

Form No. J(1)

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

Present :

**The Hon'ble Justice Rajasekhar Mantha  
And  
The Hon'ble Justice Ajay Kumar Gupta**

**C.R.A. 242 of 2016  
With  
CRAN 1 of 2016**

**Sukumar Maity  
Versus  
The State of West Bengal**

For the Appellant : Ms. Trina Mitra.

For the State : Ms. Anasuya Sinha, Ld. A.P.P.  
Mrs. Subhasree Patel.

Hearing concluded on : January 29, 2026.

Judgment on : January 29, 2026.

**Rajasekhar Mantha, J.:**

1. Since the appellant is not represented, this Court has appointed Ms. Trina Mitra, learned counsel from the High Court Legal Services Authority to represent the appellant. Her appointment shall be regularized by the office of the learned Public Prosecutor, High Court, Calcutta.

2. The Superintendent, Midnapore Central Correctional Home, has filed a report dated 20.01.2026 stating that the appellant has undergone 12 years, 4 months and 19 days of imprisonment. He has earned remission of 1 year, 8 months and 1 day. The same takes care of 14 years of imprisonment imposed on him under Section 376(2) of the IPC and Section 6 of the POCSO Act, 2012. Hence, the appellant has been awarded the maximum sentence prescribed under the two applicable provisions at the relevant point of time.

3. The instant appeal is directed against the judgment of conviction dated 21.07.2015 and order of sentence dated 22.07.2015 passed by the learned Additional District & Sessions Judge, 2<sup>nd</sup> Court, Tamluk, Purba Medinipur in Sessions Trial No. 2(03)2014 arising out of the Sessions Case No. 596/December/2013. The appellant was convicted under Section 376(2) of the Indian Penal Code and Section 6 of the POCSO Act, 2012. The appellant was sentenced to life imprisonment and directed to pay a fine of Rs 10,000.

**THE PROSECUTION CASE, THE EVIDENCE ON RECORD AND ANALYSIS OF THIS COURT**

4. On 26<sup>th</sup> August, 2013, when the victim (3 year-old) was playing at about 4.00 p.m. in the evening, the appellant took her away into his residence. The mother of the victim, PW 1(name withheld), upon not finding her 3 year-old daughter started to shout her name out. PW 1 heard cries of her daughter from the house of the appellant. Upon entering the said house, PW 1 found that the appellant had gagged

the victim's mouth and was committing penetrat sexual assault on the child.

5. PW 1 upon witnessing the horrific scene raised hue and cry. As a result, local neighbours assembled thereat. The victim was immediately taken out and was placed on her mother's lap. The victim was profusely crying and complaining of pain in her private parts.
6. The appellant was arrested by the Tamluk Police Station. A detail investigation was conducted. The statement of the mother of the victim and the neighbors were recorded under Section 164 of the Cr. P.C. before the Magistrate and were proved in course of trial.
7. PW-1's evidence is clear and explicit and consistent with the statement made under Section 164 of the Cr. P.C. and with the version in the complaint of **PW-2, Radha Rani Maity, she was a neighbour who identified the appellant on the dock.**
8. PW 2 has deposed clearly that she arrived at the place of occurrence immediately after the incident on hearing the cries of the victim's mother. She narrated the entire incident as described by the PW-1. She, however, did not enter the house. She found the victim lying on her mother's lap..
9. PW-1 admitted the victim to the hospital. The victim was in the hospital for two days. The bed head ticket of the hospital was collected. The signature of PW-1 and PW-2 and their LTI thereon were identified by them in the trial. The evidence of PW 1 & 2 could not be shaken in cross-examination.

10. **PW-3, Tumpa Maity, was the neighbour and co-villager of PW-1.**

She narrated the entire incident as stated by PW-1. Her evidence could not be seriously shaken in the cross-examination.

11. **PW-4, Kamal Kr. Bera,** was a hearsay witness. He, however, narrated the entire incident after the offence committed by the appellant.

12. **PW-5, Biswanath Patra, was the brother-in-law of PW-1.** He deposed the age of the victim and came to know the entire incident in the evening after he returned home. He signed the seizure list of the wearing apparels of the victim.

13. **PW-6, Moumita Jana, who counseled the victim .** She prepared a report. The report was exhibited as Exhibit-7. Although PW 6 was not a qualified child counsellor, the victim was very comfortable in course of her counselling and had clearly stated the incident.

