

**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) 387 of 2024

Saidul Sk.

Vs.

The State of West Bengal & Anr.

For the Appellant : Mr. S. Bhattacharyya, Advocate

Ms. Sima Ghosh, Advocate

Ms. Ankhi Kayal, Advocate

For the State : Ms. Anasuya Sinha, Ld. APP

Hearing & Judgment on : June 12, 2025

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment of conviction dated January 6, 2016 and the order of sentence dated January 7, 2016 passed by the learned Special Court Cum Additional Sessions Judge, Second Court, Suri, Birbhum in Special Case No.41 of 2015 arising out of Special Trial No.2(8) of 2015.
2. By the impugned judgment of conviction, the appellant before us was convicted of an offence punishable under Section 5(1) of the Protection of Children from Sexual Offence Act, 2012.

3. By the impugned order, the appellant before us was sentenced to suffer rigorous imprisonment for life. Other accuseds, in the trial, were imposed different punishments by the learned Trial Judge. Such convicts preferred two other appeals being CRA 162 of 2016 and CRA 149 of 2016
4. Appeals of the other convicts being CRA 162 of 2016 and CRA 149 of 2016 were disposed of by the coordinate Bench by a judgment and order dated September 13, 2023.
5. By such judgment and order, the coordinate Bench held that, the appellant before us was guilty of penetrative Sexual assault upon the victim but, the ingredients of aggravated sexual assault as defined in Section 5(1) of the POCSO Act were not established.
6. This finding of fact remains unassailed at the behest of the State. State is, therefore, bound by the judgment and order dated September 13, 2023 passed by the coordinate Bench.
7. By the judgment and order dated September 13, 2023, the coordinate Bench consequently reduced the punishment imposed upon the appellants in CRA 162 of 2016 and CRA 149 of 2016.
8. Our attention is not drawn to any material on record to take a view which is contrary to the view expressed by the coordinate Bench on September 13, 2023 so far as the involvement of the appellant before us is concerned, in the charge framed as against the appellant is concerned.

9. The victim in her depositions stated that, the appellant raped her. However, she did not state that, there was repeated penetrative sexual assault on her by the appellant.
10. In such circumstances, the appellant before us cannot be held guilty of aggravated sexual assault but must be held guilty under Section 4 of the Act of 2012.
11. Sentence of the appellant is, therefore, required to be modified accordingly. Moreso, sentence of other convicts were modified by the coordinate Bench after returning such finding on September 13, 2023. Same facility should be extended to the appellant herein.
12. Court is informed that, the appellant before us undergone an incarceration for a period in excess of 9 years. Coordinate Bench reduced the sentence of the abettors to the crime to the period already undergone.
13. Since, we find that the appellant before us to be guilty of an offence under Section 4 of the Act of 2012 which prescribes a period of punishment of minimum of 7 years which may extend to life imprisonment and also a fine, we deem it appropriate in the facts and circumstances of the present case, to impose a sentence for the period of custody already undergone. Coordinate Bench imposed a fine of Rs.5,000/- on the abettors. Since the appellant before us is the principal accused, we impose a fine of Rs.10,000/-(Rupees Ten

Thousand) only on the appellant, in default, to suffer simple imprisonment for 6(six) months more.

14. With the aforesaid modification, the appeal being **CRA (DB) 387 of 2024** is **disposed of**.
15. Trial Court records along with a copy of this judgment be sent to the jurisdictional Court at once for necessary action.

(Debangsu Basak, J.)

16. I agree.

(AD)

(Md. Shabbar Rashidi, J.)