

IN THE HIGH COURT OF CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB) 23 of 2025

With

CRAN 1 of 2025

Satish Barman

Vs.

The State of West Bengal & Anr.

For the Appellant : Mr. Hillol Saha Podder, Adv.

For the State : Mr. Niloy Chakraborty, Ld. A.P.P.
Mr. Sagnik Sankar Sikdar, Adv.

Heard on : 19.11.2025

Judgment on : 27.11.2025

MD. SHABBAR RASHIDI, J.:-

1. The appeal is in assailable judgment of conviction and order of sentence dated March 5, 2025 passed by learned 2nd Additional Sessions Judge-cum-Special Court (under POCSO Act), Jalpaiguri in connection with Sessions Case (POCSO) No. 87 of

2024 arising out of Bhaktinagar Police Station Case No. 527 of 2024 dated June 12, 2024 under Section 6 of the POCSO Act.

2. By the impugned judgment of conviction, the appellant was convicted for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO' Act). By the impugned order of sentence, the appellant was sentenced to suffer rigorous imprisonment for 20 years and a fine of Rs. 20,000/-. In default of payment of fine, the appellant was directed to undergo simple imprisonment for a further period of 2 months.

3. Learned advocate for the appellant submitted that the appellant has been falsely implicated in this case owing to property disputes between himself and the family members of the victim. Learned advocate for the appellant refers to the evidence of the victim (PW 1) and her mother (PW 2).

4. Learned advocate for the appellant also submits that there are material contradictions in the statement of PW 1 vis-a-vis her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). It is also submitted that the evidence of the victim is inconsistent insofar as the date, time and manner of the incident is concerned.

5. Learned advocate for the appellant also submitted that the medical evidence adduced on behalf of the prosecution does not support the story of sexual assault upon the victim. According to him, the injuries found on the victim were opined by PW 3 that such injury may be caused due to many reasons like cycling, climbing, dancing and gymnastics. Age of injury was not determined by the doctor. Learned advocate for the appellant submitted that there was inordinate delay in lodging the First Information Report (for short, 'F.I.R.') which raises a reasonable doubt with regard to the veracity of the prosecution's case. Learned advocate for the appellant also submits that in fact, prosecution has not been able to substantiate any injury in support of the case of the prosecution with regard to penetrative sexual assault upon the victim.

6. On the other hand, learned Additional Public Prosecutor for the State submits that non-disclosure of the exact date of incident by the victim is not fatal. Lack of specific date is minor inconsistency which does not destroy the case of the prosecution. In support of his contention learned Additional Public Prosecutor relied upon **(1996) 2 SCC 384 (The State of Punjab vs. Gurmit Singh & Ors.)**. Learned Additional Public Prosecutor further submitted that in Indian society rape is considered to be a social

stigma and for such reason a victim family takes time in deciding to report to the police. Delay in lodging the F.I.R. does not essentially result in the destruction of prosecution's case.

7. Learned Additional Public Prosecutor also submitted that variation in describing the exact location of the place of occurrence is considered as minor discrepancy which does not vitiate the prosecution's case.

8. It is also submitted on behalf of the learned Additional Public Prosecutor that contradictions in the statement of victim vis-a-vis her statement recorded under Section 164 of the Cr.P.C. is not fatal unless the contradiction fundamentally changes the core fact of assault. Minor contradictions cannot be basis for an acquittal. Learned Additional Public Prosecutor also submitted that the prosecution has been able to prove the fundamental facts with regard to the alleged incident. In terms of Section 29 of the POCSO Act, it was the appellant who was under obligation to disprove the legal presumption.

9. It is submitted by learned Additional Public Prosecutor that the defence raised by the appellant was highly technical which does not vitiate the conviction based on the facts and circumstances of the case.

10. Relying upon **(2005) 13 SCC 766 (State of H.P. vs. Asha Ram)**, learned Additional Public Prosecutor submitted that in a case of sexual offence, evidence of prosecutrix can be considered to be the sole basis of conviction of the accused.

11. The mother of the victim lodged a written complaint with the police on June 12, 2024. It was alleged that 10 days prior to the lodging of the written complaint, the convict, who was her neighbour, taking advantage of her absence, took away her minor daughter, who was then 12 years old, forcibly to the backyard by the house of the de-facto complainant. It was also alleged that the convict engaged in a physical relationship with the victim and touched private parts of the victim with his hands. The victim informed the matter to the de-facto complainant. Subsequently, the de-facto complainant lodged the written complaint.

