

**In the High Court At Calcutta
CRIMINAL APPELLATE JURISDICTION
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Biswaroop Chowdhury**

**CRA(DB)/7/2023
MONOTOSH @ BHUTTO @ DIPAK DEBNATH
VS
THE STATE OF WEST BENGAL**

For the Appellant : *Dr. Arjun Chowdhury, Advocate
Ms. Pratusha Dutta Chowdhury, Advocate
Ms. Riya Agarwal, Advocate
Mr. Mantu Mandal, Advocate
Mr. Bappaditya Roy, Advocate*

For the Respondent : *Mr. Ujjwal Luksom, Advocate*

Heard & Judgment on: March 20, 2026

Debangsu Basak, J.

1. Appeal is directed against judgment of conviction dated September 28, 2022 and the order of sentence dated September 29, 2022 passed by the learned Judge, Special Court (POCSO)-cum-Additional District & Sessions Judge, Dinhata, Cooch Behar, connection with POCSO Case No. 08 of 2021 and POCSO Trial No. 07(12)2021.

2. By the impugned judgment of conviction learned Trial Judge found the appellant guilty under Section 5(m) of the Protection of Children from Sexual Assault Act, 2012 and punished the appellant by the impugned order of sentence with 20 years of rigorous imprisonment amongst others.
3. Learned advocate appearing for the appellant submits that the appellant was falsely implicated. He submits that the appellant belongs to a particular political party. He refers to the date of the First Information Report. He submits that, there was an ensuing Assembly Election at that point of time. By reason of the political affiliation of the appellant, he was falsely implicated.
4. Learned advocate appearing for the appellant refers to the deposition of the prosecution witnesses. He submits that, medical evidence led at the trial does not support the version of the victim and the so-called eye-witness. He submits that the issue as to political rivalry was acknowledged in cross-examination by the mother of the victim being P.W. 1.
5. Learned advocate appearing for the appellant submits that, no independent witnesses were examined at the trial by the prosecution. He points out that there is a claim that 1500 people gathered at the spot on the discovery of the alleged incident. None of those persons were examined at the trial. Version of the interested witnesses therefore remains uncorroborated.
6. Learned advocate appearing for the State submits that the prosecution was able to establish the charges beyond reasonable doubt. He submits that, the Court is entitled to rely upon the evidence of the victim despite the medical evidence not corroborating. He submits that, in the facts and circumstances of

the present case, the hymen of the victim was found to be ruptured. Therefore, it cannot be said that the victim did not suffer a penetrative sexual assault. He refers to the evidence of the P.W. 5 and submits that, evidence of the victim was corroborated by P.W. 5. Therefore, the learned Judge was right in holding the appellant guilty under Section 5(m) of the Act of 2012 and passed the order of sentence as done.

7. The police received a written complaint dated March 18, 2021 being Exhibit-1 on the basis of which, they registered a First Information Report. The police case was investigated into and a charge sheet submitted. Charges under Section 6 of the Act of 2012 were framed as against the appellant on December 20, 2021. Appellant pleaded not guilty and claimed to be tried.
8. At the trial prosecution examined 9 witnesses. Prosecution tendered 11 documents which were marked as exhibits. At the conclusion of the evidence of the prosecution, appellant was examined under Section 313 of the Code of Criminal Procedure.
9. Charge framed against the appellant is that, on March 18, 2021, appellant committed sexual assault by penetrating with his male organ into the female organ of the victim and thereby committed the offences under Section 6 of the Act of 2012.
10. P.W. 1 is the de facto complainant. He is the mother of the victim. She tendered the written complaint in evidence which was marked as Exhibit-1. She also tendered the medico-legal examination report which was marked as Exhibit-2. The birth certificate of the victim was marked as Exhibit-3. She stated that, incident took place at about 12 noon. At that time, the victim was about 7 and 1/2 years. The victim along with P.W. 5 were playing at their

house. The appellant came to the house and committed the offence. The victim tried to scream when the appellant gagged her mouth by his hand. Then, P.W. 5 started raising hue and cry and on her shout, she along with others rushed to the house. On seeing the crowd, the appellant fled away. She saw the victim was crying and, thereafter, she called the neighbor. She also followed the accused and caught hold of him. Neighbor assaulted the appellant. She along with the others called the local Panchayat member and informed the matter to him. Thereafter, the victim was taken to the hospital for treatment. She also lodged written complaint.

11. In cross-examination she stated that, she cannot name the neighbours residing adjacent to the North side of her house. She admitted that there was a political rivalry in the village. She is, however, unable to say whether the appellant was supporter of a particular political party. She admitted that she was not a witness to the incident. She stated that, when she came to the place of occurrence about 1500 people assembled there.
12. P.W. 2 is the victim. She narrated that, the appellant came to her house at noon. Appellant laid her on the veranda and removed her undergarments. Thereafter, appellant committed rape on her. She stated that P.W. 5 raised hue and cry on seeing the incident and, thereafter, the appellant fled away from the house. Police took her to the hospital for medical examination. She identified her signature. Her medical evidence tendered in evidence and marked as Exhibit-6/1. She recorded statements under Section 164 of the Criminal Procedure Code which was tendered in evidence and marked as Exhibit-7.

