

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE DEBANGSU BASAK

AND

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 12 OF 2020

GOUTAM ROY

VS

THE STATE OF WEST BENGAL

For the Appellant : Mr. Sanjoy Mazoomder, Adv.

**For the State : Mr. Aditi Shankar Chakraborty, Ld. A.P.P.
Dr. Arjun Chowdhury, Adv.**

Last heard on : 13.01.2026

Judgement on : 16.01.2026

Uploaded on : 16.01.2026

CHAITALI CHATTERJEE DAS:-

1. This appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgement and order dated December 2, 2019 passed in POCSO case No. 17 of 2018 by the POCSO Court-cum-Additional Sessions Judge, 2nd Court, Cooch Behar convicting the accused/appellant

under Section 6 of the said Act and the order dated December 3, 2019 sentencing him to suffer rigorous imprisonment for 15 years.

Fact of the case

2. The prosecution case in a nutshell is that the accused is the father of the victim girl and approximately 10 years ago the wife of accused left him and went to Durgapur. The two sons of the accused are residing at Rajasthan. One day the accused return home in intoxicated condition and tortured the victim physically, even he tried to snatch all the money which victim got under beneficial scheme of Government. Victim informed the wife of de-facto complainant few days back of the date of lodging the complaint, the accused since few months was committing rape forcibly upon whom. On hearing this, the wife of de-facto complainant tried to inform the incident at concerned place but being requested by the victim she did not lodge any complaint. On June 6, 2018 being assaulted by the accused, victim left her house at 12 noon and about 11.30 P.M a phone call was received by the de-facto complainant from a person from NJP that victim was present at NJP .On the following day on June 7, 2018 at about 12 noon de-facto complainant went to NJP Police Station with accused at 8 P.M. Then she along with victim and accused came to Cooch Behar and after reaching that she insisted to go to the house of her aunt and then victim narrated the entire incident to de-facto complainant and thereafter the case was filed.

3. On completion of the investigation the charge-sheet was submitted on June 29, 2018 under Section 6 of POCSO Act of 2012. The learned Special Court

framed the charge under Section 6 of POCSO Act of 2012 against the appellant. The contents was read over and explained to the appellant who pleaded not guilty and claimed to be tried.

- 4.** In order to prove the charge 7 witnesses were examined by the prosecution. No defence witness was examined. The Learned Special Court by the judgment and order dated December 2, 2019 found the appellant guilty of the offence charged under Section 6 of the POCSO Act, 2012.
- 5.** Being aggrieved thereby the instant appeal has been filed.
- 6.** The Learned Advocate representing the present appellant submits that it is an ultimate incident where the father of the victim girl has been falsely implicated by the girl when he is absolutely innocent. It is submitted by the Learned Advocate that she was under the custody of her grandparents and none of them was cited as witness in this case. The cousin brother turned hostile during evidence who went to take her back and the de-facto complainant. No injury at her private part can be found from the medical report .Accordingly prays for setting aside the order of conviction.
- 7.** The prosecution on the other hand specifically argued that the allegation was leveled by a girl against none but her own father for commission of such egregious act. She also recorded her statement before the Learned Magistrate. Her evidence could not be impeached during the cross-examination. Therefore the Learned Trial Court rightly pass the order of conviction which should not be set aside. Accordingly prays for dismissal of the appeal.

Submission

8. Heard the submissions .On perusal of the materials on record and considering the submissions advanced by both the Learned Advocates the moot question now falls for consideration as to whether the order of conviction passed by the Learned Trial Court against the present appellant was justified enough and or whether the prosecution was able to prove the case beyond the shadow of all reasonable doubt. In this case the complaint was lodged by one Hillol Roy being the cousin brother of the victim before the Officer-in- charge Cooch Behar P.S on June 8, 2018 against the present appellant with an allegation of sexual assault upon the victim by her father. The victim being the minor girl escaped from her house on June 6, 2018 since her father assaulted her and on that night at about 11.30 P.M. a person from NJP informed the de-facto complainant that the victim was under the custody of NJP police. He on the next day immediately reached to NJP on June 7, 2018 at about 12.00 noon along with his uncle the father of the victim and thereafter they returned towards Cooch Behar after reaching Cooch Behar the victim denied to go with her father and insisted to go to her house of aunt. After that she narrated the entire incident to the de-facto complainant and then he lodged the complaint for taking legal steps against the accused person.