12. On the basis of such written complaint, Bhaktinagar Police Station Case No. 527 of 2024 dated June 12, 2024 under Section 6 of the POCSO Act was started against the appellant. Police took up investigation and on completion of investigation submitted charge-sheet. Accordingly, on the basis of materials in the case diary, charge under Section 6 of the POCSO Act was framed against the convict. The appellant pleaded to be not guilty of the charge and claimed to be tried.

13. In order to substantiate the charge, prosecution examined 9 witnesses in all. In addition, prosecution also relied upon certain documentary as well as material evidence.

14. The victim deposed as PW 1. She stated that the house of the appellant was intervened by two houses of her house. She identified the appellant in Court. She further stated that her father was a mason whereas her mother worked as a day labour. Her parents used to go out for their respective jobs at 10:00 a.m. everyday and returned by 05:00 p.m. She had a sister aged about 8 years and a brother aged about 4 years. Her grandmother also resided with her.

15. PW 1 also stated that in the month of June 20, 2024 at about 2:00 p.m. her sister and brother were playing outside, her grandmother was in the field grazing cattle and she was alone in her room. At that time, appellant came to her house and called her. He reported to PW 1 that her goat was moving in the locality beside a lane. PW 1 went in search of the goat. When she was returning home, appellant pulled her hand and forcibly took her inside a narrow lane. He tied her hands with a *gamcha* and pressed cloth in her mouth. Thereafter, the appellant removed the wearing apparels of PW 1 and inserted his male genital organ into her genital organ. PW 1 suffered pain due to the acts of the

appellant. PW 1 was also threatened that her brother would be killed if she disclosed the incident to anyone. Due to such threats, she could not divulge the incident to her family members. PW 1 further stated that on another day in the evening, PW 1 went to the roof of adjacent building with her brother and other friends. When they were coming down through the stairs with her brother, the appellant suddenly pressed her breasts. She further stated that after 10 days when she was felt severe pain in her private parts, she was compelled to divulge the incident to her mother. Thereafter, her mother lodged a complaint against the appellant. PW 1 stated that she was interrogated with the police in connection with the incident. She was also taken to North Bengal Medical College and Hospital (for short, 'NBMCH') for medical examination. She proved her signature on the consent note as well as medical report. She also recorded statement before learned Magistrate under Section 164 of the Cr.P.C. She proved her signature on such statement. PW 1 was also cross-examined at length. She stood by her statement in the examination in chief in such cross-examination.

16. Mother of the victim deposed as PW 2. She stated that she lodged the complaint against the appellant. She stated that

the house of the appellant was adjacent to her house intervened by two houses. She identified the appellant in Court.

17. PW 2 further stated in her deposition that at the relevant time she saw her daughter mentally depressed. When she asked the victim about her mental depression, she divulged that when she was alone in the room, the accused called her on the pretext to see her goat and took the victim on the backside of the house of PW 2. She also stated that the appellant tied the hands of the victim with a *gamcha* and put cloth into her mouth. She also reported that the appellant removed the pant of the victim and also his own *gamcha* and inserted his male genital organ into the female organ of the victim. The incident took place 10-12 days prior to when the victim divulged the incident to PW 2. PW 2 also stated that she informed the incident to her husband and neighbours. Thereafter, a written complaint was drafted in a computer shop as per her dictation which was read over and explained to her in Bengali. Thereafter, PW 2 put her signature on the written complaint. She proved the written complaint (Exhibit – 4) and her signature thereon (Exhibit – 4/1). She further stated that the victim was taken to NBMCH for medical examination of the victim. PW 2 signed on the consent note which she proved. The victim was also taken to Court for recording her statement

before the Magistrate. She further stated that the police seized the birth certificate of the victim under a seizure list dated June 12, 2024. She signed on such seizure list. She also proved the birth certificate of the victim.

18. In her cross-examination PW 2 stated that she did not disclose in the written complaint that the victim had reported to her that her hands were tied up by *gamcha* and the appellant put a cloth into her mouth. She also stated in her cross-examination that there was a dispute between herself and the appellant regarding usage of drain long ago.

19. A medical officer was examined as PW 3. He stated that on June 12, 2024 he examined the victim and prepared a report to that effect. He proved the medical examination report (Exhibit – 2/1). He also stated that he gave opinion to the effect that from the clinical examination and findings it was evident that penetration of the vagina of the victim had occurred. In his cross-examination PW 3 stated that apart from sexual assault, injury on 7'O clock position might be caused due to cycling, climbing, dancing and gymnastics.