13. P.W.3 is the aunty of the victim. She stated that, the incident took place at about 12.30 mid day. At that time, she along with others were working at a nearby field. She stated that, P.W. 5, her son, was playing with the victim. Appellant gave Rs.10 to P.W.5 and then P.W. 5 went to a nearby shop and his absence, appellant laid down the victim and committed the sexual assault. After returning from shop, P.W. 5 noticed the victim lying on the ground and then P.W. 5 informed her along with others. P.W. 3 along with others raised hue and cry. Upon hearing hue and cry, villagers came to the spot and assaulted the appellant. Thereafter, the police complaint was lodged by P.W. 1.
14. P.W. 4 is the grandmother of the victim. She stated that, incident took place at about 12.30 P.M. the victim narrated the incident to her. She raised a hue and cry. Local villagers came to the spot. Villagers apprehended the appellant and handed him over to the police.
15. P.W. 5 is the cousin brother of the victim. He stated that, the appellant gave him Rs.10 and told him to go to shop for buying something. After returning from the shop, she found the appellant committed rape upon the victim. He informed that appellant No. 1 and his mother, P.W. 3 as to the incident. Thereafter, appellant left the spot.
16. The scribe of the written complaint deposed as P.W. 6. Written complaint was tendered in evidence and marked as Exhibit-1.
17. The medical Officer at the health centre who examined the victim deposed as P.W. 7. He stated that, on examination of the victim, he did not found any external injury on the female genital, breast,

neck etc. The victim was advised to attend the Sadar Hospital for collection of her vaginal swab.

18. The Doctor who examined the victim at the Sadar Hospital deposed as P.W. 8. He stated that, on examination, he did not find any external injury on the body or the private parts of the victim. No foreign body was found in her private parts. Hymen was found to be ruptured, scar at margin. Vaginal swab was taken. He tendered the medico-legal examination report which was marked as Exhibit-2.
19. The Police Officer who conducted the examination deposed as P.W.9. She narrated the course of examination.
20. Appellant was examined under Section 313 of the Code of Criminal Procedure where he claimed to be innocent. He stated that, at 12 noon on that day he was at his home. He drove a toto (Erickshaw). He said that, he was beaten and that the incident is fabricated.
21. Testimony of the victim and her brother, that is, P.W.5 is that, appellant committed penetrative sexual assault on the victim at about 12 noon on March 18, 2021. Both said in their testimonials that on hue and cry being raised, the appellant fled away. Victim stated that the appellant fled away while P.W.5 stated that the appellant left the spot.
22. Victim was examined by two doctors on March 18, 2021 itself. Both the doctors did not find any mark of injury on the body of the victim. Evidence of the two doctors is not conclusive as to penetrative sexual assault.
23. Description of the incident both by the victim and the P.W.5 is that, the victim was laid on a varandha whereupon, the rape was

committed. Victim was about seven and half years of age at the time of the incident while the appellant was about forty years.

24. Prosecution examined only the family members of the victim. Mother, aunty and the grandmother of the victim all stated in unison that neighbours arrived at the spot. According to the version of P.W.1, the mother of the victim, about 1500 persons gathered at the spot on the hue and cry being raised. No independent person was examined by the prosecution at the trial. No person from the side of the prosecution came to depose that, he arrived at the place of occurrence to witness the appellant being accosted, apprehended and beaten up.
25. In a given case, testimony of the victim may be sufficient to implicate the perpetrator notwithstanding, absence of corroborative medical evidence.
26. In the facts and circumstances of the present case, reasonable doubt emanates from the facts established.
27. It is the claim of the prosecution that, 1500 persons assembled at the locale on the P.W.1 and 3 raising a hue and cry. None of these persons were examined at the trial. Version of the prosecution is penetrative sexual assault by an adult of about forty years of age on a victim of about seven and half years. Medical evidence does not corroborate the version of the prosecution.
28. We took into consideration the statement recorded under Section 164 of the Code of Criminal Procedure of the victim which was tendered in evidence and marked as Exhibit-7. Victim did not name the appellant in Exhibit-7. She used the ward "Changra" to describe the perpetrator. In local dialogue of this region "Changra" is used to describe a young boy. Appellant cannot be said to be a

young boy given his age of forty years. There is an issue of political rivalry. It emanates from the answer given by the P.W.1 in her cross-examination. She acknowledges that, there exists political rivalry in the village. Appellant is a neighbour of the victim. False implication by reason of such political rivalry cannot be discounted.

29. In our view, these factors raised reasonable doubt as to the veracity of the evidence led by the prosecution at the trial. In a criminal trial any doubt should be to the benefit of the accused.
30. In the facts and circumstances of the present case, we are of the view that the prosecution did not prove the charge as against the appellant beyond reasonable doubt.
31. In view of the discussions above, we set aside the impugned judgment of conviction dated September 28, 2022 and the order of sentence dated September 29, 2022.
32. Since we are setting aside the impugned judgment of conviction and the order of sentence, the appellant is acquitted from the charge dated December 20, 2021. He is directed to be set at liberty forthwith, if not wanted in connection with any other case. He shall, however, furnish a bond to the satisfaction of the Trial Court in terms of Section 437A of the Code of Criminal Procedure which shall remain valid for six months from date.
33. All pending applications, if any, shall stand disposed of in the above terms.
34. Let a copy of this judgment and order along with Trial Court records be forthwith transmitted to the trial Court.

CRA(DB)/7/2023

35. CRA (DB) 7 of 2023 is **allowed**.

(Debangsu Basak, J.)

36. I agree

(Biswaroop Chowdhury, J.)

Dd/Ad