9. In this case the victim girl deposed as P.W. 1 and at the time of adducing evidence she was aged about 16 years. According to her version she used to stay with her grandparents and when she was at class X one day her father returned home at night as intoxicated condition. The victim went to sleep with

her headphone then her father kicked the door of the room and tied her mouth with napkin and committed rape on her. In this way for two months her father came and committed rape during night. She narrated the incident to her sister-in-law and she told her to complain to the police. On perusal of her deposition it further transpires that before 10 years her mother left their house as her father assaulted her and she went to her paternal house at Durgapur. Her father also threatened her that if she narrates the incident to anybody he will kill her. Out of fear she remained silent and then told the incident to her sister-in-law. She was further assaulted by her father physically and as she intend to talk to people and since she had no money with her, she sold her cycle which she received under "Kanyasaree Scheme". Along with such money she took a bus and reached NJP and asked a Toto puller to take her maternal house but it was night and that Toto puller brought her to Siliguri P.S. She narrated the entire incident to the police and they did not allow her to go to her maternal house alone and asked for a phone number and she informed about her cousin brother named Hillol, the de-facto complainant. The police called Hillol and next day Hillol, her father and her grandfather went to NJP and she was handed over to Hillol Roy but after they returned to Cooch Behar she refused to return to her father and then they brought her to Cooch Behar Police Station. She narrated the incident to a lady officer and then she was taken to MJN Hospital for treatment wherefrom she went to home on Friday. On Monday she came to Court and narrated the incident to Magistrate. During the time of incident her brothers were residing at Joypur and she used to reside with her

father and grandparents. From her evidence it can be gathered that her father was in CISF service and he left service and used to work as Law Clerk.

10. The defence tried to make out a case of family dispute between the father of the victim and father of Hillol over the property matter and for that reason there is a possibility of false implication of the accused in this case. The witness also told that she got a cycle under “Kanyashree Scheme” and she mortgaged the cycle with the paternal house of her sister-in-law Bijoi Roy and took money. Her evidence further manifest that her grandmother takes sleeping pills. She also stated that she sustained bleeding injuries in her private part and the bloodstained bed sheet which she shown to her grant parents. She denied that she was tutored by Hillol and his family to make false compliant against her father.

11. P.W. 2 Hillol Roy came to learn on the relevant date that victim left her house and went to Siliguri NJP. He received a phone from a driver and asked her whether he knew the victim. He was asked to bring back the victim but it was mid night so he could not reach at that time and the driver informed him he will keep the victim in nearby Police Station. The Police informed him that the victim had physical relationship with her father and he was forced to put his signature on the written complaint. He could not say the name of the driver and he did not meet the driver but he meet the victim at NJP Police Station. It can be found from her evidence that often victim used to leave without informing anybody and accused used to scold for such reason.

12. P.W. 3 Prankrishna Dey was declared hostile. This witness identified the accused person. P.W. 4 Sudip Dey also declared hostile who could not say about any incident. P.W. 5 Jogesh Chandra Barman was the Medical Officer attached to Cooch Behar Government Medical College and Hospital .On June8, 2018 he was attached with same hospital and he examined the victim with the history of sexual assault on victim by her father but he did not find any external injury on her private part. According to him the incident took place on June 3, 2018 at about 1 P.M.

13. Dikki Lama Bhutia deposed in this case as P.W. 6 who was posed at Women Police Station Sadar, Cooch Behar as P.C. on June 8, 2018. She received a written complaint from Hillol Roy. She examined the complainant and found that he corroborated his version on written complaint. She examined the victim recorded the statement. She also examined the grandfather of the V.G and recorded his statement. She examined the other available witnesses recorded the statement and arrested the accused as there was no legal guardian of the victim, she sent her to Government Home. According to her evidence she examined Pranakrishna Dey who stated to her that there was a rumor that accused kept victim as his wife and did not allow her to go out from her house nor allow her to mix with anybody. He also stated that he heard that accused used to have physical relationship with victim forcefully. She did not examine the grandmother of the victim and also the aunt of the victim namely Putul Barman and Utpala Roy.

14. P.W. 7 Shyamal Adhikary is the scribe who wrote the written complaint on behalf of Hillol Roy on June 8, 2018. He read over and explained the contents to Hillol over which he put his signature. In his cross he said that he did not know Hillol Roy but he wrote. Therefore from the above it can be found that there is no direct evidence in order to corroborate the victim girl's statement. The question is as to whether the evidence of the victim girl can be accepted and any further corroboration is necessary or not.

