was pleased to convict the appellant under Section 8 of the POCSO

Act and sentenced him to suffer Rigorous Imprisonment for 4 (four) years and to pay a fine of Rs.50,000/- i.d. to suffer Simple Imprisonment for 10 (ten) months more for the said offence.

Tangra Police Station Case No. 295 dated 19.10.2022 was registered on the basis of information furnished by 'Y', mother of the victim girl. She alleged that her minor daughter aged about 13 years was subjected to sexual harassment by the appellant. It was contended that during Lakshmi Puja, prasad was sent to the appellant's residence in a steel utensil and on 14.10.2022, the minor daughter was sent to collect the utensil.

It was alleged that when the minor visited the appellant's residence for collecting the utensil, he forced the minor to come inside his room, held her hand and locked both the gate and the windows. He then caught hold of her from behind and touched her breast and advanced towards her. When the minor was apprehensive of such behaviour of the accused, she left the room immediately and returned home.

The complainant observed sudden change in behaviour of her minor daughter and upon enquiry her daughter narrated the incident on 18.10.2022 at about 6:30 P.M. It was further alleged that her daughter was in a disturbed mental state and disclosed that she was threatened by the accused, who warned that if she divulged the incident of sexual harassment and outraging of modesty he would cause harm to her and the entire family. Thereafter the

complainant and her husband approached the police authorities seeking strict action against the accused.

On the basis of the aforesaid information, the investigation of Tangra Police Station Case No. 295 dated 19.10.2022 commenced and on conclusion of investigation, charge-sheet was submitted on or about 16.12.2022. On 14.02.2023 the accused surrendered before the learned Special Court, when he was taken to custody. Then after supply of copies, the learned trial court was pleased to frame charges on or about 09.03.2023, under Section 8 of the POCSO Act as also under Section 12 of the POCSO Act.

The contents of the charges were read over to the accused who pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 5 (five) witnesses which included P.W.1 the victim girl-'X'; P.W.2 mother of the victim girl-'Y'; P.W.3 father of the victim girl -'Z'; P.W. 4 neighbour of the victim girl and P.W.5 Prasun Dutta Investigating Officer of the case.

P.W.1 the victim girl 'X' in her examination-in-chief stated that in the year 2022 on the date of Lakshmi Puja prasad was sent to Arun Mondal/appellant in a utensil. On or about 14.10.2022 in the evening she was asked by her parents to go to the house of Arun Mondal for collecting the said utensil as he did not return the same. She visited the house of the accused/appellant which was near their house and at that time found no family members being present

except the accused. She stood outside the residence of the accused/appellant but the accused repeatedly urged her to enter the premises. He then pulled her hand and compelled her to come inside. Thereafter the accused closed the windows and the main door from inside and stated to her that he regretted the opportunity of not roaming with her during the Durga Pujas and also asked her why she did not visited him earlier. At that time the accused suddenly squeezed her breast, embraced her from behind and rested his head upon her shoulder. When she sensed that the accused was about to commit an unlawful act she managed to free herself from the accused and left the premises, carrying the utensil with her. As she was about to leave the residence of the appellant, he threatened her that he would harm her parents if she divulged the incident to anyone. Out of fear, even after returning home she did not disclose the incident to her parents. She was mentally unsettled and her mother noticing change in her behaviour questioned her. On 18.10.2022 she narrated the incident to her mother.

On 19.10.2022 she went to the Police Station with her parents and a complaint was lodged. She was produced before the learned Magistrate who recorded her statement where she narrated the incident. The photocopy of the statement under Section 164 Cr.PC was shown to her and the same was admitted in evidence with consent of both the sides. She identified the accused in Court and further stated that at the Police Station she was examined by a lady police where she narrated whole of the incident. She further stated that when they visited the Police Station to lodge complaint, the relatives of Arun

Mondal came to their residence and threatened her grandmother, questioning why a complaint has been lodged against the appellant.

P.W.2 'Y' is the mother of the victim girl who deposed before the Court that they performed Lakshmi puja at their residence and prasad was sent to the house of the accused which is situated close to their residence. Her daughter was a student of Class Eight (VIII) at the time of incident and it was she who had been to the house of the accused for collecting the utensil. She stated that when her daughter had been to the premises of the accused, the accused dragged her inside his room, closed the doors and windows and indecently touched her daughter. After her daughter came back she noticed that her daughter's attitude has altered as she declined to take food and isolated herself.

