

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB) 156 of 2023

With

CRAN 2 of 2025

Pankaj Kumar

Vs.

The State of West Bengal & Anr.

With

CRA (DB) 136 of 2023

Balak Ram Yadav

Vs.

The State of West Bengal & Anr.

With

CRA (DB) 62 of 2023

Manjrish alias Monjrish Tripathi

Vs.

The State of West Bengal & Anr.

For the Amicus Curiae

In *CRA(DB) 136 of 2023* and
CRA(DB) 62 of 2023

:

Mr. Arpan Saha, Adv.

For the Appellant

In *CRA (DB) 136 of 2023*

:

Mr. Arnab Chatterjee, Adv.
Mr. Raushan Kumar Ray, Adv.
Mr. Avik Ghosh, Adv.
Mr. Tarun Kumar Poddar, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.
Ms. Amita Gaur, Sr. Govt. Adv.
Mr. Sourath Nandy, Adv.

Hearing concluded on : 03.02.2026

Judgment on : 12.03.2026

MD. SHABBAR RASHIDI, J.:-

1. The three appeals are taken up together for consideration as these have emanated out of a common impugned judgment of conviction dated February 24, 2023 and order sentence dated February 27, 2023 passed by learned Judge, Special (POCSO) Court, Howrah, in Special T.R. No 18 of 2016 arising out of Howrah GRPS Case No. 187 of 2015.

2. By the impugned judgment, the appellants Balak Ram Yadav and Pankaj Kumar were convicted of the offence punishable under Section 6 of the Prevention of Children from Sexual Offences Act, 2012 whereas, the appellant Manjrish @ Monjrish Tripathi was convicted of the offence punishable under Section 6/17 of the said Act. By the impugned order, the appellant Manjrish @ Monjrish Tripathi was sentenced to suffer Rigorous Imprisonment of 10 years together with a fine of ₹50,000/- for the offence under Section 6/17 of the Act of 2012. In default of payment of fine, the said appellant was directed to undergo Rigorous Imprisonment for a further period of 1 year.

3. The other two appellants namely, Balak Ram Yadav and Pankaj Kumar were sentenced to undergo life imprisonment with fine of ₹1,00,000/- each, for committing the offence punishable under Section 6 of the Prevention of Children from Sexual Offences Act, 2012 and in default of payment of fine, they were directed to suffer Rigorous Imprisonment for a further period of 2 years each.

4. It was argued on behalf of the appellants that the impugned judgment and order was passed by learned trial Court without proper appreciation of evidence and for such reason the impugned conviction and sentence of the appellants is liable to be set aside.

5. It was contended that the victim was recovered from the train in an unconscious condition and at that time one of the appellants i.e. Manjarish @ Monjrish Tripathi was detained from the self-same compartment of the train. However, the prosecution was not able to establish the circumstances under which the other two appellants were implicated in the case. According to such appellants, the victim never identified them as perpetrators. CCTV footage was also not collected until then. In fact, the prosecution did not produce any evidence with regard to involvement of the two appellants in the alleged incident.

6. The learned advocate appearing for the appellants also submitted that two consecutive Test Identification Parades were conducted and on the first day, the victim could identify only one of

the appellants. Subsequently, on the second Test Identification Parade, both the appellants Balak Ram Yadav and Pankaj Kumar were identified. It was submitted that the prosecution withheld the first Test Identification Parade report at the trial. It was also contended that the learned trial Court overlooked the evidence of PW13 in so far as it disclosed that the suspect had told him before the TIP that he was produced before Court a couple of times when the victim was also present. The victim's evidence also disclosed that when the said appellants were apprehended, she visited Howrah GRPS and had the occasion to see the appellants. Such evidence, made the identification of the appellants in the Test Identification Parade highly doubtful. In support of his contention, learned advocate for the appellant placed reliance upon **(2023) 1 Supreme Court Cases 180 (Gireesan Nair Vs. State of Kerala)**.

7. Learned advocate for the appellants also contended that the prosecution proved a seizure list i.e. Exhibit 31 with regard to seizure of a register maintained by AIR courier service. The said register was produced at the trial and was marked with 'x' for identification. However, there was no endeavour on the part of the prosecution to prove such register at the trial to look into its contents which rendered the case of the prosecution doubtful.

8. Learned advocate for the appellants further submitted that the prosecution has not been able to produce any document at the

trial to establish that the appellant Balak Ram Yadav was on leave on the relevant date and was travelling in the train in which the incident is alleged to have happened. No document regarding leave or travel of the said appellant, issued by his employer department has been proved at the trial.