15. It is trite law that a conviction for rape can be sustained solely on the testimony of the victim, provided that her evidence inspires confidence in the mind of the Court and appears to be natural and truthful. There are catena of decisions of the Hon'ble Supreme Court where it has been time and again held that the sole testimony of a victim girl may be sufficient for passing an order of conviction against the accused subject to the condition that same is able to inspire confidence in the mind of court and is of sterling in nature. A balance between securing justice for victims and safeguarding the rights of the accused must be maintained in the case of commission of an offence of sexual assault.

16. In the instant case the circumstances narrated by the victim girl establishes that the incident did not happen only once but it continued regularly for a period of 2 months and ultimately she had to mortgage her cycle received from a Government Scheme for the purpose of having some money and with that she purchased the bus ticket and left the house and this act of the girl shows the helpless condition of the victim as she wanted to escape from her father. The family of the victim consisted of the father and grandparents as the mother left

10 years ago to her paternal house being not able to bear the assault inflicted upon her by the husband. The brothers of the victim also during that time of incident were living at Rajasthan.

17. The defence has tried to impress upon the Court with regard to the fact that since the victim girl was of short tempered and there existed a dispute between the accused and the father of the cousin brother Hillol Roy there is a possibility of false implication by the victim against the accused person. This analogy, by any stretch of imagination cannot be accepted in view of the nature of accusation which pertains to sexual assault upon a daughter by her own father. The victim was not aged about 5 to 10 years who can be tutored easily but was aged about 16 years having enough mental capacity of understanding the consequences of the accusations made by her against none but her father. This court cannot be brush aside the experience and mental status of a girl of about 16 years facing the trauma who even could not disclose the fact to her mother as her mother left her in the custody of her father and grandparents and her grandparents ignored her contentions .She tried to narrate the incident even about the blood stained bed sheet to her grandparents but they did not advice her anything. The aged grandmother was dependent on sleeping pills and the father /accused used to commit the offence during night .When she informed the same to her boudi then she was advised to lodge a complaint. It is quite natural that the victim girl did not accumulate such courage to go before the police and therefore she chose to left the house and wanted to go to her maternal house. However in absence of any proper address or mode of

communication she only could reach up to the NJP Station where somehow the auto driver could make a call to Hillol , the cousin brother and then took her to the local Police Station.

18. In this case the testimony of the victim girl could not be impeached and she withstand a very elaborated cross examination which continued for number of days. That apart the final nail to the coffin was put by the accused himself when during his examination under Section 313 of the Code of Criminal Procedure the incriminating materials put before him regarding threatening to the victim that if she discloses the fact to anybody she will be killed, admitted the fact. The accused did not try to adduce any other evidence in his favour.

19. The statement made by the victim girl before the Learned Judicial Magistrate, 2nd Court, Cooch Behar also disclose the version narrated in the written complaint which the de-facto complainant could learn from victim girl herself. Non receiving of any injury on her private part in terms of the medical report itself cannot be a ground to disbelieve the testimony of the victim girl which is otherwise found credible and trustworthy.

20. The Learned Trial Court relied upon the decision of the Hon'ble Apex Court in the decision reported in ***State of Maharashtra Vs. Chandra Prokash Kewalchad Jain***¹ where it was held that “ *Women who is a victim of sexual assault, is not an accomplice to the crime but is a victim of another person's last and therefore, her evidence need not be tested with same amount of suspicion as that of accomplice .The Evidence Act no where says that her evidence cannot be*

¹ (1990) 1 SCC 550

accepted unless it is corroborated in material particulars. What is necessary is that the court must be alive and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her .Minor contradiction or insignificance discrepancies in the statement of a prosecutrix should not be a ground for throwing out the case.”

- 21.** There is nothing to show a different version of the case either from the nature of cross examination or from the evidence of the accused during his cross examination in order to create a cloud of suspicion in the mind of the court to raise a doubt regarding the case make out by the victim.

Conclusion

- 22.** Therefore in view of the above facts and circumstances and considering the law laid down, this court is of the opinion that there is no reason to interfere with the judgment and order of conviction passed by the Learned Special Court as evidence of the victim clearly indicates towards the commission of Penetrative sexual assault of victim by the accused and therefore he was rightly found guilty for the offence punishable under Section 6 of POCSO Act.
- 23.** Hence the instant Criminal Appeal stands dismissed .All the connected applications if any stands disposed of.
- 24.** The Judgement and order of conviction passed by the Learned Special Court is hereby affirmed.

25. Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[CHAITALI CHATTERJEE DAS, J.]

26. I agree

[DEBANGSU BASAK, J.]