She inquired from her daughter who narrated the incident of 14th October 2022. As her daughter disclosed the incident on 18th October 2022, on the next day she went to the police station with her daughter and reported the incident to the police officer. Her statement was reduced into writing by the said officer and she endorsed the same with her left thumb impression. She identified the accused Arun Mondal in Court.

P.W.3-'Z' is the father of the victim girl who deposed that he has three daughters and the victim is his second child who was studying then at Class IX (nine). He stated that on 14.10.2022 at about 4:30 pm he was engaged at his tea stall and asked his daughter to collect the utensil from the accused which

had been sent with the prasad of Lakshmi puja. As the said utensil was not returned by the accused and was required by him, he instructed his daughter to bring it back. His daughter narrated the incident to his wife and the same was disclosed to him on 18th October, 2022. He deposed that after hearing the incident from his wife that when his daughter had gone to the house of the accused to collect the utensil she was forcibly dragged by the accused inside his house, he went to the Police Station on 19th October, 2022 and lodged a complaint through his wife. He identified the accused in Court.

P.W.4.-Ritu Chowdhury is a neighbour and scribe of the FIR, who deposed that in relation to the incident of 14.10.2022, she came to know from P.W.2 i.e. mother of the victim girl that on the said date when she sent her daughter to the house of the accused to collect an utensil at that time the accused forcibly dragged her inside his house and molested her by touching her breast. She knew Arun Mondal as he was her neighbour and identified him in Court. She further deposed that she accompanied the parents of the victim to the Police Station and at their request drafted the complaint as narrated by the mother of the victim. She identified the complaint which bears her signature and was duly admitted in evidence.

P.W.5 - Prasun Dutta is the investigating officer of the case. He deposed that on 19.10.2022, he was posted at Tangra police station as Sub-Inspector of Police and on the basis of the written complaint of the mother of the victim, Tangra P.S. Case No. 295 dated 19.10.2022 was registered for investigation

and the case was endorsed to him for investigation. He identified the formal FIR which was admitted in evidence and stated that as the investigating officer he has referred the statement of the victim to be recorded by a lady police officer. He further deposed that the victim was thereafter sent for medical examination which she declined. He identified the report which was duly admitted in evidence. In course of investigation he visited the place of occurrence, prepared a rough sketch map, identified the same which was admitted in evidence. He also forwarded a prayer for recording the statement of the victim under Section 164 Cr.PC.

Thereafter he examined the available witnesses and recorded their statements under Section 161 Cr.PC. He further seized the birth certificate of the victim by way of a seizure list, he identified the seizure list and the birth certificate of the victim which were admitted in evidence. He deposed that from the birth certificate of the victim it reflected that her date of birth was 04.12.2006. Additionally he submitted that the accused could not be traced and as such he submitted charge-sheet vide C.S. No.- 80 dated 16.12.2022 showing the accused as an absconder.

Learned advocate appearing on behalf of the appellant submitted that even if the prosecution case is accepted in its entirety, the same do not make out any offence as the essential ingredients required to prove the case has been completely omitted. He further submitted that there are major inconsistencies which rule out the possibility of the appellant being implicated in connection

with the present case. To that effect learned advocate referred to the judgment of *Pandurang Sitaram Bhagwat v. State of Maharashtra*, reported in (2005) 9 SCC 44 and relied on the observations of the Hon'ble Supreme Court in paragraph 16 which is as follows:

“16. The approach of the learned trial Judge as noticed supra that ordinarily a lady would not “put her character at stake” may not be wrong but cannot be applied universally. Each case has to be determined on the touchstone of the factual matrix thereof. The law reports are replete with decisions where charges under Sections 376 and 354 IPC have been found to have been falsely advanced.”

According to the learned advocate the same view has been reiterated by the Bombay High Court in *Manoj Kaduba Nade -versus- State of Maharashtra* reported in 2023 SCC OnLine Bom DBDD: (2024) Z / AMR Bom 1660 BG 696.

Learned advocate also relied upon the judgment of *Radhu v. State of M.P.*, reported in (2007) 12 SCC 57, wherein the Hon'ble Supreme Court considered the issue regarding conviction based on the sole testimony of the prosecutrix and observed as follows:

“6. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape

or not would depend ultimately on the facts and circumstances of each case.”