14. **PW-7 was Sib Kanti Bera.** He heard the incident and went to the spot after hearing the mother of the victim, (PW-1) , crying. He was there along with PW-1, PW-2, PW-3 and the victim girl. He was informed by PW-1 and other people who had assembled there that the appellant committed sexual offence on the victim. He took the victim to Tamluk Hospital. He was a seizure witness to the wearing apparels of the victim. His evidence could not be seriously shaken in cross-examination.

15. **PW-8, Kartick Patra, was a local villager.** He identified the victim in the dock. He was a hearsay witness.

16. **PW-9, was Dr. Jugal Chandra Maity.** He was posted as M.O. Gynecologist at Purba Medinipur District Hospital. He examined the victim girl, aged about three years. The victim girl has come for medical examination along with her mother. He found redness on the victim's labia minora. He confirmed in cross-examination that the victim was assaulted on her private parts by the appellant without a complete penetration. The redness in the vulva is a result of such assault which could be accompanied by dirt being inserted therein.
17. **PW-10, was Dr. Pradip Kumar Das.** He was a Medical Officer at Purba Medinipur District Hospital. He examined the appellant and found him to be 45 years of age. He was also found him to be a alcoholic and there was nothing to suggest that the appellant was incapable of performing sexual intercourse.
18. **PW-11, Ishani Chakraborty** (Banerjee) was the Magistrate, who recorded the statements of PW-1, PW-2 and PW-3.
19. **PW-12, Maniklal Adak,** was the Investigating Officer of the case, who conducted the entire investigation.
20. The appellant was examined under Section 313 of the Code of Criminal Procedure. His defence was that PW-1 had threatened him to teach him a lesson for his regular alcoholism. Based on the evidence on record, the Trial Judge convicted the appellant.

21. This Court is of the clear view that the evidence on record clearly indicates the offence under Section 376(2) of the Indian Penal Code and Section 6 of the POCSO Act, 2012 have been established beyond reasonable doubt.

22. PW 1 has been the eye witness to the rape (aggravated penetrative sexual assault) committed on the victim. The other PWs have come to the PO and have seen the victim crying and her private parts were bleeding. The PWs have found the appellant at the PO. PW 4 has in fact rebuked the appellant. The evidence of PW 1 thus has been fully corroborated by the other PWs. The medical evidence has established that the private parts of the victim suffered from penetration and abrasion.

23. PW 1 was not related to the appellant. She thus had no concern whatsoever with the life or affairs of the said person. Thus, the defense of the appellant that the PW 1 has framed him in the said offence to take revenge against his alcoholism is unbelievable. Further, no mother would gamble with the dignity and childhood of her minor daughter to take revenge against an innocent person. This would harm her own child.

24. The appellant if left for a longer time with the victim, he would have committed more heinous offence on the victim. The wearing appeals of the victim clearly indicated damage caused to her private parts. As a result of which, blood had oozed down and had stained her undergarments. The appellant cannot be treated as a normal human

being for being perpetrated offence of this nature on a minor three-year old girl.

25. For the reasons stated hereinabove, this Court is of the view that the impugned judgment and order of conviction does not call for any interference by this Court.

26. The impugned judgment and the order of conviction passed by the learned Additional District & Sessions Judge, 2<sup>nd</sup> Court, Tamluk, Purba Medinipur in Sessions Trial No. 2(03)2014 arising out of the Sessions Case No. 596/December/2013 dated 21<sup>st</sup> July, 2015 and 22<sup>nd</sup> July, 2015 respectively under Section 376(2) of the Indian Penal Code and Section 6 of the POCSO Act, 2012.

27. The appellant shall serve the remainder of the sentence and also pay fine.

28. Accordingly, C.R.A. 242 of 2016 is dismissed. Consequently, all connected pending applications, if any, are also disposed of.

29. Lower Court records along with copy of this judgment be sent down at once to the learned Trial Court for necessary compliance.

30. The report submitted by the Superintendent, Midnapore Central Correctional Home has forwarded a report dated 20.01.2026 is taken on record.

31. Urgent Photostat certified copy of this judgment, if applied for, be furnished to the parties expeditiously.

**(Rajasekhar Mantha, J.)**

I agree

**(Ajay Kumar Gupta, J.)**