9. Learned advocate for the appellant also argued that the learned trial Court failed to appreciate that in her first statement before Madhupur GRPS, the victim never made an explicit allegation of sexual assault upon her. It was contended that the case of sexual violation was incorporated later with a view to cover up the voluntary disappearance of the victim from her house. According to learned advocate for the appellant, the learned trial Court overlooked the evidence that the victim had Facebook friendship with a stranger which was not known to her parents and that she met such friend prior to the incident. Learned advocate for the appellant also raised doubts over the time of uploading pictures on the Facebook account of victim vis-à-vis the time of incident.

10. Learned advocate for the appellants also contended that the learned trial Judge failed to appreciate that there were material contradictions in the testimony of the victim in relation to her going unconscious and her rescue by Madhupur GRPS in an unconscious state. Learned advocate for the appellants submitted that the

prosecution failed to establish the charges levelled against the appellants.

11. On the other hand, learned advocate for the State submitted that the prosecution has proved the charges beyond all reasonable doubts. The chain of circumstances were persuasively established by the prosecution with the help of cogent and overwhelming evidence which leaves no scope for any proposition except pointing to the guilt of the appellants. Learned advocate for the State stood by the impugned judgment and order.

12. The victim, a class IX student, boarded Howrah-Amritsar Express from Howrah station at about 1.55 a.m. on December 27, 2015. Due to her ignorance, she boarded in a compartment of the train, reserved for military. 10-15 minutes of the departure of the train, three persons including the person who was detained for interrogation, started chatting with the victim. They also asked the victim if she would drink which she replied in the negative. Thereafter, one of them brought out a wine bottle from his bag. The other person mixed water in such wine in an empty bottle and thereafter, the victim was forcefully made to drink wine. The statement of the victim also disclosed that after consuming wine, she went to washroom to meet nature's call. When she was coming out of the washroom, one of the persons, pushed the victim inside, abused her and disrobed her and committed nasty work while pressing her mouth. Thereafter, the

second man came in and committed nasty work upon her. Both of them took turns and committed the nasty work four times. After committing the crime the miscreants brought the victim out of the bathroom and laid her on a seat of the train. The miscreants also threatened the victim not to disclose the incident or she would be thrown out of the train. After sometimes, the train stopped somewhere when the victim was deboarded and her statement was recorded.

13. Such statement also said that the incident started after 10-15 minutes of the departure of the train from Howrah station and happened between 1.55 p.m. and 2.45 p.m. She further stated that the person who was detained for interrogation disclosed his name as Manjrish Tripathi. The victim identified her as the person who forced her to consume liquor.

14. On the basis of such statement of the victim, Madhupur Rail PS Case No. 00 of 2015 dated December 28, 2015 under Sections 376(2)(g)/376D/120B of the Indian Penal Code, 1860 and Sections 4/8 of the Protection of Children from Sexual Offences Act, 2012 was started against three unknown miscreants.

15. The police took up investigation and on completion thereof, submitted charge sheet in the case. Offence being exclusively triable by the Court of Sessions, the case was committed to the Court of learned Sessions Judge. On the basis of materials in the case diary,

charge under Section 6 of the POCSO Act was framed against the appellants on April 8, 2016.

16. In order to substantiate the charge, the prosecution examined as many as 18 ocular witnesses. In addition, the prosecution also relied upon certain documentary as well as material evidence which were produced at the trial and were admitted in evidence.

17. The victim herself deposed as PW 1. She has stated that on December 27, 2015, at about 11/12 noon she came to Howrah station and intended to go to Ludhiana. She further stated that she boarded Howrah Amritsar express in an Army compartment due to rush in other compartments. There were only three persons in such a compartment. When she took seat in the compartment, the three persons came to her and started talking to her. The conversation continued for about 15 minutes. While the train was passing Sreerampore station, PW 1 was asked whether she take drinks which she answered in the negative. PW1 further stated that two of the persons held her by hands and the third person poured drink into her mouth from a red colour bottle. She identified the appellant Pankaj Kumar and Balak Ram Yadav in Court as the persons who held her. She also identified the appellant Manjrish Tripathi as the person who poured drink into her mouth.

18. PW1 also stated that when she tried to raise alarm, she was threatened by all the appellants that they were Army personnel and

they could do anything and everything to her. After that, PW1 went to washroom. When she was inside the washroom someone kicked on the door. When she opened the door, the appellant Pankaj Kumar pushed her and entered into the washroom causing injury on her left ring finger. Thereafter, the said appellant undressed PW1 and committed sexual intercourse upon her. After him, another appellant Balak Ram Yadav entered into the washroom and committed sexual intercourse upon PW1. They took turns and committed sexual intercourse upon PW1 for about 6 times. PW1 went semi-unconscious and when she regained senses, she found police personnel in the train compartment. She was taken to police station and at that time, appellant Manjarish Tripathi was also present. He was also nabbed by police from the said compartment.

