IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Jay Sengupta

CRA (SB) 149 of 2022

CRAN 2 of 2025

(via video conference)

Khushi Mollick @ Jamsed Hossain

Vs.

The State of West Bengal& Ors.

For the appellant	:	Ms. Minoti Gomes Md. Hafiz Ali Mr. Kausik Biswas Mr. Debojyoti De .....Advocates
For the State	:	Mr. Somopriyo Chowdhury Ms. Anindita Mukherjee .....Advocates
For the SLSA	:	Ms. Soma Chowdhury Bandhu .....Advocate
For the de facto complainant through HCLSC	:	Ms. Sreyashee Biswas .....Advocate
Heard lastly on	:	13.11.2026
Judgment on	:	17.11.2026

Jay Sengupta, J:

1. This is an appeal directed against the judgement and order of conviction and sentence dated 06.09.2022 and 07.09.2022 passed by the learned Judge, Special Court under the POCSO Act, Kandi, Murshidabad in Sessions Trial No. 02(04), 2017 arising out of Burwan Police Station Case No. 440 of 2016 dated 04.12.2016, thereby convicting the appellant and sentencing him to suffer rigorous imprisonment for 3 years under Section 363 of the Penal Code and to pay fine with a default clause and to suffer rigorous imprisonment for committing offence under Section 366 of the Penal Code and to suffer rigorous imprisonment for 3 years and further to suffer rigorous imprisonment for 7 years along with a fine with a default clause under Section 4 of the POCSO Act and to suffer rigorous imprisonment for 3 years and to pay fine with default under Section 8 of the POCSO Act, all sentences having to run concurrently.

2. Learned counsel appearing on behalf of the petitioner has submitted and has relied on the written notes as follows. The alleged victim girl was aged about 17 years and the accused was aged about 21 years at the time of occurrence. Admittedly, they were in a love relation. The alleged victim in her 164 Cr.P.C. statement admitted she knew the appellant and marriage took place in the house of appellant. There are many contradictions in the statements of the alleged victim under Sections 161 Cr.P.C., 164 Cr.P.C. and the evidence. It is evident that the victim girl went with the petitioner at her own volition and co-habited. The victim girl reached the age of discretion. The appellant is in custody for more than 4 years. The appellant

being 21 years old and victim girl being 17+ years old were in love and as per 164 Cr.P.C. statement, the V.G. got married to the petitioner while staying in his house. The prosecution story is absolutely vague as the victim girl in her Section 161 statement stated that on being scolded by her father, she went away from her house. In the Section 164 Cr.P.C. statement she stated she went to meet her friend and she knew the appellant before going with him.

3. Learned counsel appearing on behalf of the de facto complainant has submitted and has relied on the written notes as follows. The victim was 15 years old girl as per FIR. She went missing on 26.11.2016. FIR was lodged on 04.12.2016 under Sections 363, 365 IPC. The victim was recovered on 08.12.2016 from Burwan Bus Stand. The FIR was registered on 04.12.2016 on the basis of a written complaint lodged by the PW-1, being the father of the victim against unknown accused. The FIR in a nutshell is that on 26.11.2016 the minor daughter of the complainant went missing. He tried to search for her in every possible place.However, he could not find any trace of her. Burwan Police Station Case No. 440/2016 dated 04.12.2016 was registered against unknown accused on the basis of the aforesaid complaint and the same culminated into S.T. No. 02(04)2017 arising out of C. Special Case No. 10 of 2017. Duringtrial, PW1 was the de facto complainant, the father of the victim. PW2 was the victim. PW3 was the scribe of the FIR. PW4 was a neighbour. PW5 was the doctor who examined the victim. PW6 was an ASI.PW7 was an SI.The victim girl being examined as PW-2 in her evidencehad stated that she was kidnapped by the appellant and then she

was kept confined at the room of the appellant where she was subjected to rape and her this version has been corroborated by her statement made before the Learned Magistrate and before the Police. Hence, the order of conviction and sentence passed by the Learned Judge Special Court under the POCSO Act is liable to be upheld. The victim was recovered after 12 days from the date of her kidnapping and the medico-legal examination was conducted on 26.01.2017, i.e., after 1 month and 18 days of her recovery and the attending doctor being examined as PW-5 deposed that she noticed that the hymen was torn and it was an old healed tear.As such, her medico-legal examination also corroborated her version. The victim girl stated before the treating doctor being PW-5 herein that she last met the appellant about a month ago. Such statement of the victim girl before the doctor at the first opportunity along with the medical evidence goes to show the credibility of her evidence. The version of Doly Begum being examined as PW-4, the neighbour of the victim who had heard the incident from the victim herself has also corroborated the victim's evidence. The age of the minor victim has remained unchallenged through out and even if the story of the prosecution is considered as gospel truth that the victim was a consenting party, then also it can be presumed that the consent of a minor is no consent. The appellant has also failed to overcome the rebuttable presumption under Section 29 of the POCSO Act. The appellant has also failed to overcome the presumption of "Culpable mental state" as laid down under Section 30 POCSO Act. The PW-6 being the 1st IO deposed that the victim had been recovered from the Burwan bus stand. However, the victim had deposed that

she was recovered from the house of the appellant.However, such discrepancy is a minor one and shall not lessen the veracity of the entire prosecution case and hence, the order of conviction and sentence is liable to be upheld. The prosecution has succeeded in proving its case beyond all reasonable doubt. Reliance is placed on State of Himachal Pradesh Vs Manga Singh, (2019) 16 SCC 759; State of Rajasthan Vs. N.K., (2000) 5 SCC 13, 3J; Nawabuddin Vs. State of Uttarkhand, (2022) 5 SCC 419.

