

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

**CRA No.36 of 2021
IA No: CRAN 3 of 2026**

Rama Shankar Sah

-Versus-

The State of West Bengal and Another

For the appellant/petitioner	:	Ms. Madhushri Dutta, Adv.
For the State	:	Mr. Jagriti Mishra, AAAG, Mr. Atul Dong, Adv.
Heard on	:	12.06.2026
Reserved on	:	12.06.2026
Judgment on	:	18.06.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against a conviction under Section 4 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.
2. Learned counsel for the appellant argues that the impugned judgment is tainted by error of law as well as perversity. It is argued that the prosecution case was fraught with patent contradictions and discrepancies, which were overlooked by the learned Trial Judge.

3. The Victim Girl (VG), who was three years old at the relevant point of time, adduced evidence as PW-1, but did not identify the appellant, although she stated in her evidence that she knew him. Moreover, the VG named the offender as "*Pintu vaiya ke papa*" (father of Pintu). However, both the defence witnesses stated in their evidence that the name of the son of the appellant is "Pappu". In his statement under Section 313 of the Code of Criminal Procedure (Cr.P.C.), the appellant also denied having any son by the name of Pintu. He stated his son's name to be Abhisek.
4. Furthermore, the mother of the VG, who adduced evidence as PW-2, gave out contradictory versions of the story. In her complaint, on the basis of which the First Information Report (FIR) was registered on July 23, 2018, the mother stated that on the fateful day she, along with the VG and her father, were at home and the father was sleeping; when the mother of the VG went to the toilet, the appellant intruded into their home and committed the offence.
5. However, the said witness, in her statement under Section 164 of the Cr.P.C., altered the version by stating that the appellant had come with the VG's father to take liquor and was present in the room when she left the same for the toilet. She further stated that the father of the VG was unconscious and sleepy and the offence was committed before her return.
6. Again, in her evidence as PW-2, the VG's mother stated that the appellant came in when she left, during which interregnum the offence was committed. Thus, it is submitted that the manner of entry of the appellant is shrouded in doubt even as per the version of the VG's mother.

- 7.** Learned counsel for the appellant next argues that the father of the VG, Biswanath, adducing evidence as PW-5, stated in his examination-in-chief merely that he woke up and found blood oozing out from the VG. However, in his cross-examination, he stated that he had seen the appellant inserting his finger in the private parts of the VG. Despite seeing so, according to PW-5, he merely sat, doing nothing even after witnessing the offence being perpetrated on his daughter. Moreover, PW-5, in his cross-examination, stated that he could not remember the name of the appellant, although he admitted that he knew the appellant for the last 3-4 months and met him twice, including the date of the offence.
- 8.** Learned counsel for the appellant next contends that Chandra Kishor Prasad, PW-4, and Pappu, the son of the appellant, had business rivalry according to both the defence witnesses and Chandra instigated his friend Biswanath, the father of the VG, to lodge the complaint. Thus, the possibility of the complaint being motivated by vindictiveness cannot be ruled out.
- 9.** It is next argued by the appellant that PW-2 merely put her Left Thumb Impression (LTI) on the complaint, whereas her elder daughter, who adduced evidence as PW-3, wrote the same. Thus, the complaint might not have been the true version of PW-2, the mother of the VG.
- 10.** Lastly, the appellant argues that no neighbour saw the appellant come to the place of occurrence, which is not credible in view of the building where the VG resides with her family being a four-storied one.