19. PW1 also stated that later on, she came to know that she was deboarded from the train at Madhupur railway station. She recorded her statement in Hindi in presence of a lady constable of police. Her statement was recorded and after going through the same, she put her signature thereon. She proved her signature of such statement. (Exhibit 1/1). She was also medically examined in a hospital at Deoghar after obtaining her consent. She proved her signature on the consent letter (Exhibit 2). Thereafter, PW1 was taken back to Howrah station on December 29, 2015. At Howrah, PW1 was again taken to police station where her statement was again recorded. She was also

taken to Howrah hospital where she was medically examined, upon obtaining her consent which she proved (Exhibit 3). PW1 also recorded her statement before the Magistrate. She proved her signatures on such statement (Exhibit 4 series). She also proved her signature on the seizure lists under which her vaginal swab and a sweater were seized (Exhibits 5 & 6). She was again medically examined at Howrah hospital on January 6, 2016. PW 1 also attended Test Identification Parades conducted in the Howrah Jail and identified appellant Balak Ram Yadav on the first day and appellant Pankaj Kumar on the second day of test identification parade. She also proved her signature on the seizure list under which her wearing apparel she wore at the time of incident, were seized (Exhibit 7).

20. PW1 was extensively cross examined on behalf of the appellants on various aspects including her Facebook account, her friends and also touching her chastity. In her cross examination, PW1 admitted that when the appellants were apprehended, she visited the police station with her parents and had an occasion to see them. She however, denied that she identified the appellants in test identification parade as she had seen them in the police station.

21. The father of the victim deposed as PW 2. He stated that on December 25, 2015 there was an altercation between the victim and her mother and the victim left the house over such altercation. When she did not return, PW 2 and others started searching for her.

However, no information could be received until the morning of December 26, 2015. On December 27, 2015 the victim again left her house at about 10 am/11 am in absence of PW 2. When she did not return until afternoon, PW 2 started looking for her. He managed the credentials of the Facebook account of the victim from where PW 2 came to know that she had left a message on her Facebook that she was proceeding towards Punjab. PW 2 immediately rang up over Child Line when he was advised to go to Howrah Station. He went there and provided the photographs of the victim to the representatives of Child Line. On the advice of the Child Line, PW 2 lodged a complaint with the police. PW 2 further stated that on the date of lodging the written complaint, he received phone call at about 8/8:30 pm from Madhupur GRPS that his daughter was traced out. On the following morning, PW 2 along with his wife and son went to Madhupur GRPS and came to know about the incident from one Assistant Commissioner of Police of Madhupur GRPS. He was informed that the victim was taken to hospital for her medical examination which was at a distance. Thereafter, PW 2 returned to Kolkata upon assurance by police that the victim would be taken to Howrah Station by train and would be handed over to his custody on the following morning. Later on, in the following morning, PW 2 received a call from police personnel. He immediately went to Howrah station accompanied by his brother-in-law. Upon reaching Howrah, his daughter was medically examined

and, thereafter, she was handed over to PW 2. PW 2 was also cross-examined on behalf of the appellants at length. However, nothing favourable appears to have been elucidated in such cross-examination.

22. The mother of the victim was examined as PW 3. She corroborated the statements made by PW 2. She stated that her daughter went away from her house. From the Facebook account of the victim, she came to know that the victim was travelling by Amritsar Express to reach to one of her friends of Ludhiana. She further stated that the matter was brought to the notice of Child Line. Later on, the victim was recovered at Madhupur Station. The victim was medically examined at Madhupur as well as Howrah and subsequently, she was given into the custody of PW 3. PW 3 also signed on a seizure list through which the vaginal swab of the victim was seized. She proved her signature.

23. A Sub-Inspector of Police was examined as PW 4. He stated that on December 27, 2015 he was posted at Madhupur Police Station as Officer-in-Charge of GRPS. On the said date, he received a WhatsApp message from Child Line, Deoghar to rescue the victim from Punjab Mail. Upon receiving such information, PW 4 formed a team of RPF personnel and GRPF personnel. When the train arrived at station, a search was conducted by the team and the victim was found in the military compartment of the train in an unconscious state. One

