

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

CRA 766 Of 2013

Subrata Ghosh

-Versus-

The State of West Bengal

For the Appellant : **Mr. Bhaskar Chakraborty ,
Ms. Sulagna Sen.**

For the State : **Mr. Bidyut Kumar Ray,
Ms. Rita Dutta.**

Hearing concluded on : **26.06.2025**

Delivered on : **18.09.2025**

Prasenjit Biswas, J:-

1. This appeal is directed against the impugned judgment and order dated 23.07.2013 passed by the learned Additional Sessions Judge, Fast Track 4th Court, Barrackpore, North 24 Parganas in connection with S.T. Case No. 1(12) 2008 arising out of S.C. Case No. 20(7) of 2008 filed at the behest of the appellant/convict.

2. By passing the impugned judgment and order this appellant was convicted for the offence punishable under Section 354 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for one year along with a fine of Rs. 5,000/- and in default of payment of fine to undergo further simple imprisonment for six months. This appellant was further directed to pay Rs.3,000/- to the victim from the said fine amount as imposed by the learned Trial Court.

3. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction the present appeal is preferred on behalf of this appellant.

4. In short campus the story of the prosecution is delineated hereunder-

“The defacto complainant (father of the victim) lodged a complaint stating interalia that on 06.03.2008 when his daughter (victim), aged about 7 years was playing with other children on Panchanantala Seba Samiti, Shibpuja Yard and at that time at about 11:30 am the accused Subrata Ghosh who is a grocer allured the victim to give lozenge and called her at his grocery shop which is situated adjacent to the ground. It is further stated in the written complaint that the accused opened the upper garments of the victim and forcefully pressed her breasts. The accused caught hold the throat of the victim and threatened her to assault if she would make shout. The accused tried to open her panties, then the victim started to cry in a loud voice. Hearing her cry the people from the Puja Pandle rushed to the shop and seeing them the accused fled away from the spot.”

5. Over the complaint lodged by the defacto complainant a case being Jagaddal P.S. Case No. 81 of 2008 dated 06.03.2008 under Sections 376 (2) (f)/ 511/ 323 of IPC was registered. Thus, the criminal law was set in motion. After completion of investigation charge sheet was submitted by the prosecuting agency under Section 376 (2) (f) / 511/ 323 of the Indian Penal Code against this appellant.

6. Charge was framed by the Trial Court under Section 376 (2) (f) / 511 of the Indian Penal Code against this appellant.

7. In this case 9 witnesses were cited on behalf of the prosecution and documents were marked as exhibits 1 to 4 on its behalf. Neither any oral nor any documentary evidence was adduced on behalf of the defense.

8. Mr. Bhaskar Chakraborty, learned Advocate appearing for the appellant has said that the impugned judgment and order of conviction passed by the learned Trial Court is not sustainable under the eye of law as there are material contradictions and omissions in the evidences of the prosecution witnesses. It is said by the learned Advocate that no explanation was given by the side of the prosecution for delay in lodging the FIR. The incident took place at about 11 am in the morning but the formal FIR shows that the information was received by the police personnel on 16.:15 hours. The attention of this Court was drawn to the evidence of PW7 who is the scribe in the written complainant and stated in his evidence that he was informed over telephone in between 4-5 pm and he reached the police station at about 7:30 – 8:00 pm. Mr. Chakraborty further contended that the place of occurrence has not been

determined properly as no sketch map was prepared by the investigating officer and this was admitted by PW9 (I.O) of this case.

9. It is further assailed by the learned Advocate that PW8 who is the medical officer has stated in his evidence that except a slight echymosis around upper part of the left nipple and inner aspect of tip of the same nipple he could not found any scratch mark, nail mark, punching mark or teeth mark all over the body of the victim. It is further said by the learned Advocate that as there was previous animosity in between the parents of the defacto complainant and the accused, this appellant has been falsely arraigned with the crime. It is said by the learned Advocate that PW3 (victim) has stated in her evidence that she was playing with her friends in the ground near the Shiba Puja Temple but in cross-examination she stated that she was playing alone on the ground. Moreover, the victim did not state the name of the accused to the investigating officer, to the parents and the attending doctor. It is further said by the learned Advocate that the victim did not disclose the name of the accused before the learned Magistrate who recorded her statement under Section 164 of Cr.P.C.

10. The attention of this Court is drawn by the learned Advocate by saying that PW2, who happens to be the mother of the victim did not disclose the case history to the attending doctor of the hospital. As per submission of the learned Advocate that save and except the victim (PW3), all other witnesses cited by the side of the prosecution were not witnesses to the incident and they heard the incident from the victim (PW3). So, it is said by the learned Advocate

that the prosecution has miserably failed to bring home the charge labeled against this appellant/convict. It is said that the impugned judgment and order of conviction passed by the Trial Court does not stand under the law and it may be set aside.

