

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 Md. Shabbar Rashidi**

CRA 212 of 2017

**Dinesh Das
Vs.
The State of West Bengal an Anr.**

For the Appellant : Mr. Dipankar Mandal

For the State : Ms. Rituparna Ghosh
Ms. Trisha Rakshit

Heard on : 24.02.2026

Judgment on : 24.02.2026

Md. Shabbar Rashidi, J.:

1. The instant appeal is an assailment of the impugned judgment and conviction dated 16th February, 2017 and the order of sentence dated 17th February, 2017 passed by the learned Additional Sessions Judge, 2nd Court at Krishnagar, Nadia in Sessions Trial No.1(1) of 2017 arising out of Sessions Case No.11(08) of 2016. By the impugned judgment the appellant was convicted for the offence punishable under Section 376(2)(i) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "the POCSO Act"). By the impugned order the convict was sentenced to undergo imprisonment

for the remainder of the natural life for the offence punishable inter alia under Section 376(2)(i) of the IPC and Section 6 of the POCSO Act 2012 and also to pay fine of Rs.1,00,000/-, in default, to undergo Rigorous Imprisonment for three years more.

2. At the time of advancing argument, learned advocate appearing for the appellant submits that there are material contradictions between the statements of the prosecution witnesses which render the case of the prosecution doubtful.

3. Learned advocate for the appellant also submits that the appellant was never named by the victim at the time of medical examination at three several hospitals.

4. Learned advocate for the appellant submits that had the appellant been involved in the offence his name should have been disclosed by the victim or the other witnesses.

5. Learned advocate for the appellant submits that the prosecution has miserably failed to prove the charges leveled against the appellant and as such the impugned conviction and sentence passed against him is liable to be set aside.

6. In the alternative, learned advocate for the appellant also submits that the sentence passed for the remainder of his natural life is excessive and harsh.

7. The father of the victim lodged written complaint with the police stating inter alia that on 9th August 2016 at about 5:45 in the evening the victim, who was nine years old then and had been playing with other kids adjacent to her house.

8. The written complaint also stated since the victim went missing; the de facto complainant made an enquiry from the children playing around. One of the children informed that the victim was taken by her maternal uncle.

9. Consequently a search was conducted whereupon the victim was found lying unconscious in a ditch. She was moved to the hospital. After she regained consciousness she stated the name of the appellant and alleged that the appellant had committed penetrative sexual assault upon the victim due to which she sustained bleeding injuries in her private parts and unconscious. The victim was taken to Aranghata B.P.H.C. for treatment, she was later taken to Ranaghat Hospital and thereafter to Kalyani Hospital.

10. On the basis of such written complaint, Dhantala PS Case No. 234 of 2016 dated August 19, 2016 under Section 6 of the POCSO Act was started against the appellant as an FIR named accused.

11. The police started and completed investigation and submitted charge sheet against the appellant. Accordingly, on the basis of the material in the case diary charges under Section 376(2)(i) of the Indian

Penal Code and alternative charge under Section 6 of the POCSO Act was framed by the Trial Court against the appellant on January 3, 2017.

12. In order to substantiate the charges, the prosecution examined as many as 17 witnesses. In addition, the prosecution also relied upon certain documentary as well as material evidences which were admitted in evidence at the trial.

13. The victim herself deposed as PW-1. She stated that about 6 months prior to the date of her deposition on 9th August, 2016 at 6.00 p.m., she and her friend were sitting on a box. At that time, the appellant took her to ditch a by the side of the railway gate. Thereafter, the appellant undressed the victim and committed penetrative sexual assault upon her. She further stated that she was taken to the hospital for medical treatment. She also recorded her statement under Section 164 of the Cr.P.C which she signed. She proved her signature on the statement.

14. The mother of the victim deposed as PW-2. She stated that her husband lodged a written complaint with regard to the incident occurred upon her daughter. She identified the appellant in Court. She further stated that on August 9, 2016, her daughter was ravished by the appellant, resulting in bleeding injuries. The victim was moved to hospital for medical examination. She further stated that the victim was still undergoing medical treatment. Her statement under Section 164 of the Cr. P. C was recorded before the Magistrate.

15. The father of the victim deposed as PW 3. He has stated that the victim was aged about 8 ½ years old. He lodged a written complaint on 09.08.2016 at 5.45 p.m. At that time the victim was playing with 4-5 other minor. When he did not find the victim, one child Srabani Das told him that the victim was taken away by her maternal uncle. Thereafter PW 3 along with local people went to search for his daughter. The daughter was rescued by the villagers from a paddy field near the local railway gate. The victim was taken to Aranghata hospital. Thereafter the victim was transferred to Ranaghat hospital and there from to Kalyani Hospital. The victim was ultimately taken to NRS Hospital where she was undergoing treatment at the time of deposition of PW3. PW 3 lodged a written complaint. He proved the said written complaint (exhibit 3).

