

Calcutta High Court
In the Circuit Bench at Jalpaiguri
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

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

CRA (DB)/16/2022

NIREN BARMAN
VS
THE STATE OF WEST BENGAL

For the Appellant : Mr. Satarudriya Mukherjee, Advocate
Ms. Tannu Agarwal, Advocate
Mr. Debajit Kundu, Advocate

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

Heard and Judgment on : 25.03.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment of conviction dated June 6, 2022 and order of sentence dated June 8, 2022 passed by the learned Additional Sessions Judge-cum-Judge, Special Court under POCSO Act, Alipurduar in connection with Special Case No. 38 of 2017 (CIS Special Case no. 35 of 2017) corresponding to Sessions Trial No. 48 of 2017.
2. By the impugned judgment of conviction, learned Trial Judge found the appellant guilty under Section 4 of the Protection of Children from Sexual Offences Act, 2012.

3. By the impugned order of sentence, learned Trial Judge sentenced the appellant imprisonment for life along with a fine of Rs.20,000/-.
4. Learned Advocate appearing for the appellant submits that, the prosecution was unable to establish the charge under Section 4 of the Act of 2012 beyond reasonable doubt as against the appellant. He draws the attention of the Court to the rough sketch map of the alleged place of occurrence being Exhibit 5. He submits that, on the testimony of the victim herself, the victim was allegedly proceeding to her school through a road which in normal circumstances, would be occupied by a number of persons including students going to the school. In particular, reference of Exhibit 5, he submits, point (C) is the place from which, the victim was allegedly accosted by the appellant and taken to point (A) allegedly where the victim was raped. He submits that on testimony of the victim, the difference between point (C) and point (A) is about 500 Metres. Victim claimed to be dragged all the way from point (C) to point (A). He submits that it is inconceivable that an incident of such nature, occurring at about 10'O clock in the morning on a school day will go unnoticed by any student traversing such road or by any members of the public or parents or students using such road to go to school.
5. Referring to the deposition of the doctor who examined the victim, he submits, such doctor being P.W. 2 stated in cross-examination that he was not sure as to whether the victim was sexually assaulted or not. He

submits that, therefore, the benefit of doubt should be afforded to the appellant, if nothing else.

6. Learned Advocate appearing for the State submits that the prosecution was able to establish the charge under Section 4 of the Act of 2012 beyond all reasonable doubt. He refers to the testimony of the victim. He submits that, the testimony of the victim should not be disbelieved. According to him, there is no ground to interfere with the impugned judgment of conviction or order of sentence.
7. Police received a written complaint on January 1, 2016 with regard to an incident of rape. Such complaint was registered as a First Information Report. Police on conclusion of the investigation, submitted a charge sheet. Charge under Section 4 of the Act of 2012 was framed on December 12, 2017 as against the appellant. Appellant claimed to be not guilty.
8. At the trial, prosecution examined 11 witnesses. On conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Criminal Procedure Code.
9. P.W. 1 is the victim. She stated that, at the material point of time, she was in Class-IX of the school. She stated that the school hour was from 10 a.m. to 4 p.m. On the date of the incident, she was going to school and for that purpose, she left her home around 10 a.m. On the way to school, she was accosted by the appellant. Appellant was known to her as the appellant was her neighbour. Appellant threatened her with dire

consequences and took her to the jungle. Thereafter, the appellant raped her. P.W. 1 requested the appellant not to do the mischief but the appellant disclosed that if the P.W. 1 did not offer herself to him, she would face consequences.

10. P.W. 1 stated that after rape, the appellant fled away. Thereafter P.W. 1 returned to her house. At that time, her parents were not in the house. She did not go to school at that date. On her parents returning home in the evening she disclosed the incident to them. Thereafter her parents went to the house of the Panchayat. Panchayat asked her parents to wait for one day. The appellant did not come to the Panchayat. Thereafter, her mother lodged complaint with the police station.

11. P.W. 1 was taken to the hospital and on being asked she disclosed about the incident to the doctor who examined her. P.W. 1 stated that she recorded her statements under Section 164 of the Criminal Procedure Code which was tendered in evidence and marked as Exhibit 1.

12. In cross-examination, P.W. 1 stated that, on the date of incident, she was going to school alone and no other student was going to school at that time. She stated that, she needs to go through a forest and the appellant was found in the midst of the forest. She also claimed that, she raised her voice for help. She tried to flee from the clutches of the appellant but failed. She, however, did not assault or inflict any nail scratch on the appellant. She claimed that the appellant dragged her for about 500 meters inside the forest from the road. Appellant pulled her

holding her with one hand and the cycle with another hand. She stated that she was inside the forest for about one hour during which she raised her voice for help. She sustained scratch injuries on her body due to that reason and she showed the same to the doctor. She handed over the wearing apparel to the police.