11. Mr. Bidyut Kumar Ray, learned Senior Advocate appearing for the State has said that there is nothing material in the record for which the impugned judgment and order of conviction passed by the learned Trial Court may be interfered with.

12. It is contended by the learned Advocate that the victim (PW3) has narrated the entire incident which corroborates the contentions of the written complaint. It is further said that the testimony of PW3 gets corroboration from the evidence of the doctor (PW8) and the injuries as found by PW8 clearly corroborates the incident and the commission of offence made by the appellant convict. The attention of this Court is drawn to the deposition of PW1 (father of the victim) which also corroborates the contentions of the written complaint. The written complaint was marked as exhibit 1 in this case. PW2, (mother of the victim) also stated in the same line of her husband i.e. PW1. The statement of the victim made before the Magistrate is marked as exhibit 2 series in this case. It is said by the learned Advocate that the other witnesses cited by the side of the prosecution also support the case of the prosecution. So, it is said that the impugned judgment and order of conviction passed by the Trial Court may be upheld and the appeal challenging the said impugned judgment and order of conviction may be dismissed outright.

13. I have carefully reviewed and considered the arguments put forth by both parties. I have thoroughly examined all the materials and evidence submitted in this case.

14. PW3/ victim who is the star witness of the prosecution stated in her evidence that the incident took place on the day of 'Shiba Puja' in the campus of Shiba Temple at Panchanantala, Basudebpur at about 12 noon. It is said by the victim that at that point of time she was playing with her friends in the ground near Shiba Temple and at that time this appellant accused allured her for a lozenge and took her in his shop room and pressed her breasts and opened her undergarment. It is said by the victim that she cried for help but the accused threatened her for dire consequences and hearing her cry local people assembled at the place of occurrence and seeing them the accused fled away from the spot. It is said by the witness that immediate to the incident she informed the incident to her parents.

15. In cases involving child witnesses, particularly when the victim is a young child, the court must consider several key factors before determining the weight and reliability of the testimony provided. It is important to recognize that children, especially those in early stages of education (such as a student of Class III), may not possess the cognitive or emotional maturity to provide detailed and intricate accounts of traumatic events. Therefore, the expectations placed upon them in terms of offering an elaborate description of an incident should be tempered with a level of understanding and sensitivity to their age and developmental stage.

16. It is crucial to note that the testimony given by the child victim, despite the limitations expected at her age, should not be dismissed outright simply due to her inability to provide an "elaborate" description of the incident. What the court needs to assess is whether the child's statement, when considered in light of the overall circumstances, is consistent, clear, and truthful within the boundaries of what a child of her age can reasonably be expected to convey. Her ability to convey the core details of the event—such as who was involved, the nature of the act, and its impact on her—can still carry significant weight, even if she is unable to offer a comprehensive or highly detailed account of the events. Courts often prioritize the substance of what is being said over the form in such cases, recognizing the limitations imposed by the child's age.

17. PW1, Dulal Dey (father of the victim) has deposed in supporting the contentions made in the written complaint. It is said by this witness that the incident took place at Panchanantala in the playground of Basudebpur and at that point of time his daughter (victim) was playing in the playground. It is further said by this witness that at that time this appellant allured his daughter in lieu of lozenge and called her in shop. It is further said by this PW1 that after taking the victim to his shop, this appellant pressed the breasts of the victim and tried to undress her and threatened his daughter with a dire consequence.

18. PW2 Madhabi Dey (mother of the victim) also stated in the same line of PW1. It is said by this witness that on the relevant date their daughter was playing in the field of 'Seba Samity' at Panchanantala and at that time this

appellant allured her daughter in lieu of lozenge and took her in shop room and after that this accused pressed the breasts of her daughter severely. The entire fact was narrated by the victim before this witness. It is further said that this appellant accused tried to undress the victim with a view to ravish her and threatened the victim with dire consequences. There are some minor variations in the evidences of PW1, PW2 and PW3 in the narration of events which is quite natural.

19. PW4, Sukumar Santra also echoed the same voice of PW1, PW2 and PW3 and stated in his evidence that the accused took the victim to his shop room after allurements of giving her a lagnence and pressed her breasts and put off her under garments. PW5 Gouranga Malick who is an adjacent neighbor also stated about the involvement of the accused with the alleged offence. Same as to other witnesses this PW5 stated that he heard the incident that the victim stated to her mother that the accused allured the victim and took her into his shop and pressed her breasts and got bite blow.