11. Thus, it is contended that there is sufficient doubt as to the involvement of the appellant in the offence and, as such, the benefit of doubt ought to have been given to the appellant.
12. The learned AAAG, appearing for the State, vehemently opposes the submissions of the appellant and argues that the victim girl did not identify the appellant because the appellant was not produced before her to save her, a minor girl of tender years (three years old), from the ensuing trauma, which is recorded in the impugned judgment. Thus, there was no scope of the VG identifying the appellant. However, the VG clearly stated in her evidence that the offender was "*Pintu vaiya ke papa*", whereas PW-2, her mother, identified the appellant as the offender as well as the father of Pintu. Conspicuously, it is submitted, no counter suggestion on such count was put to PW-2 in her cross-examination.
13. Insofar as the alleged enmity between Chandra Kishor (PW-4) and the appellant's son leading to the complaint being lodged is concerned, learned AAAG categorically refutes the same and submits that the appellant never stated so in his statement under Section 313 of the Cr.P.C. Moreover, no question was put to PW-4 in that regard in his cross-examination.
14. Learned AAAG further argues that the involvement of the appellant in the offence was categorically corroborated by several witnesses and material evidence, including the medical report. Thus, it is argued that the prosecution sufficiently proved the guilt of the appellant beyond reasonable doubt.
15. Accordingly, it is prayed that the appeal be dismissed.

16. Upon hearing learned counsel for the parties, it is found that the impugned judgment is elaborate and adverts to all relevant facets of the matter. The learned Trial Judge painstakingly sifted through the evidence and came to his conclusions.
17. Insofar as the argument of the appellant that the VG did not identify the appellant is concerned, the learned Trial Judge categorically recorded that the VG was not called upon to do so in view of her tender years, to save her the possibly ensuing trauma. The VG was only three years old at the relevant time and, thus, this Court does not find any fault with the learned Trial Judge in pursuing such course of action.
18. Even otherwise, the said omission cannot be termed as a lacuna in the prosecution case, since PW-2, the mother of the VG, who literally caught the appellant “red”-handed (with blood oozing out from the private parts of the VG smeared in his hands) immediately after the offence and categorically identified the appellant in her deposition. PW-2 also stated in her evidence that the appellant was known as “*Pintu vaiya ke papa*”. Conspicuously, no counter suggestion to such statement was put to PW-2 in her cross-examination, thus establishing the identity of the appellant beyond reasonable doubt.
19. Apart from the two defence witnesses, none else referred to the appellant’s son being Pappu. The appellant himself, in his statement under Section 313 Cr.P.C., stated that the name of his son to be Abhisek, and neither ‘Pappu’ nor ‘Pintu’. Thus, even from the defence case, two different names of the

appellant's son come out, hence, giving rise to the possibility of the appellant's son also being known by the nickname Pintu.

- 20.** The discrepancies pointed out by the appellant in the evidence of the prosecution witnesses are minor in nature, which is but natural if the witnesses are truthful. Fact remains that the sum-total of the basic case run by the prosecution was sufficiently corroborated by cogent evidence.
- 21.** The wearing apparel of the VG, smeared with blood, was exhibited, the medical report, which was also exhibited, showed penetration and both PW-1 and PW-2 corroborated that the appellant was guilty of the offence.
- 22.** Both PW-2 (mother of VG) and PW-5 (father of VG) corroborated that they found the appellant immediately after the offence with blood smeared in his hands whereas the neighbours as well as PW-1, PW-2 and PW-5 corroborated that blood was oozing out from the private parts of the VG immediately after the incident. The evidence on record also shows that the VG had to be hospitalized for three days after the incident. Such multitude of evidence could not have been manufactured.
- 23.** One of the purported incongruities in the prosecution case, as per the appellant, is the manner of entry of the appellant to the place of occurrence. However, PW-2 consistently stated in her evidence as well as her statement under Section 164, Cr.P.C. that the father of the VG, along with the appellant, were drinking liquor and the father went into a drunken stupor, during which phase the offence was committed. The stray statement in the complaint, which gave rise to the FIR, to the effect that the appellant "intruded" when PW-2 left the room, does not demolish the rest of the

corroborative evidence. Such minor discrepancy may also be attributed to the fact that PW-2 merely put her LTI on the complaint and her elder daughter, PW-3, wrote the complaint on her behalf and there might have cropped up little gaps in communication. In her evidence, PW-3, the sister of the VG, clearly stated that she had read over and explained the contents of the complaint to her mother PW-2. However, it is common experience that certain nuances of language are lost in transcription. Hence, it may very well be that there was some gap between the version of PW-2 and the written complaint written as per her instruction by her elder daughter. It is well-settled that the FIR is not an encyclopaedia and it is open to the prosecution to substantiate the offence by adducing evidence. It would suffice if the FIR contains the rudiments of the alleged offence, which it does in the instant case.