20. Sister of the de-facto complainant deposed as PW 4. She identified the appellant in Court. PW 4 further stated that on the day of lodging the complaint, she came to know from her elder

sister that on the date of incident, her sister and husband of such sister were out of their house for their respective jobs and the other children were playing outside. The victim was alone in the house. On that day, the appellant entered the house and took the victim to the backside of her house and committed sexual intercourse upon her. PW 4 also stated she also enquired about the incident from the victim who narrated the incident to her. PW 4 also stated that she came to know that accused committed rape upon the victim about 12 days prior to lodging of the complaint. She was interrogated by police. The victim was aged 12 years at the time of incident. In her cross-examination, PW 4 stated that she came to know about the incident at the police station from PW 2. She also stated that when the victim girl narrated the incident, her mother and aunt (*boroma*) were also present.

21. Aunt (elder mother) of the victim girl was examined as PW 5. She stated that her house is situated adjacent to that of the victim. She also stated that about 7 months ago (from February 5, 2025) the victim narrated to her that 12 days prior to such narration, appellant took the victim to the backside of her house and committed rape upon her. She further stated that the appellant is her neighbour and was a regular visitor to her house. He used to play with the children of PW 2 often. PW 5 identified

the victim in Court. She was interrogated by police. PW 5 was cross-examined on behalf of the appellant but nothing favourable appears to have been elucidated in such cross-examination.

22. Another medical officer of NBMCH was examined as PW 6. He stated that on June 24, 2024 he examined the appellant and prepared a report upon such examination in his pen and signature. PW 6 proved such report (Exhibit – 7). It was also signed by the appellant.

23. A neighbour of the victim deposed as PW 7. She stated that about 7 months ago at about 12:30-1:00 p.m., when she was returning home with her son from his school, she saw the accused coming out from a newly constructed house situated adjacent to the house of PW 2. She also saw the victim coming out from the house crying. PW 7 further stated that after 10-12 days, the victim divulged to her mother that the appellant committed rape upon her in a vacant place situated beside her house. In turn, the victim and PW 2 informed the incident to PW 7 and other neighbours. Thereafter, a complaint was lodged by PW 2. PW 7 was interrogated by police in connection with such incident. She identified the appellant in Court.

24. Another neighbour of the de-facto complainant deposed as PW 8. He stated that he identified the appellant in Court. PW 8

stated that about 6-7 months ago, one day he found that police had come to the house of PW 2. PW 8 was also called by police at the house of PW 2. When he went there, he came to know from PW 2 that the appellant had touched body of the victim and also committed rape upon her. He was, however, not interrogated by police.

25. The investigating officer of the case was examined as PW 9. He stated that on June 12, 2024 the Officer-in-Charge, S.I. Prasenjit Dey Sarkar received a written complaint and forwarded the same to Bhaktinagar Police Station for registering a case. He proved the endorsement of the officer-in-charge. On the basis of the forwarding of the officer-in-charge, the inspector-in-charge, Bhaktinagar Police Station registered Bhaktinagar Police Station Case No. 527 of 2024 dated June 12, 2024. PW 9 proved the endorsement of the inspector-in-charge as well as the formal F.I.R. The case was endorsed to PW 9 for investigation. In his deposition, PW 9 has described various steps taken by him in the investigation of the case. He examined the complainant as well as other witnesses and recorded their statement, took steps for medical examination of the victim and also for recording her statement under Section 164 of the Cr.P.C. He seized the birth certificate of the victim. He also conducted a raid to secure the

arrest of the appellant. He visited the place of occurrence and prepared draft sketch map with index of the place of occurrence. Upon conclusion of investigation, he submitted charge-sheet against the appellant under Section 6 of the POCSO Act.

26. Upon conclusion of the evidence on behalf of the prosecution, the appellant was examined under Section 313 of the Cr.P.C. In such examination, the appellant pleaded innocence and claimed allegation to be false. He, however, declined to adduce any defence witness.

27. The convict, according to the case of the prosecution, is alleged to have committed rape upon the victim. According to the case set out in the written complaint, the appellant committed rape upon the victim by taking advantage of her being alone in the house. The victim deposed in her evidence that at the relevant point of time her parents were out for their jobs, her brother and sister were playing outside and her grandmother had gone to field for grazing the cattle. She was alone in the house. At that time, the appellant came to the house and told her that her goats were moving stray in the area. On such reporting by the appellant, when the victim went out to look for her goats, the appellant pulled her in a narrow lane and committed rape upon her. The victim also made a statement under Section 164 of the Cr.P.C. In

such statement also the victim narrated that the appellant came to her house and reported that three of her goats had entered a lane situated beside her house. When she went there, she found no goats. While she was returning, the appellant pressed her hands and mouth by a piece of cloth. The appellant removed her wearing apparels and committed rape upon her.