4. Learned counsel appearing on behalf of the State has submitted and has relied on the written notes as follows. The 17 years old victim stated that she was taken from the bus stand by the accused to the house of his brother at Rajgram. She was confined in a room and raped by the accused/appellant. Thereafter, she was taken to the house of the accused, where she was kept for 18/19 days and rape was committed upon her. The victim's evidence remains unimpeached in the cross-examination. The victim's statement under Section 164 Cr.PC before the Magistrate was proved as Exhibit 3. PW-5/Medical Evidence corroborated that the victim was subjected to sexual intercourse. Hymen was found torn. PW-6 gave Corroborative Evidence. The first I.O. stated that the victim girl was recovered from Burwan bus stand on 08.12.2016. Her statement was recorded under Section 164 Cr.P.C. on 09.12.2016. PW-7/Second I.O. seized the birth certificate of the victim (D.O.B.16.03.1999). The victim was therefore aged 17 years at the time of the incident. PW-4/Neighbour corroborated PW-1 and PW-2. The victim's evidence remains unimpeached and is corroborated by the medical evidence. No further evidence is required

to convict the accused. One of the arguments of the defence is that there may have been consent. However, consent of the victim is immaterial under the POCSO Act. The victim vouched in her Section 164 Cr.P.C. statement and the evidence that she was raped by the accused. Section 30 of POCSO Act applies. The accused has failed to discharge the burden to prove that he was not guilty of sexual assault. The victim also stated that she was kidnapped from Sunderpur bus stand. Hence, Section 363 and Section 366 IPC are also made out. The conviction has rightly been recorded by the Learned Trial Court and the same deserves to be upheld by this Court.

5. I heard the learned counsels appearing on behalf of the parties and perused the petitioner of appeal, the evidence adduced, the other materials on record and the written notes of submission filed.

6. First, there is hardly any doubt about the age of the victim.Clearly, she was a minor at the time of the alleged occurrence. The birth certificate of the victim showed that she was a little more than 17 years of old at the time of occurrence.

7. The appellant's contentions that the victim went to the petitioner at her own volition and co-habited and that she had reached an age of discretion have no legs to stand. The question of consent of a minor cannot arise, especially vis-à-vis offences under the POCSO Act.

8. The father of the victim (PW 1) lodged the FIR on 04.12.2016 about his minor daughter going missing on 26.11.2016. The victim was recovered on 08.12.2016. Thereafter, the convicted was arrested.

9. In the statement before the learned Magistrate as well as before the learned Trial Court, the minor victim consistently stated that she was kidnapped by the appellant. She categorically deposed during trial that she was raped by the appellant. Such stand of her could not be impeached in the cross. In fact, in the statement before the learned Magistrate, she also mentioned that the parents of the victim were quite nice. This lends credence to the proposition that the victim was not making up this story. It is the prosecution case that after the victim was kidnapped, she was taken to the house of a relative of the accused where the two stayed for a day and thereafter the victim was taken to the house of the appellant where allegedly there was a sham marriage conducted. The appellant allegedly entered into physical relationship with the alleged victim during this period.

10. Not only did the victim, after her recovery, confide the above referred facts in her father, but also told this to a neighbour being PW 4.

11. As regards the purported discrepancy between the versions of the alleged victim and the investigating officer about from where the victim was recovered, it is not clear whether the bus stand in question was too far away from the residence of the accused. In any event, as had been claimedby the victim that she was staying with the appellant at the appellant's house, she must have come to the bus stand from the said house. If, as per the

investigating officer, the victim was recovered from such bus stand and the victim in her evidence stated that she was recovered from the house of the appellant from where she might have gone to the bus stand, the consequent apparent anomaly cannot be treated as fatal to the prosecution case. It has to be treated as a minor discrepancy, especially in view of the categorical stand taken by the minor victim about the commission of the offences during trial as also before the learned Magistrate.

12. The medical evidence adduced also supports the prosecution case.

13. Therefore, this Court finds no reason to disbelieve the version of the minor girl giving out the necessary details about the commission of such crimes.

14. On the other hand, the defence failed to rebut the presumptions under Sections 29 and 30 of the POCSO Act.

15. In view of the above discussions, this Court finds that the prosecution has been able to prove its case beyond all reasonable doubt.

16. Even on the question of the sentences, the approach of the learned Trial Court has been quite measured and reasonable.

17. This Court does not find any legal or factual infirmity in the impugned judgement and order of conviction and sentence awarded by the learned Trial Court.

18. Therefore, the appeal is dismissed and the impugned judgement and order of conviction and sentence is upheld.

19. Let a copy of this judgement be sent back along with the trial court records forthwith to the learned Trial Court.

20. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with requisite formalities.

(Jay Sengupta, J.)