Reliance was further placed on the judgment of *Raju v. State of M.P.*, reported in (2008) 15 SCC 133 wherein the Hon’ble Supreme Court observed that while the testimony of a victim of rape has to be treated at par with an injured witness, but the same cannot be automatically accepted as beyond scrutiny. Reference was accordingly made to the observations of the Hon’ble Apex Court, which states :

“11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved.....”

Reference was also made to the decision of *Vivek Kumar Moriya -versus- State of U.P & Anr.* reported in 2023 SCC OnLine All 3206 wherein it was observed that in cases relating to sexual offences law operates in a manner that the girls/women have upper hand when it comes to the protection of law.

Attention of the Court was invited to the decision of *Subrata Biswas & Anr. -versus- State*, reported in 2019 SCC OnLine Cal 1815, and reliance was placed on the following observations:

“1. The appellant in the present case has been charged with the most deplorable conduct of having raped his step-daughter aged around 13

years. In this backdrop, it is pertinent to bear in mind howsoever heinous the accusation, it is the bounden duty of the Court not to be swayed by its gravity but to dispassionately assess the veracity of the prosecution case with utmost objectivity so that the gruesomeness of the accusation does not cloud judicial clarity in determination of guilt.”

It was submitted by the learned advocate that in the present case the prosecution has only examined five witnesses including the Investigating Officer and yet the appellant has been convicted despite material contradictions and improvement in evidence. Attention of the Court was drawn to the testimony of P.W.3 (father of the victim) who stated before the Court that at about 4.30 P.M. when he was engaged in his tea stall, he asked his daughter to go to the house of the accused to collect the utensil. The same according to the appellant is in contradiction to the statement of the victim girl recorded under Section 164 of the Cr.PC, wherein she stated that the accused called her to take back the can which was in his house on 14th October, 2022. It was also pointed out by the appellant that the victim girl during her cross-examination admitted on being confronted by the accused, that she did not state to the Magistrate on 14th October, 2022 relating to the fact that when she had been to the house of the appellant whether he was alone at his home; she also did not state to the Magistrate that the appellant repeatedly asked her to enter in his house. Moreover she answered in cross-examination that she could not recollect whether she stated to the learned court that the accused told him that he missed the opportunity to roam with her during the Durga puja or questioned her as to why she did not visit his place prior to the said date.

According to the learned advocate, the testimony of the victim girl is an embellishment which she introduced in court for building up the case. Reference accordingly was made to *Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra*, reported in (2010) 13 SCC 657 and attention of the Court was drawn to paragraph 31 which is as follows:

“31. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and the other witness also makes material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.”

Learned advocate also submitted that there were materials which were not pointed out in the FIR or the same was disclosed by the witnesses in their statements under Section 161 Cr.PC but was for the first time introduced in Court. Consequently such version of the prosecution witnesses lack credibility and are to be discarded. It was also urged that no independent witnesses have been examined by the prosecution, nor there are any materials to suggest whether any puja was at all organized. Moreover, the version of P.W.3 that he was not hostile towards the appellant as he secured a job at KMC while he failed to get a job, do make out a motive for implicating the present appellant.

Learned advocate further urged that since the victim refused medical examination, her testimony in this case should be disbelieved and to that effect reliance was placed upon the judgment of the Hon'ble Supreme Court in

State of Himachal Pradesh v. Rajesh Kumar, reported in 2025 SCC OnLine SC 577. Reference was made to paragraph 10 which reads as follows.

“10. The afore-extracted portions make it amply clear that the prosecutrix and her parents themselves never fully co-operated with the medical staff, thereby adversely impacting the credibility of their version of events. It is a well-settled proposition of law that non-allowance of medical examination by an alleged rape-victim raises negative inferences against them. We cannot ascribe any good reason to the complete lack of assistance that the complainants tendered to the authorities, apart from their contradictory stances before the Court. We are further doubtless in this regard as the High Court, while discussing the prosecutrix's testimony, has come to the invariable conclusion that she was not mentally unsound - given that she was able to clearly comprehend the question and answer during the cross-examination.”