28. Mother of the victim was admittedly not in the house at the relevant point of time. She was informed about the incident by the victim. In her deposition, the mother of the victim (PW 2) narrated the incident exactly that was narrated by the victim (PW 1). She had stated that the victim was called by the appellant from her house, when she was alone, on the pretext of looking for her goats. Thereafter, on the backside of the house of PW 1, the appellant caught the appellant, tied her hands with *gamcha*, put cloth into her mouth. Thereafter, the appellant committed rape upon her.

29. PW 1, the victim stated in her deposition that when she divulged the incident to her mother, her *jethi* (elder aunt) was also present there. The said *jethi* deposed as PW 5. She corroborated the statement of PW 1 that the appellant took her to backside of their house and committed rape upon her. PW 7 has also corroborated the statement of PW 1 that the victim divulged before

her mother that the appellant committed rape upon her in a vacant place situated beside her house. She was informed about the incident by the mother of the victim. PW 2 in her deposition has stated that after coming to know about the incident from her daughter, she first informed her husband and, thereafter, other neighbours.

30. Therefore, from the evidence on record adduced on behalf of the prosecution it appears that it is the consistent case of the prosecution that at the relevant time, the victim was alone in her house. She was called by the appellant on the pretext that some of her goats were roaming in the locality. When the victim came out of her house in search of the goats and entered a narrow lane beside her house, the appellant caught her, tied her hands and put cloth into her mouth. It is the consistent statement of the prosecution witnesses that after doing so, the appellant committed penetrative sexual assault as against the victim. The appellant made out a case that there are material contradictions in the statements of prosecution witnesses which tell upon the veracity of the prosecution case. While there may be some minor discrepancies at the time of cross-examination of the prosecution witnesses, it is a consistent case which has come out from the evidence on behalf of the prosecution that the victim was called by

the appellant and that the appellant committed penetrative sexual assault upon the victim in a narrow lane situated beside the house of the victim. It is also the consistent case of the prosecution that while doing so, the appellant tied the hands of the victim and put cloth into her mouth.

31. It is nowhere in dispute that at the relevant time, the victim was aged about 12 years. Initially, the victim did not divulge the incident to her parents. It has been alleged that she was threatened by the appellant. For such reason, she did not disclose the incident immediately. The victim, after disclosing the incident to her mother and after lodging of the complaint with the police, was medically examined by PW 3. PW 3, after such examination of the victim opined that, from the clinical examinations and findings it was evident that penetration of the vagina of the victim had occurred. In his report (Exhibit – 2) PW 3 also noted several injuries which is prescribed below:-

- “1. Scar mark 1 cm x 0.5 cm over lateral end of left eyebrow;*
- 2. Pin head size black mole over right forearm 1½” below elbow point”*

32. At the time of medical examination of the victim, PW 3 noted the history of assault as narrated by the patient party

where the appellant was named as the assailant. PW 3 also found healed tearing of hymen at 7'O clock position.

33. Such injuries which were noted and described by PW 3 in his medical examination report not only corroborates the penetrative sexual assault upon the victim who was then only 12 years of age, but at the same time also corroborates the power used by the assailant in the commission of penetrative sexual assault. Such injuries noted by PW 3 go side by side with the statement of the victim (PW 1) and other prosecution witnesses to the effect that the hands of the victim were tied and the appellant put cloth into the mouth of the victim before the commission of the offence. The statement of PW 1 stands corroborated not only by the evidence of PW 2, PW 5 and PW 7 but also gets overwhelmingly corroborated by the medical evidence i.e. PW 3 and Exhibit – 2. The evidence of another medical officer (PW 6) together with his report (Exhibit – 7) goes to establish that the appellant was physically capable of committing sexual intercourse.

34. Therefore, on the basis of the evidence of PW 1 duly corroborated by that of PW 2, PW5, PW 7 and PW 8, it is convincingly established that it was the appellant who called the victim from her house, took her into a narrow lane beside her

house, tied her hands and mouth and ultimately committed penetrative sexual assault upon her. Such case of the prosecution is further corroborated by the medical evidence (PW 3) coupled with Exhibit – 2 that the victim was sexually assaulted. Her hymen was found ruptured at the age of just 12 years.

