

Form No. J(1)

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

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Om Narayan Rai**

**C.R.A. (DB) 47 of 2025
With
I.A. No. CRAN 2 of 2026**

**Haridas @ Haridas Debdas
-Versus-
The State of West Bengal**

For the petitioner: Mr. Sanjay Mazoomdar.

For the State: Mr. Nilay Chakraborty,
Mr. Abhijit Sarkar.

For the de facto complainant: Mr. Hillol Saha Podder,
Ms. Mousumi Das.

Heard on: April 20, 2026.

Judgment on: April 20, 2026.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against a judgment and order dated 25th April, 2025 passed by the learned Additional Sessions Judge, 2nd Court-cum-Special Court under the POCSO Act, Jalpaiguri in Sessions Case (POCSO) No. 67 of 2023 arising out of Banarhat Police Station Case No. 181 of 2023 dated 10th July, 2023. The appellant was convicted to suffer Rigorous Imprisonment of twenty years and fine of Rs.50,000/- for the offence punishable under Section 6 of the

POCSO Act, 2012. He was thereafter sentenced to six months' imprisonment and fine for the offences punishable under Section 248 of the Indian Penal Code and the victim was awarded compensation of Rs.5,00,000/- to be paid by the DLSA.

PROSECUTION CASE AND TRIAL:

2. The prosecution case in brief is that on 9th July, 2023 the victim girl (11 years of age) was at home with her younger brother who was six years old. Her father had died much earlier. Her mother was a daily rated worker. The grandparents of the victim with whom the victim and her family were residing were away visiting a relative at Khagenhat. Around 3:30 P.M. on the fateful day, when the victim and her brother were there at home, the appellant is stated to have entered the house. The appellant gave the victim's brother 10 rupees and asked him to buy something from a local shop. The appellant thereafter took the victim to an adjacent room where the grandmother of the victim stayed. He thereafter removed the garments of the victim and committed penetrative assault on her within the meaning of Section 5 and 6 of the POCSO Act, 2012.

3. After the incident, the appellant threatened the victim that if she disclosed the incident to anybody, he would kill her. He offered money to the victim and threatened her while asking her not to disclose the incident to anyone. In the evening upon return of the victim's mother, she narrated the whole incident to her mother. The mother thereupon

went to the house of the appellant and informed the family members thereat of the incident of the offence committed by the appellant. The lady members of the house of the appellant stated that they would discuss the matter in the evening in presence of the male members of the house.

4. When the mother of the victim went back in the evening, the appellant came into the house and upon finding the mother of the victim narrating the incident to his family members, he fled away. The mother of the victim on the next date i.e. 10th July, 2023 lodged a complaint with the Banarhat Police Station. F.I.R. No. 181 of 2023 dated 10th July, 2023 was registered by the Police under Section 376AB of the Indian Penal Code read with Section 6 of the POCSO Act, 2012. The appellant was named as accused in the FIR. The victim was sent for medical examination and her statement was recorded under Section 164 of the Code of Criminal Procedure before a Magistrate. After investigation was completed by the Sub Inspector of Police Banarhat Police Station (PW-5), charge-sheet was submitted. Charges were framed against the appellant on 27th February, 2024 under Section 448 of the Indian Penal Code for wrongful trespass into the house of the victim under Section 5M and punishable under Section 6 of the POCSO Act, 2012 read with Section 376AB of the Indian Penal Code. Charges were also framed under Section 506 of the Indian Penal Code against the appellant.

5. PW-1 was the victim girl herself. She narrated the entire prosecution case. In her evidence, she stated that she lived in a place called Paschim Khairkata in the house of the paternal parents. She was a school going student and in Class-VI. Her father died in 2020. She thereafter narrated the prosecution case in details against the appellant. Her medical examination report was approved by the PW-1 along with signature and was exhibited, though with objection. The statement of the victim girl under Section 164 was also proved and marked as Exhibit-2 and her signature marked as Exhibit -2/1. She confirmed that she had given a statement before the Judicial Magistrate under Section 164 of the Cr.P.C. and was medically examined.

