

02.07.2026
Court No.13
Item No. 5
pk

**CRA 152 of 2020
With
IA No: CRAN 2 of 2025**

**Saiful Khan
Vs.
The State of West Bengal and another**

Mr. Soumyajit Das Mahapatra ... appears as *Amicus Curiae*

Mr. Pradip Banerjee .. Addl. Public Prosecutor
Mr. Sankalpa Bhattacharyya
... ... for the State

1. The appeal is directed against judgment and order of conviction dated 21.01.2020 and 24.01.2020 passed by the Additional Sessions Judge, 2nd Court, Burdwan in Sessions Trial No. 54 of 2014 arising out of Sessions Case (P) No. 64 of 2014. The appellant was convicted under Sections 417/506 of the Indian Penal Code and Section 6 of the POCSO Act to suffer rigorous imprisonment for six months and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for one month more for the offence punishable under Section 417 IPC, to suffer rigorous imprisonment for one year and to pay a fine of Rs. 5,000/-, in default, to suffer simple imprisonment for three months more for the offence punishable under Section 506 IPC and to suffer rigorous imprisonment for ten years and to pay a fine of Rs.50,000/-, in default, to suffer rigorous imprisonment for two years more for the offence punishable under Section 6 of the POCSO Act, all the sentences shall run concurrently.

2. Heard Mr. Soumyajit Das Mahapatra, learned advocate, appears as Amicus Curiae and Mr. Pradip Banerjee, learned advocate representing the State.

3. The prosecution case in brief is that on 09.02.2014 the father of the minor victim girl aged 15 years lodged a complaint at the Mongalkote Police Station that while his daughter was going out in the evening to fetch water for the house, the appellant waylaid the victim, pressed her mouth with a towel and took her to a nearby garden and committed rape upon her. The appellant was admittedly 22 years old. The appellant thereafter threatened the victim from disclosing the incident to anybody on a promise of marriage. When the father of the complainant asked the appellant to marry his minor daughter, he refused. However, even after the incident on 09.02.2014 the appellant cohabited with the victim and had physical relations with her.

4. Based on the complaint, a formal FIR was registered with the Mongalkote Police Station being Mongalkote Police Station Case No. 24 of 2014 dated 09.02.2014 under Section 376 of the Indian Penal Code as also Section 7/8 of the POCSO Act. Investigation was undertaken in detail. The victim was sent for medical examination. A DNA report of the child born out of the incident was obtained by the Investigating Officer. After investigation was completed, charge sheet was filed. Charges were framed against the appellant under Sections 376(1)/417/506 of the Indian Penal Code and Sections 4/6 of the POCSO Act on 30.08.2014.

5. PW 1 was the father of the victim. He deposed on the entire lines of the complaint. His evidence could not be seriously shaken in the cross-examination.

6. PW 2 was the victim herself who detailed the entire incident as narrated by PW 1.

7. PW 3 was Dr. Partha Sarathi Roy Chowdhury, who examined the accused at the Katwa Sub-Divisional Hospital on 11.12.2014. He deposed that the appellant was capable of physical relations and was about 25 years at the time of examination.

8. PW 4 was Abdur Rahaman Sk., who was the scribe of the complaint.

9. PW 5 was Dr. Debasish Sarkar attached to the Burdwan Medical College and Hospital. He took the blood sample of the child born out of the incident for DNA test. Other samples and body fluids of the baby were kept preserved.

10. PW 6 was Gautam Mondal, who was the I. O., who conducted the entire investigation and disclosed the steps taken there under. He also confirms having sent the blood of the child for DNA test.

11. PW 7 was Dr. Anil Kumkar Sharma, who conducted DNA test of the child born out of the incident. He confirms the DNA that the genetic profile of the appellant is consistent as biological father of the female baby. DNA report was exhibited as exhibit 9. The procedure and methodology for conduct of DNA test was duly deposed by PW 7. His evidence could not be shaken in cross examination. What however stands out is that the blood samples of the victim girl and

the appellant were not forcibly taken and analysed for a conclusive comparison of the DNA of the child.

12. PW 8, Ms. Anita Ghosh, was the head mistress of Girls High School (Higher Secondary) where the victim was studying. She proved the birth certificate and age of the victim.

13. The appellant was thereafter examined under Section 313 of the Cr. P. C. and could not offer any appropriate alibi of his absence of place and time of occurrence or thereafter.

14. Based on the evidence on record the Trial Judge convicted the appellant as already indicated herein above.

15. The learned Amicus Curiae appointed to represent the appellant has argued that before the Co-ordinate Benches a point was raised that DNA samples of the victim girl and the appellant were not taken for an appropriate matching with the DNA of the victim girl.

16. A Co-ordinate Bench thereafter directed the blood samples of the victim girl and the appellant to be collected and sent for DNA and thereafter compared with the DNA of the child.

17. The above process was completed and DNA report has been produced by the Mongalkote Police Station before this Court on 13.05.2026. The said DNA report signed by Dr. Chakraborty issued by State FSL, Belgachia, Kolkata, confirms that the DNA of the child belongs to the appellant and the victim girl.

18. Having regard to the facts and circumstances of the case and the additional evidence that this Court was inclined to consider, this Court is of the view that the procedural issues of reexamination of

the fresh evidence produced before this Court may be dispensed with in the special facts and circumstances of the case.

19. The conviction of the appellant is upheld.

20. CRA 152 of 2020 fails and is hereby dismissed. Consequently, connected pending application, if any, is also dismissed.

21. Before parting with the case, this Court wishes to record its appreciation for the assistance rendered by Mahapatra, learned counsel, appointed as Amicus Curiae by this Court. The High Court Legal Services Authority shall pay necessary fees as per their schedule to Mr. Mahapatra and if necessary empanelled him, if not already so done.

22. For the aforesaid purpose, Mr. Mahapatra shall be entitled to submit a bill to the High Court Legal Services Authority.

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

(Rajasekhar Mantha, J.)

(Ananya Bandyopadhyay, J.)