Lastly, learned advocate submitted that there was also 4 (four) days delay in lodging the FIR which makes the prosecution case questionable and the totality of the circumstances do make out a situation which calls for interference by this Court as the prosecution version, particularly the statements of the prosecutrix and her mother creates a doubt resulting in a dent in the foundational facts of the prosecution case which will not be safe for arriving at a finding of guilt. The learned trial court without proper judicial application of mind arrived at its conclusion, which therefore deserves to be set aside.

Learned advocate appearing on behalf of the private respondent narrated the factual matrix and relied upon the testimony of the witnesses. It was specifically urged that although there was a delay of 5 (five) days in lodging the FIR but the same was satisfactorily explained by the victim herself. The same would be transparent from the deposition of the victim wherein she stated that because of mental trauma suffered by her as a consequence of the incident she could not divulge the same and it was only when her mother pressurized her, she disclosed the incident when she was advised by her parents to inform the police station. So far as the issue relating to refusal of the medical examination by the victim is concerned learned advocate clarified that for an offence under Section 8 of POCSO Act, medical examination of the victim is unwarranted. As the victim's testimony is sufficient to prove the authenticity of the offence, the victim's birth certificate was seized by the investigating officer of the case, which was duly marked in evidence and confirms the age of the victim girl at the time when the incident or when the offence took place. In this case the version of the de-facto complainant as well as the victim girl is consistent which leads to an irresistible conclusion relating to the culpability of the accused. The charges were framed under Section 7 of the POCSO Act as such the provisions of Section 29 and Section 30 of the POCSO Act is attracted. The said provisions are rebuttable. However, no attempt was taken by the accused to explain the circumstances which were appearing against him and there were no specific answers by the accused under Section 313 of the Code of Criminal Procedure.

Having referred to the aforesaid contentions, learned advocate appearing on behalf of the private opposite party submitted that the materials placed on record are adequate to sustain conviction of the appellant and there is no scope for any escape route or for that matter any interference is warranted by this Court.

Learned advocate for the State also narrated the sequence of events including the evidence adduced before the Court. It was submitted that the evidence of P.W. 2 and P.W.3 when read conjointly with the deposition of the victim, as also her statement under Section 164 of the Code of Criminal Procedure, the same remained consistent throughout. Despite efforts being made by the accused/appellant, the victim's testimony stood firm in cross-examination, thereby establishing the case beyond doubt.

Additionally it was submitted that victim consistently deposed that she was subjected to threats at the instance of the accused which extended to dire consequences to be faced not only for herself but also her family. Such circumstances instilled fear in the mind of the victim thereby preventing her to disclose the incident. However, the same resulted in her mental distress which was observed by her mother and finally when her mother pressurized her, she disclosed the same which satisfactorily explains the factum of delay in lodging the FIR. It was also submitted on behalf of the State that the nature of incident complained of, do not call for any medical examination when the statement of the victim is supported by the attending circumstances.

Learned advocate therefore submitted that there is no scope for interference in the judgment and order of conviction and sentence passed by the learned trial court and as such this Court should not interfere in the verdict pronounced by the learned trial Court.

I have taken into account the submissions advanced on behalf of the learned advocate appearing for the respective parties. The main emphasis of the learned advocate appearing on behalf of the appellant relate to certain inconsistencies which surfaced in deposition of the witnesses before the trial Court. According to the learned advocate while P.W.3, father of the victim girl deposed that, as he was engaged in the tea stall he asked his daughter to collect the utensil, on the other hand the victim girl in her statement before the learned Magistrate under Section 164 Cr.PC stated that the accused called her to collect the utensil from his house. Learned Advocate further submitted that the victim girl consistently improved her version as before the learned Magistrate under Section 164 Cr.PC neither she stated that the accused was alone in his house nor she stated that the accused repeatedly asked her to enter in his house. Further she also failed to recollect while deposing in Court whether she stated before the learned Magistrate that the accused told him that he missed the opportunity of roaming with her during Durga puja and questioned her as to why she did not visit his house earlier. It was also vehemently argued before the Court that no materials were produced in course of trial to suggest whether the Laxmi puja at all had taken place. In order to rebut the prosecution case learned Advocate submitted that there was an

animosity existing as the appellant succeeded in getting a job while P.W.3, father of the victim failed to succeed to get the job at K.M.C.