another person from the said compartment was also detained. The victim was taken to retiring room and the father of the victim was informed over phone. After regaining senses, the victim disclosed before a lady constable in the team that she was forced to consume liquor by three persons who committed rape upon her repeatedly. Such statement was recorded by the lady constable and placed before PW 4. He treated such statement as First Information Report and registered Madhupur Rail PS Case No. 00 of 2015 dated December 28, 2015 under Sections 376(2)(g)/376D/120B of the Indian Penal Code and under Section 4 of the POCSO Act. PW 4 proved the endorsement of receipt and his signature on the written complaint. He also filled the formal F.I.R. which he proved. PW 4 further stated that after registering the case, he himself took up the investigation and apprehended the detained person on suspicion. In the course of investigation, he sent the victim girl to Sadar Hospital, Deoghar for medical examination with an application to constitute a medical board. After such medical examination of the victim, PW 4 also examined the remaining available witnesses and recorded their statements. Within 24 hours, PW 4 handed over the victim as well as the appellant Manjriish Tripathi together with the case diary and connected papers to Howrah GRPS as the place of occurrence falls under the jurisdiction of Howrah GRPS. PW 4 also handed over the wearing apparels of the victim to the Officer-in-Charge of Howrah PS

which was seized under a seizure list. PW 5 proved his signature on the seizure list. He also identified the seized wearing apparels of the victim in Court (Mat Exhibit 1 collectively).

24. A lady constable before whom the victim narrated the incident deposed as PW 5. She stated that on December 27, 2015 in the evening she received a phone call from PW 4. As per the instructions of PW 4, she went to Madhupur Railway Station and was informed by PW 4 that a girl was travelling in Amritsar Express without informing her parents. When the train reached Madhupur Station, she along with others started searching for the girl. The victim was ultimately recovered from the military compartment of the train in semi-conscious condition. The victim was removed to retiring room of Madhupur Railway Station from the military compartment. One person who was sitting beside the victim was apprehended by PW 4 for interrogation. PW 5 and another lady police officer remained with the victim during the night. When the victim regained senses, she informed PW 5 that she boarded the train from Howrah Station. After 10/15 minutes of departure of the train, she was forced to consume liquor. Thereafter, the victim went to the toilet in that compartment. One of the three persons who forced her to drink, accompanied the victim to the toilet and when she was about to come out from the toilet, the person entered into the toilet forcefully. He committed rape upon the victim inside the toilet. Thereafter, the second of the three

men also entered the toilet and committed rape upon the victim. Both of them committed rape upon the victim in turns for six times. PW 5 also stated that she was informed by the victim that she was taken back from the toilet by the aforesaid appellants who committed rape upon the victim and was laid on a seat of the compartment. The appellants were also planning to throw the victim out of the train. PW 5 further stated that PW 4 recorded the statement of the victim in her presence. She put her signature on such recording which she proved (Exhibit 1/4).

25. PW 5 also accompanied the victim to Deoghar Government Hospital for medical examination. Later on PW 5 and others accompanied the victim to Howrah GRPS and handed over the victim to Howrah GRPS along with one of the appellants apprehended from the military compartment. PW 5 identified the said person in Court as Manjrish Tripathi. PW 5 also handed over the wearing apparels of the victim to Howrah GRPS which was seized under a seizure list. She proved her signature on such seizure list dated December 29, 2015. She was also examined by Howrah GRPS. PW 5 identified the seized wearing apparels of the victim.

26. A medical officer of Howrah District Hospital deposed as PW 6. He stated that on December 30, 2015 he conducted potency test of the appellant Manjrish Tripathi in connection with Howrah GRPS Case No. 187 of 2015 dated December 29, 2015. On that date, he could not

form any opinion in such examination. He again examined the said appellant on January 13, 2016 and upon such examination, PW 6 opined that the said appellant was quite capable of performing sexual intercourse. He prepared a report in this regard which he proved (Exhibit 10).

27. PW 6 further stated that on January 27, 2016 the appellant Pankaj Kumar was brought to him for potency test in connection with Howrah GRPS Case No. 187 of 2015 dated December 29, 2015. However, such examination could not be conducted as the appellant Pankaj Kumar refused his examination. Howrah GRPS Case No. 187 of 2015 dated December 29, 2015 6 prepared a report in this regard upon which the appellant noted his refusal. Such report was admitted in evidence and marked as Exhibit 11.

28. PW 6 also conducted potency test upon the appellant Balak Ram Yadav on January 13, 2016 in connection with the said case. However, PW 6 could not come to a conclusion on such examination on December 29, 2015 and January 27, 2016. Appellant Balak Ram Yadav was again examined by PW 6 on February 10, 2016 and on such examination PW 6 opined that the said appellant was capable of performing sexual intercourse. He proved his report in this regard (Exhibit 12).

29. Another medical officer and a psychological specialist deposed as PW 7. She stated that on January 6, 2016 she examined the victim

produced by Howrah GRPS. PW 7 also stated that she examined the victim after nine days of the alleged incident. She narrated the seven injuries found by her on the person of the victim, in her deposition. She further stated that as the victim came late on the ninth day of the incident, some of the evidence might not be available. She also stated that no external injuries were found on her private parts including vagina. The vaginal swab of the victim was collected but at that time, the victim was menstruating. PW 7 also could not examine the inner parts of the vagina of the victim properly due to menstruation. She, however, found the hymen of the victim ruptured. PW 7 proved her medical report (Exhibit 8/1).