6. P.W.-2 was the mother of the victim. She narrated the entire incident consistent with the complaint. She deposed about going to the house of the appellant twice on the same day. She further deposed that after the appellant ran away from the house, she lodged a complaint with the Banarhat Police Station. The complaint was scribed by one Binoy Roy and was taken on record.

7. Her signature on the seizure list dated July 10, 2023 was proved and marked as Exhibit 4. Birth certificate, Aadhar Card and wearing apparels of the victim were also seized and her signature on the seizure list dated July 12, 2023 was marked as Exhibit 5. The Birth Certificate itself was marked as Exhibit 6.

8. P.W.-3, Shyamal Roy, a neighbour, was a hearsay witness as was P.W.-4, Ajit Roy, another neighbour.

9. P.W.-5 was the Investigating Officer of the case, who identified the written complaint and the formal FIR and the Aadhaar Card of the victim. He also confirmed the seizure of the birth certificate of the victim under a seizure list that was marked as Exhibit 5/1. He deposed about the steps taken towards the investigation.

10. The appellant was examined under Section 313 of the Cr.P.C. where he denied all the circumstances alleged against him by the prosecution and its witnesses. It is noted that while asserting that he is innocent he stated that he was the supporter of a political party and family members of the victim girl were supporters of the ruling party. He deposed that on the date of the alleged incident, the mother of the victim girl requested him to carry paddy to the nearby mill and in the evening when he returned home he found political leaders of the ruling party had assembled in front of his house. On the previous day Panchayat elections were held. He apprehended something wrong was going to happen so he hid himself in the nearby tea garden wherefrom he overheard that local political leaders were planning to assault him on the allegation of sexual assault upon the victim girl who was his “*bhatija*”. He asserted false implication due to political rivalry.

ARGUMENTS AND ANALYSIS:

11. Learned Counsel for the appellant first argued that the proof of charge under Section 448 IPC was vital to the prosecution case. He submits that there is no evidence to indicate that the appellant trespassed into the house of the victim on the date and time of occurrence.

12. This Court, however, notes that the presence of the appellant at the place of occurrence has been clearly deposed by the victim girl. The complaint filed by the P.W.-2 indicates the same. The victim and her mother have been consistent throughout on this point. The appellant in his examination under Section 313 of the Cr.P.C. has neither explained that he was elsewhere nor has he adduced any evidence or cited any witness to prove that he was not present at the place of occurrence.

13. In the light of the above, this Court is of the view that the presence of the appellant in the place and time of occurrence has been duly proved by the prosecution.

14. The next argument advanced by the learned counsel for the appellant is that the brother of the victim, who could have been the best eyewitness in addition to the evidence of the victim girl of the presence of the appellant and the commission of the offence, has not been examined by the prosecution. It was asserted that the evidence of the brother would have established the presence of the appellant and

the offence under Section 448 of the IPC. He relied on a judgment of the Madras High Court in the case of ***Kanan vs Inspector of Police*** reported at ***AIROnline 2023 MAD 811*** in support of his contention.

15. This Court notes that the presence of the appellant is duly established as already discussed in the previous paragraphs. The brother was six-year old at the time of the incident and seven-year old at the time of trial was going on. The prosecution in their wisdom chose not to examine or bring as witness a seven-year old boy. While it is true that even a seven-year old child can depose if the Court is satisfied that he was capable of making deposition, when the evidence existing on record sufficiently proves the presence of the appellant at the place and time of occurrence, mere non production of the victim's brother as witness would not dent the prosecution case.

16. The complaint as well as the statement of the victim under Section 164 together with her evidence in course of trial are consistent with one another and duly corroborate each other. This Court is, therefore, of the view non-examination of the younger brother is not fatal to the prosecution case.

17. The sheet anchor of the case of the appellant is that the medical examiner, who examined the victim at Jalpaiguri District Hospital, was not brought as a witness by the prosecution. According to the learned counsel for the appellant, it is the medical examiner, who would have been best able to establish and prove his report.