There is a difference between minor inconsistencies or discrepancies and material contradictions in a case. Appellant could not overcome on the issue relating to the charge which was framed wherein he was asked to answer in respect of touching of the person of the victim in an indecent manner, squeezing her breast and molesting her with sexual intent while she went to collect the utensil.

In *Attorney General v. Satish* reported in (2022) 5 SCC 545, the Hon'ble Supreme court elaborately dealt with the concept of sexual intent and applicability of the provisions of the POCSO Act including the presumptions provided under the said act, Paragraphs 38 to 40 are relevant which reads as follows:

“38. *The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be trivialised or held insignificant or peripheral so as to exclude such act from the purview of “sexual assault” under Section 7. As held by this Court in Balram Kumawat v. Union of India [Balram Kumawat v. Union of India, (2003) 7 SCC 628] , the law would have to be interpreted having regard to the subject-matter of the offence and to the object of the law it seeks to achieve. The purpose of the law cannot be to allow the offender to sneak out of the meshes of law.*

39. *It may also be pertinent to note that having regard to the seriousness of the offences under the POCSO Act, the legislature has incorporated certain statutory presumptions. Section 29 permits the Special Court to presume, when a person is prosecuted for*

committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of the Act, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. Similarly, Section 30 thereof permits the Special Court to presume for any offence under the Act which requires a culpable mental state on the part of the accused, the existence of such mental state. Of course, the accused can take a defence and prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. It may further be noted that though as per sub-section (2) of Section 30, for the purposes of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability, the Explanation to Section 30 clarifies that “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. Thus, on the conjoint reading of Sections 7, 11, 29 and 30, there remains no shadow of doubt that though as per the Explanation to Section 11, “sexual intent” would be a question of fact, the Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption under Section 30 as regards the existence of “culpable mental state” on the part of the accused.

40. *This takes the Court to the next argument of Mr Luthra that there being an ambiguity, due to lack of definition of the expressions “sexual intent”, “any other act”, “touching” and “physical contact”, used in Section 7, coupled with the presumptions under Sections 29 and 30 of the Act, the reverse burden of proof on the accused would make it difficult for him to prove his innocence and, therefore, the POCSO Act must be strictly interpreted. In the opinion of the Court, there cannot be any disagreement with the said submission of Mr Luthra. In fact it has been laid down by this Court in a catena of decisions that the penal statute enacting an offence or imposing a penalty has to be strictly construed. A beneficial reference of the decisions in Sakshi v. Union of India [Sakshi v. Union of India, (2004) 5 SCC 518 : 2004 SCC*

(Cri) 1645] , in R. Kalyani v. Janak C. Mehta [R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516 : (2009) 1 SCC (Cri) 567] and in State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (2014) 9 SCC 632 : (2014) 5 SCC (Cri) 249] be made in this regard. However, it is equally settled legal position that the clauses of a statute should be construed with reference to the context vis-à-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject-matter. The Court cannot be oblivious to the fact that the impact of traumatic sexual assault committed on children of tender age could endure during their whole life, and may also have an adverse effect on their mental state. The suffering of the victims in certain cases may be immeasurable. Therefore, considering the objects of the POCSO Act, its provisions, more particularly pertaining to the sexual assault, sexual harassment, etc. have to be construed vis-à-vis the other provisions, so as to make the objects of the Act more meaningful and effective.”

Having considered the overall circumstances appearing in evidence as well as the settled principles of law, I am of the opinion that the appellant has failed to rebut the prosecution charges under Section 8 of the POCSO Act as such no interference is called for, so far as the trial Court finding relating to the guilt of the accused is concerned. As such the order of conviction passed by the Learned Trial Court is upheld.

However, the records of the case reflect that accused/appellant is in custody since 14.02.2023 when he surrendered before the learned special Court. Taking into account the continuous period for which the accused/appellant is in custody during the trial as well as during the pendency this appeal, I am inclined to reduce the sentence of the appellant to

a period of Rigorous Imprisonment for 3 (three) years, keeping the fine amount intact.

Accordingly, CRA (SB) 126 of 2023 is disposed of with partial modification of the sentence imposed by the learned Trial Court.

Pending connected applications, if any, are also disposed of.

Department is directed to send back the Trial Court Records immediately. A copy of the judgment be forwarded to the learned Trial Court immediately for compliance regarding the directions given above.

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

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

(Tirthankar Ghosh, J.)