30. A medical officer from Deoghar Sadar Hospital was examined as PW 8. She stated that a medical board was constituted under directions of Deputy Superintendent, Deoghar Sadar Hospital consisting of Dr. L. N. Pandit, orthopaedic surgeon, Dr. L.P. Brahamchari, Dental surgeon, Dr. M. K. Lal, Radiologist and herself. She examined the victim on December 28, 2015 brought by RPF, Madhupur. PW8 identified the RPF personnel by their names and designation in her deposition. She further stated that on internal examination of the victim, she found *a) no foreign body and no external hair present in the private parts; b) hymen found ruptured*. At the time of examination, seminal fluid found present on the vaginal cavity at the time of examination. Vaginal swab was taken in two slides and

was sent for histopathological examination. Pathological examination was made by pathologist of Sadar Hospital, Deoghar and report in this regard was submitted. PW 8 perused the said report. The victim was sent to dental surgeon, orthopaedic surgeon and radiologist for age determination. She went through such report and the age of the victim was assessed between 14 years and 15 years.

31. PW 8 further stated in her deposition that after examination, her opinion was,

- a) "Each of the patient was 14 years to 15 years;*
- b) Signs of rape was present;*
- c) Seminal fluid found present on the red vinyl cavity at the time of examination;*
- d) Sign of forceful intercourse was present;*
- e) Pathological report shows spermatozoa was present on the vaginal Swab;*
- f) Mark of violence present on the left hand palm 2 to 3 cm abrasion present, left hand ring finger nail injured, blackish to bluish colour plus swelling."*

PW 8 described the wearing apparel of the victim as 1) black coloured bra 2) black T-shirt 3) purple coloured sweater 4) light sky jeans pant, which were handed over to the team of GRPS. She proved the report prepared by her and the other members of the Board which contained the signature of PW 8 (Exhibit 2/1 and Exhibit 2/2). She also identified the wearing apparels of the victim in Court.

32. Another doctor from Deoghar hospital and a member of the medical board was examined as PW 9. He stated that on December 28, 2015, he was a member of a medical board constituted for medical examination of the victim besides three other members. PW 9 further stated that on examination he advised x-ray AP view pelvis including iliac crests, x-ray elbow AP view, x-ray AP view of both wrists. He proved his signature on the advice (Exhibit 13). He further stated that after the tests, reports were produced before the medical board and on the basis of physical appearance dentition and radiological finding in OPG, pelvis wrist and elbow, the age of the victim was estimated to be between 14 to 15 years. He proved the report prepared in his pen (Exhibit 13/1) and his signature on the findings (Exhibit 14). He also proved his signature on the report of the medical board (Exhibit 2/3).

33. Another member of medical board was examined as PW 10. He stated that on December 28, 2015 he examined the teeth of the victim as a member of a medical board constituted by the superintendent, Sadar Hospital, Deoghar. He advised x-ray of jaws and teeth of the victim. He also noted number of her teeth, erupted teeth, perused x-ray plates and found his opinion along with other members of the board. He further stated that on the basis of physical appearance, dentition, radiological findings of jaws (OPG), pelvis, wrist, elbow, each of the victim was estimated between 14 and 15 years. PW 10 proved his signatures on the report of the medical board

(Exhibit 14/1 and Exhibit 14/2) he also proved his signature on the opinion of the medical board and the x-ray plate.

34. Another doctor of the medical board deposed as PW 11. He stated that on December 28, 2015 the victim was brought to Sadar Hospital, Deoghar. She was examined by the gynaecologist and PW 11 was supplied with the slides of vaginal swab of the victim. PW 11 examined the said slides and found 1) epithelia cells, 2) artefacts and 3) spermatozoa. He proved the pathological report prepared in his pen and signature (Exhibit 16). PW 11 also stated that on December 28, 2015, he was a member of a medical board constituted by the Deputy Superintendent of Sadar Hospital, Deoghar to determine the age of the victim. He further stated that the board examined the victim and advised x-rays and OPG. X-ray of pelvis, x-ray of elbow, x-ray of wrist and OPG were done. PW 11 proved his signature on the OPD slip. He wrote the opinion for the board on behalf of all the members and proved the opinion as well as his signature thereon. He also proved the x-ray plates of elbow, pelvis and that of the wrist.

35. Another medical officer attached to Nirikhan Kendra was examined as PW 12. She stated that on February 20, 2016 the victim was admitted under her and she was interrogated by police in that connection. She stated before police that the victim was under severe mental trauma as she was sexually assaulted.