20. PW6 Sanatan Santra also deposed involving the accused in commission of the crime.

21. It has been brought to the notice of this Court by the learned Advocate appearing for the accused that the testimony of the victim cannot be safely relied upon inasmuch as there are certain variations and contradictions in her statement. According to the defence, such discrepancies are sufficient to cast a serious doubt on the veracity of the prosecution case. However, this Court is unable to accept such contention in its entirety. It is a settled principle of law

that in cases of this nature, particularly when the victim is recounting a traumatic incident after the lapse of some time, minor inconsistencies or variations in her narration are not only natural but also expected. The memory of a witness, especially of one who has undergone a distressing and shocking experience, cannot be expected to be a photographic or mechanical reproduction of events. Slight discrepancies, therefore, do not demolish the core of the prosecution case if the overall testimony of the victim inspires confidence.

22. In the present case, the evidence of the victim, when read as a whole, appears to be cogent, reliable, and trustworthy. The material particulars of the occurrence remain consistent and are duly corroborated by the supporting witnesses and other circumstances brought on record. It is well recognized that minor contradictions, which do not go to the root of the case, cannot be magnified to discredit the substantive evidence of a victim of an offence of such a serious nature. The Court must be cautious not to discard otherwise credible testimony merely because of trivial or peripheral inconsistencies. Therefore, the contention raised on behalf of the accused that the victim's evidence is unreliable on account of such minor contradictions does not have merit.

23. This Court is not unmindful that the testimony of the victim stands on a high pedestal and required due weightage but when the victim is a child of tender age such as in the present case where the girl was only about 7 years old, the Court is duty bound to approach her testimony with sensitivity and not to discard it merely on account of minor discrepancy or triable contradictions.

24. The testimony of this witness has clearly established that the accused, taking advantage of her minority and innocence subjected her to acts which are indecent, objectionable and squarely fell within the ambit of outreaching her modesty. The victim herself (PW3) and her parents i.e. PW1 and PW2 and other witnesses corroborate with each other about the commission of the crime by the appellant. Although, at the time of incident the victim was aged about 7 years but her evidence was found consistent, natural and free from material contradictions. I have already said that the evidence of the victim stood corroborated by PW1 and other supporting witnesses. Immediately to the incident the victim (PW3) narrated the entire incident to her mother and the father of the victim (PW1) lodged complain which is without embellishment or deliberation. In this case the testimony of the victim (PW3) is wholly reliable. Her evidence is corroborated by surrounding circumstances and immediate complain which rules out fabrication. The conduct of this accused in targeting the minor victim is indicative of his culpable intention and the defence has failed out to point any material contradiction or motive of his false implication.

25. In the present case, the testimony of the child victim unmistakably points to the fact that the accused had outraged her modesty. Her version of events is clear, consistent, and trustworthy, and it finds substantial corroboration in the testimonies of her family members as well as other supporting circumstances brought on record. The minor inconsistencies highlighted by the defence are trivial in nature and do not go to the root of the matter. They do not shake the core of the prosecution's case or cast any

serious doubt on the veracity of the allegations. Such minor contradictions are natural and expected, especially in cases involving child witnesses and emotionally charged incidents, and they do not detract from the overall credibility of the prosecution's narrative. As for the alleged lapses in the investigation—such as the delay in recording statements or the failure to seize certain items—they are procedural in nature and do not undermine the material evidence establishing the culpability of the accused. It is well settled that deficiencies in investigation, unless they cause serious prejudice to the accused, cannot be a ground to reject otherwise cogent and convincing evidence. In this case, the evidence on record clearly points to the guilt of the accused, and the procedural shortcomings, if any, do not diminish the reliability of the prosecution's case.

26. Section 354 of the Indian Penal Code makes it an offence to assault or use criminal force on a woman intending to outrage or knowing it to be likely that such act would outrage her modesty. Even a minor girl is culpable of possessing modesty which can be outraged, and the test is whether the act of the accused could be perceived as culpable of shocking the sense of decency of a woman. The deposition of the victim who was aged about 7 years at the time of offence was found consistent and natural and is free from material contradictions which is supported by other witnesses. It is trite law that even a female child possesses modesty which the law seeks to protect. The act of indecent assault on a 7 years old girl child, therefore, cannot be trivialized and must be dealt with sternly. So, the act of the accused cannot be viewed as

nothing other than an intentional and deliberate attempt to outrage her modesty. The victim's consistent testimony, supported by other corroborative evidence and the lodging of FIR by the defacto complainant (father of the victim) leaves no room for doubt regarding the commission of the offence. The defence failed to discredit the testimony of the victim or to put forth any cogent explanation as to why such a serious allegation would be falsely labeled against the accused. It is also the trite law that when the victim of tender age, the gravity of the act is aggravated and a minor girl's vulnerability is exploited when she is subjected to such indecent assault, and the law mandates stern action to deter such acts.