16. PW 4 and 5 were the co-villagers have deposed that the victim was playing at the house of the accused when she did not return home within a reasonable time, search was conducted. Upon information from a friend, they came to know that the maternal uncle of Srabani Das had taken her. Upon conducting search, the villagers and other persons recovered the victim from a ditch by the side of the railway gate with bleeding injuries in her private parts. She was lying unconscious.

17. PW 4 further stated that when the victim regained her senses, she named the appellant. PW 5 has corroborated the statement made by the other witnesses on behalf of the prosecution.

18. PW 6 is hearsay witness.

19. PW 7 did not add any value to the case of the prosecution. A medical officer of Ranaghat Hospital was examined as PW 8. They have proved the medical examination reports of the victim.

20. PW 11 is also a hearsay witness.

21. PW 12 is the recording officer.

22. PW 13 is the Investigating Officer of the case. He examined the witnesses and recorded statements under Section 161 as well as he arranged for recording the statement of witnesses under Section 164 of the Code of Criminal Procedure. He also arranged for potency test of the appellant. On completion of investigation PW-13 submitted charge sheet.

23. PW-14 is a medical officer but he did not add any value to the case of the prosecution as he did not examine either the appellant or the victim.

24. PW-15 is a medical officer. He has proved the bed head ticket of the victim at N.R.S. Hospital at Kolkata (Exhibit-11).

25. A lady police officer was examined as PW-16. She has stated that on 11th August, 2016 she recorded the statement of the victim girl. During her cross-examination, PW-16 stated that when the victim opened her eyes and saw her nighty stained with blood and blood was oozing out from her private parts. Nobody was found present near her and she came out

near Salua Railway Gate when villagers found her and shifted her to hospital.

26. Upon conclusion of the evidence made on behalf of the prosecution, we find that the appellant was examined under Section 313 of the Cr.P.C. Circumstances appearing against him in the evidence led by the prosecution was confronted to the appellant.

27. In answer to such question the appellant did not specifically deny the allegations or the circumstances. He just replied "I do not have anything to say". Based on the evidence the Trial Judge convicted the appellant as already discussed hereinabove.

28. In so far as the first argument of the learned counsel for the appellant that the victim had not named the appellant before any of the medical officers, this Court notes that the victim was nine years old. She must have been traumatized by the incident. It is unlikely that the victim was at all asked by the medical officer as to who had exactly assaulted her. There is no evidence to this effect. There is no cross-examination by the defence in this regard. It further appears from the records that both in the deposition in the Trial Court as well as the statement under Section 164 of the Cr.P.C., the victim girl has clearly named the appellant.

29. It is now well settled that a conviction under Section 376(2) or under Section 6 of the POCSO Act can be made on the sole evidence of a victim girl. In the instant case this Court sees that the evidence of the victim girl

is supported by the medical evidence that has come on record as well as the evidence of three of her family members and two police officers.

30. In the backdrop of the above, reading the evidence as a whole, this Court is of the view that prosecution has been able to prove the charges against the appellant beyond all reasonable doubt. It is equally well settled that minor omissions on the part of the investigating officer cannot lead to upset of a well founded case established by the prosecution through the other witnesses.

31. This Court further notes that even in the examination under Section 313 of the Cr.P.C. the appellant has not even denied the prosecution case and all the circumstances that were confronted to him. The answer given by the appellant to the effect that he has nothing to say about the evidence against him could constitute an admission of guilt. This, however, is not the basis on which the Trial Judge has found favour with the prosecution and has held that the charges against the appellant have been conclusively proved. The conclusion of the Trial Judge is based on the evidence on record as already discussed hereinabove.

32. In so far as alternative argument of the learned counsel for the appellant that the imprisonment for the remainder of the natural life of the appellant is far too excessive and harsh, this Court notes that the appellant is a person of depraved mind. He is a predator, who has targeted the victim girl, who is nine years old, and enticed her, and taken her away and committed the act of penetrative sexual assault on an innocent little

child. The degree of depravity is such that no lesser sentence than the one awarded to the appellant would suffice. The Trial Judge has awarded the only punishment prescribed. The appellant appears to be the maternal uncle of the friend of the victim girl. A child reposes faith and trust in such persons and relatives. The appellant has abused such trust and taken advantage of the faith of the innocent little child of nine years old. The degree of depravity of the appellant is clearly evident from the above and no punishment lesser than the highest punishment prescribed under the POCSO Act 2012 is warranted in the facts of the case.

33. For the reasons stated hereinabove, the impugned judgment and order of conviction calls for no interference. The instant appeal is hereby dismissed.

34. Let the Trial Court Records be returned to the appropriate Court for necessary action as indicated herein above.

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

(Md. Shabbar Rashidi, J.)

I Agree.

(Rajasekhar Mantha, J.)