18. He places reliance on paragraph 10 of an unreported judgment of the Telangana High Court (***Criminal Appeal No.244 of 2012***) dated 22nd August, 2022 in the case of ***Manoj Kumar Mahanand Vs. State of Telangana.***

19. He further submitted that the matter ought to be remanded back for trial for brining the medical examiner as a witness for the prosecution and also to enable his client to cross-examine him. A decision of a coordinate Bench of this Court dated 20th March, 2026 in ***CRA (DB) 50 of 2025 (Khiren Roy Vs. State of West Bengal)*** has also been cited in support of his contention.

20. This Court, however, notes that the decision of a coordinate Bench of this Court and that of the Telangana High Court in the ***Manoj Kumar Mahanand (supra)*** would have no application to the facts herein.

21.As regards ***Manoj Kumar Mahanand (supra)*** the said judgment does not indicate as whether or not the prosecution case had been established by consistent testimonies of the victim. The Hon'ble Telangana High Court has only discussed about the necessity of proving the medical report as the same had been vitally relied upon by the learned Trial Court in the said case.

22. As regards ***Khiren Roy (supra)*** the coordinate Bench of this Court had found that only the signatures of the victim and the mother of the victim had been tendered in evidence and had been marked as

exhibits and the “*entire document was not tendered in evidence*”. In the said case the coordinate Bench of this Court did not evaluate the entirety of the evidence at that stage as would be clear from paragraph 15 of the judgment.

23. The medical report, in the instant case, which indicates that, sexual intercourse on the victim cannot be ruled out and that the private part of the victim was open wide, has been exhibited in evidence, though with objection.

24. The Madras High Court judgment in the case of ***Kanan (supra)*** also cannot come to the aid of the appellant at all. In the said case the Court found the absence of the testimony of the victim’s brother to be fatal inasmuch as it was the case of the prosecution that there were more than one instances of violation on the same day and the victim’s brother was present at the time of the incident. Further the Court had found that the victim’s statement was not supported by medical evidence on record. In the instance case the brother of the victim was not there at the time of incident. The medical evidence is not contrary to what has been deposed by the victim. The medical evidence i.e. report of the medical examiner, indicated that sexual assault could not be ruled out and that “vaginal opening was widely open”.

25. Even assuming for the sake of argument that there is no medical opinion on record at all so that the learned Trial Court could have looked into it, it is now well settled and established that a conviction

under the POCSO Act, 2012 can be based on the sole evidence of the prosecutrix. In the instant case, the evidence of the prosecutrix in course of trial is wholly and completely corroborated by her statement under Section 164 of the Cr.P.C. and the evidence of P.W. The depositions of the victim girl and her mother have been consistent right from the beginning till the end and the same satisfies the test of sterling witness as provided in the case of ***Rai Sandeep alias Deepu v.State (NCT of Delhi)*** reported at ***(2012) 8 SCC 21***

26. The contention of the appellant that the medical report shows absence of injuries on the body of the victim cannot by itself negate a predatory sexual assault. It is unexpected that an 11 year-old child can offer much resistance and that too to a person who she knew as her uncle. The appellant has betrayed the trust reposed on him by the victim girl who was a niece. The possibility of the victim girl being intimidated and scared into submission of the appellant, therefore, cannot be ruled out.

27. In the light of the discussions made hereinabove, this Court is of the view that the findings of the Trial Court against the appellant and the conviction and order of sentence has been discussed appropriately by reference to the decisions of the Hon'ble Supreme Court.

28. This Court is, therefore, of the view that the offence against the appellant has been duly proved by the prosecution. The impugned judgement and order of sentence calls for no interference.

29. The prayer made by the learned counsel for the appellant for reduction of the sentence is considered and rejected.

30. Accordingly, CRA (DB) 47 of 2025 is hereby dismissed. Consequently, CRAN 2 of 2026 is also dismissed.

31. Let the Trial Court Records and a copy of the judgement be sent down to the learned Trial Court.

32. All parties shall act on the server copy of this order duly downloaded from the official website of this Court

I agree.

(Rajasekhar Mantha, J.)

(Om Narayan Rai, J.)