- 24.** Another alleged discrepancy harped upon by the appellant is that the VG's father, despite having seen the offence, kept sitting on without taking any steps. However, the father of the VG (PW-5) stated in his evidence that he woke up from his intoxicated daze upon hearing commotion and saw the offence being perpetrated, upon which he tried to save his daughter. As per the case of PW-1, PW-2 as well as PW-5, the appellant fled from the spot immediately after committing the offence and being called out by PW-2 upon her return from the toilet. It is also their common version that the father of the VG, having had substantial amount of liquor along with the appellant, was in a completely inebriated state and almost unconscious when the offence took place. Thus, there might very well be slight incoherences and

inconsistencies in the exact chronology of events which happened during such drunken stupor of the said father, as borne out by his version in evidence.

- 25.** The father of the VG, not quite known for his memory, as borne out by the fact that he could not recollect the name of the appellant in evidence, might very well have mixed up the exact chronology of events at the relevant point of time, more so keeping in view his condition at that juncture.
- 26.** The mere fact that the VG's father forgot the name of the appellant in evidence does not come to the aid of the appellant in any manner, since no effective purpose would be served for the prosecution in PW-5, the said father, having admitted to have forgotten such name. Rather, it would enure to the benefit of the prosecution if PW-5 named the appellant in his evidence.
- 27.** The appellant also seeks to propound a conspiracy theory, which is palpably absurd. It is not credible from any perspective that merely because of the alleged business rivalry between Chandra, a friend of the victim girl's father, and the appellant's son, the VG's father would go to the extent of putting his minor daughter of three years and her future at stake by making false allegations against the appellant. In fact, the complaint was not lodged by the VG's father at all, but by her mother, accompanied by her elder sister. Thus, the said theory falls flat.
- 28.** Even the defence witnesses' evidence does not bear out such case. Conspicuously, the appellant himself, in his statement under Section 313,

Cr.P.C., never even mentioned about any such enmity but went into a complete denial mode regarding all relevant aspects of the case.

29. Even if we scrutinize the evidence on DW-1 and DW-2, it would only come out as per their own version that there was a business rivalry between Chandra and the son of the appellant. No enmity whatsoever between the VG's father and the appellant or the appellant's son has been made out even in the said deposition. Thus, the theory of enmity prompting the complaint is far-fetched and not credible from any perspective.
30. The chain of events leading to the offence and immediately thereafter has been categorically corroborated by the prosecution witnesses and the substantial material evidence on record, including the wearing apparel, the duly-proved medical examination report, the proof of hospitalisation of the VG for three days, identification of the appellant by PW-2, the mother of the VG, who was present immediately after the offence and saw the appellant with blood-stained hands, cannot be overlooked. Thus, there is no scope of doubt whatsoever as to the appellant being guilty of the offence under Section 4 of the POCSO Act. The standard governing appreciation of evidence in criminal cases is 'beyond *reasonable* doubt'; thus, the prosecution case is required to be reasonably established. It is not the law that every prosecution case has to be cent per cent foolproof. The proof has to be established within reasonable margins of error.
31. In such view of the matter, there is no scope of interference in the present appeal.

- 32.** Accordingly, CRA No.36 of 2021 is dismissed on contest without any order as to costs, thereby affirming the impugned judgment dated December 20, 2018 passed by the learned Additional District & Sessions Judge, Second Court cum Special Judge (POCSO Act, 2012) at Darjeeling in Spl.(c) 14 of 2018, arising out of FIR No.08 of 2018 dated July 23, 2018, P.S. Women Sadar Darjeeling, REG. No. 19 of 2018, under Section 4 of POCSO Act, 2012.
- 33.** IA No: CRAN 3 of 2026 is also disposed of in the light of the above observations.
- 34.** Urgent certified copies, if applied for, be supplied to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)