

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)/55/2025
IA NO: CRAN/2/2026

ABUL HOSSAIN
VS
THE STATE OF WEST BENGAL AND ANR

For the Appellant : Mr. Satyajit Paul, Advocate
Mr. Rounak Ghosh, Advocate

Amicus curie : Mr. Hillol Saha Poddar, Advocate

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

For *de facto* complainant : Mr. Souvik Roy, Advocate

Heard and Judgment on : 24.03.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against a judgment of conviction dated June 17, 2025 and order of sentence dated June 18, 2025 passed by the learned Additional Sessions Judge, 2nd Court, Cooch Behar in POCSO Case No. 20 of 2022 and Sessions Trial No. 2(08) of 2022.
2. By the impugned judgment of conviction, learned Trial Judge found the appellant to be guilty under Section 6 of the Protection of Children from

Sexual Offences Act, 2012. By the impugned order of sentence, learned Trial Judge sentenced the appellant to suffer rigorous imprisonment for 20 years and to pay a fine of Rs.50,000/- and in default, to suffer imprisonment for 3 years. Out of the fine of Rs.50,000/-, Rs.45,000/- was directed to be paid to the victim.

3. We heard both the learned Advocates for the appellant as also the amicus curie appointed. Since the appellant was remaining unrepresented for a considerable period of time, we requested the Member Secretary, High Court Legal Aid Services to appoint an amicus curie which was done.
4. Learned advocate appearing for the appellant submits that the prosecution was unable to establish the charges as against the appellant beyond reasonable doubt. He submits that, there are glaring discrepancies in the versions of the prosecution witnesses. Penetrative sexual assault was not established at the trial. He submits that, the medical evidence is inclusive with regard to the penetrative sexual assault.
5. Learned advocate appearing for the appellant submits that the wearing apparel of the victim, although seized, as P.W. 10 stated was washed by the mother of the victim. Therefore, according to him, there was no evidence of any penetrative sexual assault for the prosecution to prove the charge under Section 6 of the Act of 2012.

6. Learned advocate appearing for the appellant submits that, prosecution did not examine any eye-witness to the incident. The entire case of the prosecution is based on circumstantial evidence. All circumstances were not established at the trial.
7. Learned advocate appearing for the State submits that, the prosecution was able to prove all charges as against the appellant at the trial. He submits that, the victim deposed at the trial. Deposition of the victim cannot be disbelieved. He submits that, the victim in adequate gestures establish the penetrative sexual assault on the victim by the appellant. In such circumstances, he submits that the judgment of conviction and the order of sentence be upheld.
8. Referring to the other evidences available on record, learned advocate appearing for the State submits that, doctor who examined the victim did not rule out penetrative sexual assault. Doctor found the vagina of the victim to be reddish on the right lateral side which necessarily involves penetration, if not anything else. Coupled with this fact, is the discovery of fluid in the pant of the victim by various witnesses.
9. A written complaint was received by the police on May 10, 2022 from P.W. 1. Such written complaint was registered as a First Information Report. Police on completion of the investigations, submitted a charge sheet against the appellant.

10. By an order dated August 4, 2022, charges under Section 6 of the Act of 2012 and Sections 375 and 376 of the Indian Penal Code, 1860 were framed as against the appellant. Appellant claimed to be not guilty.
11. To establish the charges as against the appellant, prosecution examined 10 prosecution witnesses and tendered various documentary material evidences at the trial which were marked exhibits.
12. P.W. 1 is the mother of the victim. She stated that, she lodged police complaint against the appellant. She identified the appellant in Court. She stated that, the incident occurred on May 10, 2022. At the relevant point of time, the victim was not at home. She started searching for the victim. In the meantime, victim came to the house and showed her private part by pointing her finger. She saw the private part of the victim and in pant the victim wore and found it to be dirty and in wet condition. In the meantime, the victim pulled her and took her to the house of the appellant and pointed her finger towards the appellant. P.W. 1 charged the appellant for misdeed and charged him as to the reason for giving the victim Rs.10 while still carrying the victim.
13. P.W. 1 stated that, the appellant admitted the fact that, he gave Rs.10 to the victim but denied any allegation of any sexual molestation. P.W. 1 stated that, in the afternoon she informed the matter to the local people. Police was informed about the incident. Police took the appellant to the police station. She lodged the police complaint which was tendered in evidence and marked as Exhibit-1. She recorded her statement under

Section 164 of the Criminal Procedure Code which was tendered in evidence and marked as Exhibit-2. Victim recorded her evidence under Section 164 of the Criminal Procedure Code. She tendered the Birth Certificate of the victim in evidence.

14. P.W. 1 was cross-examined. In cross-examination she stated that, the victim used to come to the house of the accused of and on. After going to the house of the appellant, the victim used to disturb the appellant by touching his household articles and by other means. She admitted that the victim cannot say anything.
15. Neighbour of the victim deposed as P.W. 2. In her examination-in-chief she stated that, at the calling of the mother of the victim, she went to the house of the victim and saw the victim with a Rs. 10 note in her hand. She found the pant of the victim in a wet condition. She also found that after the pant of the victim was removed by the mother of the victim, she found swelling on the private part of the victim. In cross-examination, PW. 2 stated that, she stated in evidence whatever she saw and heard. No question in cross-examination was put to her as to the swelling on the private part of the victim seen by her.
16. P.W. 3 is another neighbour of the victim. She stated that, she went to the house of the victim on the mother of the victim calling her. She stated that, mother of the victim showed her pant of the victim which was found to be wet. She saw on the pant of the victim sperms. Then, she asked the victim to disclose the name of the person who committed the misdeed to

her. Victim took P.W. 3 to the house of the appellant and identified the appellant who was in his house. P.W. 3 identified the appellant at the dock.