36. A Judicial Magistrate deposed as PW 13. He stated that he conducted a Test Identification Parade inside the jail premises on February 4, 2016 in connection with Howrah GRPS Case No.187 of 2015 dated December 29, 2015. He further stated that in such test identification parade, the victim identified appellant Pankaj Kumar, placed amongst 10 others, as the person who along with two other army personnel forcefully poured liquor into her mouth while she was travelling in Amritsar Mail train on December 27, 2015. The victim also disclosed before PW 13 that after the liquor was poured in her mouth, she became semi-unconscious. Thereafter, she was taken to washroom of the train and was subjected to rape by such persons including the suspect. PW13 proved the report of test identification parade prepared by him.

37. A Sub-Inspector of police deposed as PW 14. He stated that on January 5, 2016 the inspector in charge of Howrah GRPS endorsed him with the investigation of Howrah GRPS Case No. 187 of 2015 dated December 29, 2015. Accordingly, he took up investigation of the case as 4th investigating officer. In his part of investigation, he seized a sealed packet from the office of Superintendent Sadar Hospital Deoghar produced by the lab technician Bijoy Kishore Prosad in presence of ASI Ram Krishna Sharma of Madhupr GRPS under a seizure list. He proved such seizure list. He also recorded the statement of Dr. Manish Lal, Dr. Nivedita Kumari, Dr. Nandalal

Pandit, Dr. Lakshman Prosad of Sadar Hospital, Deoghar. On January 6, 2016 he returned to Howrah GRPS and handed over the case diary to the inspector in charge with the seized articles.

38. Another police personnel was examined as PW 15. He stated that on December 30, 2015, the inspector in charge of Howrah GRPS supplied him two photographs of two male persons and asked him to go to Gauhati and Tripura to the different battalions of BSF for the identification of the persons in the photograph. Pursuant to such directions, PW 15 visited the transit camp, Army Department and LGBI airport. On the following day, PW 15 received information that two persons were detained by the CISF on the basis of the photographs. PW 15 went there and the two detained persons admitted the photographs to be of them. They disclosed their name as Bala Ram Yadav and Pankaj Kumar. Accordingly, he arrested the two persons and after observing all formalities he returned with the arrested persons on January 1, 2016. PW 15 also seized mobile phones, SIM cards, trolley bag and identity card of Bala Ram from his position under a seizure list which he proved (Exhibit 22). Similarly, a micromax mobile with SIM No. 9774321383, micromax mobile with SIM No. 9478702806, one black coloured school bag, identity card of Pankaj Kumar were seized by PW 15 under another seizure list (Exhibit 23). He also recorded the statement of Dipak Kumar, inspector of CISF, LSI Hem Kanwar, Constable of CISF Darad Yogesh

under Section 161 of the Code of Criminal Procedure, 1973. On January 2, 2016, he came back to Howrah GRPS and handed over the arrested persons with the seized articles to the inspector in charge. The seized articles were handed over to the Malkhana officer of the Howrah GRPS.

39. A police officer deposed as PW 16. He stated that on December 29, 2015 he was posted at Howrah GRPS as a probationary inspector. He used to know Sub-Inspector Asit Baran Nath of the said GRPS and was conversant with his handwriting and signature. PW 16 proved the endorsement of receipt of the written complaint as well as formal FIR in the pen of SI Asit Baran Nath. He further stated that he was endorsed with the investigation of the case of Howrah GRPS Case No. 187 of 2015 dated December 29, 2015. In the course of investigation, PW 16 narrated the various steps taken by him. He seized the wearing apparels of the victim under a seizure list and arranged for recording the statement of the victim under Section 164 of the Cr.P.C. He also forwarded the arrested accused Manjrish. He also sent two teams of police personnel to Madhupur Keul and Gauhati. Such teams on its return submitted their part of the case diary which was collected by PW 16.

40. PW 16 further submitted that PW 15 along with the team arrested the appellant Balak Ram Yadav and Pankaj Kumar from Gauhati. PW 16 forwarded the said appellant in Court. He also

submitted prayers for holding Test Identification Parade. He also recorded the statements of available witnesses. On January 6, 2016, PW 16 handed over the investigation upon return of the investigating officer from leave.

41. Another inspector of police deposed as PW 17. He stated that he took up investigation of the case on February 10, 2016. During his part of investigation, he arranged for medical examination of the appellant Balak Ram Yadav. He collected the samples of urethral swab and urethral smear of the said accused. He also examined the medical officer and recorded his statement. PW 17 proved the seizure list dated February 10, 2016. He also examined available witnesses and sent the urethral swab and urethral smear slides for scientific forensic examination on February 11, 2016. The connected papers were proved by PW 17 (Exhibit 28).