35. In **Gurmit Singh & Ors.** (supra), the Hon'ble Supreme Court laid down the following:-

“21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault — it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it

must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

36. A case has been made out on behalf of the appellant that he has been falsely implicated in this case out of grudge and old enmity. For such reason, the appellant relied upon the cross-examination of PW 2 where she stated that long ago a dispute had occurred between herself and the appellant regarding the usage of drain. Similarly, PW 1 in her cross-examination stated that she usually used the roads situated in front of the house of the appellant who claimed his ownership over the road. He, however, never objected to using of the road by PW 1. PW 2 has stated that she had some dispute with the appellant long ago. However, the appellant has not brought forth anything to establish that such dispute between him and PW 2 was of such a degree that he would be implicated in a false case. No evidence whatsoever has been produced on behalf of the appellant to establish such dispute and as to how old the dispute was. In view of the aforesaid

facts and circumstances, we could not persuade ourselves to believe, even remotely, that the appellant has been falsely implicated in this case by the de-facto complainant or her family or relatives out of grudge over some pre-existing disputes.

37. So far as the defence case as to the contradictions in the prosecution witnesses is concerned, we have noted hereinbefore that the evidence of the prosecution is consistent with regard to the date, time, place and the manner of commission thereof. The defence has not been able to point out any major contradiction which imprints any dent on the evidence of the prosecution with reference to the place of occurrence, date and time of occurrence and the manner of incident in which it was executed.

38. So far as the delay in lodging the F.I.R. is concerned, it is evident that the written complaint was lodged by PW 2 after 10-12 days of the incident. PW 1 (the victim) herself stated in her deposition that she did not disclose the incident to her mother out of threat by the appellant. She disclosed it after 10-12 days of the incident. In fact, she, under the evidence on record, goes to show when she felt pain in her private parts, she disclosed the incident to her mother as well as PW 5. It is not uncommon in our society, irrespective of threat allegedly meted out by the appellant, an incident of rape upon a victim of 12 years is not reported until the

victim finds herself in a position which makes her to disclose such incident. In the case at hand, admittedly the incident was reported by the victim after 10-12 days of the incident when she felt unbearable pain her private parts and was forced to disclose the incident. After knowing of the incident, the mother of the victim (PW 2) instantly reported the matter to the father of the victim and other neighbours and ultimately lodged an F.I.R. In such circumstances, we are of the opinion that the delay in lodging the F.I.R., if any, does not tell upon the veracity of the prosecution case and cannot vitiate the case.

39. In **Asha Ram** (supra), the Hon'ble Supreme Court held that,

"19. In State of Punjab v. Gurmit Singh this Court pointed out at SCC p. 403, para 21:

Rape is not merely a physical assault — it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence

of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

(emphasis in original)”

40. The materials on record go to show that the charge against the appellant was framed under Section 6 of the POCSO Act which relates to punishment for aggravated penetrative sexual assault. However, upon conclusion of trial, learned trial Court proceeded to convict the appellant for the offence of penetrative sexual assault under Section 4 of the POCSO Act, though, no charges were framed against the appellant under Section 4 of the POCSO Act. For the offence of aggravated penetrative sexual assault, Section 6 of the POCSO Act prescribes a punishment of not less than 20 years which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine. The offence of penetrative sexual assault under Section 4(1) of the POCSO Act

prescribes a punishment of imprisonment of either description for a term which shall not be less than 10 years but which may extend to imprisonment for life and shall also be liable to fine. Section 4(2) of the POCSO Act provides a punishment akin to that for the offence of aggravated penetrative sexual assault punishable under Section 6 of the POCSO Act. In essence, Section 4 of the POCSO Act is a minor offence as against the offence punishable under Section 6 of the POCSO Act for the purpose of Section 222 of the Cr.P.C. In that view of the facts, though charge against the appellant was framed under Section 6 of the POCSO Act, he was convicted under Section 4 of the POCSO Act, though no charge under Section 4 of the POCSO Act was framed against him. Such conviction and sentence cannot be said to be bad in law in view of the provisions contained under Section 222(2) of the Cr.P.C.

41. On the basis of the discussion made hereinbefore, we find no reason to interfere with the impugned judgment and order. The same is hereby affirmed.

42. Consequently, the appeal being **CRA (DB) 23 of 2025** is dismissed. Connected application being CRAN 1 of 2025 is disposed of.

43. Period of detention suffered by appellant during investigation, enquiry or trial shall be set off against the substantive sentence imposed on him in terms of Section 428 of the Cr.P.C.

44. Urgent Photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

45. I agree.

[DEBANGSU BASAK, J.]