13. P.W. 2 is the medical officer who examined the victim. P.W. 2 stated that he examined the victim on January 11, 2016. In his opinion, the hymen might be ruptured. In his opinion, it cannot be said whether the victim was sexually assaulted or not. There was no mark of injury found in her private part. No foreign body was found in her private part. He tendered medical report which was marked as Exhibit 2.
14. In cross-examination, P.W. 2 stated that, in his opinion, he was not sure as to whether the victim was sexually assaulted or not. He also stated that, he did not find any injury on the body of the victim.
15. P.W.3 is the scribe of the written complaint. He tendered the written complaint which was marked as Exhibit 3.
16. A neighbour of the victim deposed as P.W. 4. He stated that, he heard from the parents of the victim that the appellant committed an indecent act on the victim. When she went to the house of the victim, she noticed that the father of the victim was rebuking the victim.
17. A lady constable deposed as P.W. 5. She took the victim to the hospital for medical examination. She identified her signature on the seizure list which was marked as Exhibit 4/1.

18. A co-villager of victim deposed as P.W. 6. He is a hearsay witness not adding any value to the case of either of the prosecution or the defence.
19. Mother of the victim deposed as P.W. 7. She stated that incident took place at 10'O clock. On returning home, victim informed her that the appellant committed an indecent act on her at the forest. She stated that, she called the local Gram Panchayat for cooperation. After two day, she lodged the police complaint. She identified her signature on the written complaint which was marked as Exhibit 3/1. She stated that she was present before the Magistrate when the statement of victim was recorded. She identified her signature therein. In cross-examination, P.W. 7 stated that, she noticed scratch mark on the wrist of the victim. She also stated that, apart from such scratch marks on the wrist of the victim, there was no other injury on the person of the victim.
20. P.Ws 8 and 9 did not add any value to the case of either the prosecution or the defence.
21. P.W. 10 is the Investigating Officer. He narrated his manner of investigation. He tendered the rough sketch map with index which was marked as Exhibit 5.
22. P.W. 11 is the police official who lodged the formal First Information Report. He submitted the charge sheet.
23. On conclusion of the evidence of the prosecution, appellant was examined under Section 313 of the Criminal Procedure Code where he claimed to be innocent as he declined to adduce any evidence at the trial.

24. Incident is alleged to take place at 10'O clock in the morning on January 9, 2016. According to the version of the prosecution, victim was accosted while she was going to school, by the appellant, taken to a place of about 500 meters away from the place where, the victim was initially accosted.
25. Version of the victim is that she was dragged by the appellant from the initial place where she was accosted to the place where the rape was committed. Version of the victim is that, she was held by the appellant by one hand and that, while she was being dragged the appellant was holding a bi-cycle with the other hand. She was dragged for 500 meters. She raised a hue and cry. She suffered injuries.
26. Incident of accostment is claimed to occur on a road which traversed by members of the public. It is a road which leads to the school at which, the victim studied. Incident is alleged to take place at a time when the school was open. Students are supposed to be using that road to arrive at the school. Apart from the students, there will be parents accompanying such students to the school. There will be members of the public using such road also.
27. Prosecution did not produce any independent witness who saw the incident of the appellant accosting the victim from the place where she was accosted that is the road leading to the school. Apparently, victim was accosted in broad day light from a road which leads to her school.

28. Mother of the victim found only scratches on the wrist of the victim. Doctor examining the victim did not find any injury on the body of the victim and certainly not in her private part.
29. Medical evidence does not corroborate the claim of rape made by the victim. In the event, the Court is in a position to believe the version of the victim herself, then, it is not necessary that the medical evidence need to corroborate the version of the victim.
30. In the facts and circumstances of the present case, we find that, the victim is being accosted by the appellant from a public place which in every likelihood would be teeming with school going children and their parents if not other members of the public. Prosecution, however, did not examine any person who saw the appellant to accost the victim from that public place.
31. This raises sufficient doubt as to the veracity of the claim of the victim. Claim of the victim as noted above is unsupported by the medical evidence. The medical evidence therefore, assumes significance in view of the version of the victim not being corroborated at the trial.
32. Reasonable doubt, if any raised, should benefit the accused. Reasonable doubts however, need to emanate out of the facts established. Fact established at the trial is that, the victim was accosted by the appellant from a public place that is a road which leads to the school at the time, when, the victim was going to the school. In every likelihood, there will be a number of persons using that road, such as students

going to school, parents accompanying such students and other members of the public. As noted above, no independent witness came forward to corroborate the version of the victim as to the appellant accosting her from such public place dragging her to the place of occurrence.

33. In such circumstances, we are of the view that, the prosecution was unable to prove the charge under Section 4 of the Act of 2012 as against the appellant beyond reasonable doubt. The impugned judgment of conviction and order of sentence are set aside. Appellant be set at large immediately subject to the custody of the appellant not being required in any other police case. The appellant shall, however, furnish a bond to the satisfaction of the Trial Court in terms of Section 437A of the Criminal Procedure Code which shall remain valid for six months from date.
34. All pending applications, if any, including application for bail, shall stand disposed of in the above terms.
35. Let a copy of this judgment and order along with the trial court records be sent down to the learned jurisdictional Court at once.
36. **CRA (DB)/16/2022 is disposed of.**

(Debangsu Basak, J.)

37. I agree.

(Biswaroop Chowdhury, J.)