42. Another part investigating officer of the case was examined as PW 18. He stated that he was endorsed with the investigation of the case on January 6, 2016. He has also described the various steps taken by him in course of his tenure of investigation. He also recorded the statements of available witnesses, seized various articles including the birth certificate of the victim under separate seizure list. He also collected the wearing apparels of the victim and sent the same for forensic examination on January 11, 2016 through a challan, Exhibit 32. He also examined the mother of the victim and the doctor who

examined the victim and recorded their statements under Section 161 of the Criminal Procedure Code. Later on, owing to his transfer, PW 18 handed over the investigation to PW 17.

43. On conclusion of the evidence for the prosecution, the appellants were examined under Section 313 of the Criminal Procedure Code. In such examination the appellants appear to have been confronted with the circumstances appearing against them in the evidence of the prosecution witnesses. In such examination, the appellants have pleaded innocence having been falsely implicated in the case. They, however, declined to adduce any defence evidence.

44. From the evidence on record it transpires that the victim left her house, may be due to some spat with her parents, and was heading to one of her friends at Ludhiana, Punjab. Evidence on record, more specifically the evidence of the parents of the victim, namely, PW 2 and PW 3, reveals that the victim left the house after she had altercation with her mother. It also transpires that the victim left her house after such altercations previously as well. Both PW 2 and PW 3 have stated that when the victim did not return to her house after a considerable time, they approached the Child Line and on the advice of such Child Line, they also lodged a complaint with regard to missing of the victim with the police. In the meantime, PW 2 and PW 3 managed to log in into the Facebook account of the victim

from where they came to know that the victim was travelling to one of her friends at Ludhiana by train.

45. Such facts narrated by PW 2 and PW 3 get corroborated by the evidence of PW 1, the victim herself. In her deposition, PW 1 stated that after having a spat with her parents, she went to Howrah station and took a train namely Amritsar express for travelling to one of her friends at Ludhiana.

46. According to the evidence of PW 1, she boarded the train in a military compartment pretending it to be a general compartment. In such compartment of the train, the victim was approached by the three appellants. All the three appellants were military personnel. According to the narration of PW 1, while she was having chats with the appellants, they allegedly asked the victim if she would like to consume liquor which she answered in the negative. Thereafter, the appellants forcefully poured wine into her mouth resulting in her semi-unconsciousness. The victim was then accompanied by the appellants to the toilet. According to the case made out by the prosecution, when the victim tried to come out of the toilet, one of the appellants pushed her inside, undressed her and committed sexual intercourse forcefully upon her. After that, another appellant also committed sexual assault upon the victim and thereafter the two appellants sexually violated the victim at least six times in turns. It is further case of the prosecution that after sexually violating the victim

repeatedly, she was brought out of the toilet and was laid on her feet in the compartment from where the victim was recovered by the police personnel of Madhupur GRPS.

47. The incident is alleged to have started after 10/15 minutes of the departure of the train from Howrah station at about 1:55 AM and it is said to have continued between 1:55 AM and 2:45 AM. Two of the appellants, who committed sexual assault upon the victim allegedly, absconded from the train whereas the person who made the victim to consume liquor remained and was detained at the time of recovery of the victim.

48. The officer in charge of Madhupur GRPS was examined as PW 4. He made a categorical statement that he received a message from Child Line on December 27, 2015 to rescue the victim who was travelling by Train No. 13049 up, Punjab Mail. Upon such information, PW 4 formed a rescue team of police personnel. PW 5 was a member of such team. The rescue team made a search for the victim in the train on its arrival at Madhupur station and rescued the victim in an unconscious state. The evidence of PW 4 and PW 5 also discloses that the appellant Manjriish Tripathi was also apprehended from the compartment where the victim was found. The aforesaid witnesses have also testified that upon regaining consciousness, the victim disclosed before them that she was forced to consume liquor by three persons who committed rape upon her. The victim recorded a

statement before the police personnel which was treated as the written complaint and on the basis of such statement, a specific case was started.

49. The evidence of PW 4 and PW 5 also discloses that the victim was taken to Deoghar Sadar hospital for her medical examination. A medical board was constituted for her examination. She was examined by the medical board. The members of such medical board were examined by the prosecution as PW 8, PW 9, PW 10 and PW 11. The aforesaid witnesses have testified that the victim was produced before Deoghar Sadar Hospital by police personnel from GRPS. They described the nature of injuries found on the person of the victim and the tests conducted by the medical board for determination of her age. The evidence of PW 8 clearly indicates that upon examination of the victim, signs of rape were found present, seminal fluid was detected in the vaginal cavity of the victim and there were signs of forceful intercourse upon her. The evidence of such witness also disclosed that there were marks of violence detected on the person of the victim and pathological report showed presence of spermatozoa in the vaginal swab. The evidence of PW 9, PW 10 and PW 11, besides noting the injuries found on the person of the victim, mainly confined to determination of age of the victim which according to the opinion of the board was opined between 14 and 15 years.