27. In view of above facts and discussions made above I am of the opinion that the conviction of the accused under Section 354 IPC stands fully justified. The Trial Court has rightly appreciated the evidence and found the accused guilty for commission of the offence for outraging the modesty of a girl who was aged about 7 years at the relevant point of time and I find there is no infirmity in the impugned judgment and order of conviction for which interference is warranted.

28. Accordingly, the impugned judgment and order of conviction passed by the learned Trial Court under Section 354 of the Indian Penal Code is affirmed.

29. The facts involved in this case indicate that the incident was happened more than 16 years ago. Now the question arises for consideration as to whether it would be appropriate to direct the appellant to undergo the rest of the sentence. In this case the accused was arrested and brought before the

Trial Court on 07.03.2008 and he was granted bail by the Trial Court on 08.04.2008. There is no over emphasizing the fact that speedy trial which is the essence of the justice has been lost. It appears from the facts of the case that the incident was happened more than a decade ago and the case is pending since 2008 and the appellant is presently aged about 51 years. This appellant has been on bail throughout the case and did not indulge in any criminal activities nor breach any advantage of the bail granted to him. This appellant was found guilty of an offence after a protracted trial process and as such he is entitled to a lenient sentence on the ground of delay.

30. It is beyond cavil that the concept of a speedy trial is not an aspirational ideal but a binding constitutional guarantee. The right to a speedy trial is implicit in Article 21. No procedure for depriving a person of his liberty can be said to be “reasonable, fair and just” unless it ensures a reasonably expeditious conclusion of proceedings. Any procedure that permits indefinite or inordinate delays would, therefore, fall foul of Article 21. In the present case, the essence of justice, which lies in timely adjudication, has been lost. The delay in final resolution has rendered the very object of criminal jurisprudence nugatory. The fundamental principle is that punishment must follow guilt within a reasonable time so as to serve both deterrent and reformative purposes. If incarceration is to be ordered after an extraordinary lapse of decades, the object of punishment stands frustrated and it degenerates into retribution rather than justice.

31. It is profitable to quote the observation of the Hon'ble Apex Court rendered in case of **K. Pounammal vs. State Represented by Inspector of Police**¹ interalia that-

"The aspects in the present case as highlighted above that the incident had occurred more than 22 years ago and that the age of the widow appellant is 75 years who stays alone, the Court finds it appropriate that she may not be made to undergo the imprisonment again. In the totality of the facts and circumstances, the imprisonment already undergone by her is treated to be adequate sentence.

The sentence awarded to the appellant is accordingly reduced to the actual undergone. At the same time the imposition of fine is required to be increased. The appellant shall be liable to pay fine of Rs. 25,000/- over and above originally imposed. The amount of fine shall be paid on or before 10th September, 2025."

32. In that case Hon'ble Apex Court upheld conviction under the Prevention of Corruption Act for an offence allegedly committed in 2002 but reduced the custodial sentence to the period already undergone (31 days) in view of the long delay, advanced age of the appellant and other mitigating circumstances, while enhancing the fine.

33. For the aforesaid reasons as referred above which are in my opinion the special reasons and accordingly I alter the jail sentence imposed on the

¹ **2025 SCC OnLine SC 1784**

appellant to what he has already undergone. In other words, this Court altered the jail sentence of the appellant and award him what is already undergone by him and at the same time enhance the fine from Rs. 5,000/- to 25,000/- to meet the ends of justice.

34. The appellant is therefore now not required to undergo any more jail sentence however in case if he fails to deposit a fine amount of Rs. 20,000/- after adjusting the sum of Rs. 5,000/-, if already paid by the appellant he will have to undergo simple imprisonment for a period of 1 month. If the appellant deposit the fine amount of Rs. 25,000/- within three months from today he will not be required to undergo any default jail sentence. If he has already paid Rs. 5,000/- then he will only deposit Rs. 20,000/-. Fine amount if paid Rs. 20,000/- to be paid to the victim.

35. In view of aforesaid discussion, the instant appeal succeeds and is **partly allowed.**

36. The impugned judgment passed by the learned Trial Court dated 23.07.2013 is hereby modified to the extent indicated above.

37. Let a copy of this order along with TCR be sent down to the learned Trial Court immediately.

38. Urgent Photostat certified copy of this order, if applied for be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)