50. Since the alleged incident took place on a running train and the police personnel of Madhupur GRPS intercepted and recovered the victim from such train, a zero First Information Report was registered by it. Later, the victim was medically examined by Deoghar Sadar Hospital. However, ultimately, the case stood transferred to Howrah GRPS on the grounds of jurisdiction, from where the train had initially departed.

51. The victim was brought to Howrah GRPS and at its behest, she was again medically examined. PW 7 is the medical officer who examined the victim, albeit, after 9 days of the incident. On such examination, PW 7 described as many as 7 injuries found on the person of victim and her hymen was found ruptured by PW 7. The nature of injuries described by PW 7 appears to be in quite consonance of the narration of incident given by the victim in her deposition as well as her statement recorded under Section 164 of the Cr.P.C. The narration of incident given by PW 1 seems to be consistent with that described in her statement recorded under Section 164 of the Cr.P.C. The chronology of events described by PW 1 is duly corroborated by PW2 and PW3. The parents of the victim, PW 2 and PW 3 stated to have approached the Child Line authorities upon elopement of the victim. There is evidence on record that the Madhupur GRPS intercepted and rescued the victim from inside a train on the basis of inputs from Child Line. PW 12 is a Doctor under

whose care; the victim was admitted in a Nirikhan Kendra, after the incident. He has testified that the victim was traumatised after the incident. He has categorically stated that the history of the patient was that she was sexually assaulted.

52. As noted hereinbefore, one of the appellants who allegedly made the victim forcefully to consume liquor was detained from the compartment of the train along with the victim. Two other appellants, who were alleged to have committed sexual assault upon the victim, absconded. The police took all the steps to trace out the aforesaid appellants namely Pankaj Kamar and Balak Ram Yadav. Their photographs were sent to several authorities of the Army and paramilitary forces. Ultimately the two appellants were arrested from Gauhati airport by the intervention of CISF on the basis of the photographs sent to them. The two appellants were brought back to Kolkata where they were put on test identification parade. They were identified by the victim in such TI parade as the persons who sexually violated the victim. PW 6 is the Doctor who examined the appellants, conducted potency test and opined that the aforesaid three appellants were quite capable of sexual intercourse.

53. The Judicial Magistrate, who conducted the test identification parade i.e. PW13, has testified that the victim identified the appellants in the test identification parade. The suspect/appellant placed himself at his choice in the parade. There is nothing in the evidence of PW 13

that the appellant had raised any point at the time of this identification parade that he was shown to the victim prior to such parade. At the time of examination of the appellant under section 313 of the Cr.P.C., the appellant was confronted with the statement of PW 13 with regard to holding of the test identification parade and his identification therein. In answer to question No. 41, the appellant replied to the effect that 'it is all false. I am innocent'. In that view of the facts, such objection raised by the appellants in course of hearing does not stand.

54. In *Gireesan Nair* (supra), the Hon'ble Supreme Court was of the view that it was for the prosecution to prove that TIP was conducted in a fair manner and that all necessary measures and precautions were taken before conducting the TIP. In the facts of such case, the Hon'ble Supreme Court had also noted that the witnesses had the opportunity of seeing the accused before the conduct of the TIP. Not only have the witnesses deposed that they had seen the suspects before the TIP, even Accused 2, at the end of the 1st TIP, had raised agreements that the suspects were all photographed, videographed and were shown to the witnesses from the cabin of the IO.

55. However, as noted above no such allegation was ever made by the appellants prior to or during the TIP or even during the trial of the case. We have noted the answer given by the appellant during his

examination under Section 313 of the Cr.P.C. In such view of the facts, the ratio laid down by the Hon'ble Supreme Court in **Gireesan Nair** (supra) cannot be applied in the facts of the present case.

56. In the light of the discussions made hereinbefore, we find no reason to interfere with the impugned judgement of conviction and order of sentence. We affirm the same.

57. Consequently, the appeals being CRA (DB) 62 of 2023, CRA (DB) 136 of 2023 and CRA (DB) 156 of 2023 are hereby dismissed. Connected applications, if any, shall also stand disposed of.

58. Period of detention already undergone by the appellants during enquiry, investigation or trial shall be set off against the substantial punishment in accordance with the provisions of Section 428 of the Cr.P.C.

59. Urgent Photostat Certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[MD. SHABBAR RASHIDI, J.]

60. I agree.

[DEBANGSU BASAK, J.]