17. P.W. 3 was cross-examined at length. In cross-examination, she stated that she did not see the pant of the victim or any sperms thereon. Rather, it was told by the mother of the victim to her.
18. P.W. 4 is another neighbour of the victim. She stated that, on the relevant date, he returned from his shop and he was taking rest. Then he heard about the incident. He is the seizure list witness. He tendered the signatures on seizure list which were marked as Exhibits 3 and 4 respectively. In cross-examination, he stated that, he did not possess any personal knowledge as to the incident.
19. P.W. 5 is another neighbour. He did not add any value to the case of either prosecution or the defence. Similarly, P.W. 6 also did not add any value to the case of either the prosecution or the defence.
20. P.W. 7 is the doctor who examined the victim. He stated that, on May 11, 2022, he examined the victim. He stated that, due to unsoundness of mind, victim resisted him from examining the vagina. However, he found the vagina of the victim to be reddish on the right lateral side. He opined that, there was no extra genital injury. In his opinion, chances of penetrative sexual assault could not be ruled out. He tendered the medical report which was marked as Exhibit-5.

21. In cross-examination, P.W. 7 stated that, he could not examine the hymen of the victim or could not even see whether it was ruptured or not.
22. P.W. 8 is the doctor who examined the appellant. He stated that, in his opinion, there was nothing to suggest that the appellant is incapable of performing sexual intercourse. Medical report of P.W. 8 in respect of the appellant was tendered and marked as Exhibit-6.
23. Investigating Officer was examined as P.W. 9. She narrated the course of the investigation. She tendered various documents which were marked as exhibits at the trial. She submitted charge sheet as against the appellant.
24. Father of the victim deposed as P.W. 10. He stated that, P.W. 1 informed him as to the incident. He also stated that, the police seized the wearing apparel of the victim at the home. However, the mother of the victim washed the wearing apparel. He identified his signatures on the various seizure lists.
25. P.W. 11 is the victim. Since, the learned Trial Judge found the victim to be deaf and dumb and it therefore took assistance of an interpreter for recording the evidence of the victim.
26. P.W. 11 who is the victim, in examination-in-chief showed by her hand towards her private part and started raising her voice and started pushing her body against the body of the interpreter when she was asked as to what the appellant did to her.

27. On conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Criminal Procedure Code where he claimed that all allegations as against him were absolutely false. He claimed to be innocent. He declined to adduce any evidence.
28. Victim was found to be deaf and dumb by the learned Trial Judge. Victim deposed as P.W. 11 through the interpreter. Victim reacted violently on the name of the appellant being taken at the trial. Victim also showed by gestures the manner in which, the appellant treated her.
29. Inference of penetrative sexual assault from the gestures of the victim as perpetrated by the appellant as deduced by the learned Trial Judge cannot be said to be unfounded. Cross-examination of the victim did not yield any positive result in favour of the defence. Incident occurred on May 10, 2022. Victim was examined by the medical doctor, being P.W. 7 on May 11, 2022. P.W. 7 stated that, vagina of the victim was found to be reddish on the lateral side. In his opinion, penetrative sexual assault could not be ruled out. P.W. 2 found swelling in the vagina of the victim where she met the victim on May 10, 2022.
30. Evidence of P.W. 1 who is the mother of the victim is that, the victim went to the house of the appellant whereupon the incident took place. Immediately, on conclusion of the incident, victim returned to her house. Victim met her mother. Victim by gestures informed the P.W. 1, that is the mother of the victim, as to the misdeeds of the appellant. Mother of the victim, that is P.W. 1 accosted the appellant at the relevant point of

time whereupon although the appellant acknowledged that he gave Rs.10 to the victim. He did not admit to the crime committed.

31. Presence of the victim and the appellant at the relevant point of time in the house of the appellant, stands established by the prosecution at the trial. P.W. 7 found the private part of the victim in a particular manner, as appearing from his testimony and exhibit-5. He did not rule out penetrative sexual assault. P.W. 2 also found swelling in the private part of the victim. Victim narrated the incident in her testimony at the trial. There is nothing to disbelieve the testimony of the victim. Testimony of the victim implicates the appellant in the crime of penetrative sexual assault.
32. Under Section 29 of the Act of 2012, once the prosecution is able to establish beyond reasonable doubt the presence of the victim and the appellant at the place of occurrence and at the time of occurrence, it is for the appellant to discharge the onus of reverse proof. Appellant, in the facts and circumstances of the present case, is unable to do so.
33. Apart from Section 29 of the Act of 2012, we find that, the prosecution was able to establish that, the victim and the appellant were together in the house of the appellant at the material point of time. Penetrative sexual assault was committed by the appellant upon the victim on the basis of the testimonies of P.W. 11, the victim, corroborated by P.W. 2 and P.W. 7. Post occurrence incidents narrated by P.W. 1 stand corroborated by P.W. 2, P.W. 3 and P.W.4. Chain of circumstances

leading to the irrefutable conclusion of the guilt of the appellant in the crime charged with stands established.

34. In circumstances, the impugned judgment of conviction and the order of sentence are affirmed.

35. Sentence awarded shall run concurrently. Period of detention undergone shall be set off against the sentence undergone.

36. Let a copy of this judgment and order along with the trial court records be sent down to the learned jurisdictional Court at once.

37. Suspension of the fine at the time of admission of the appeal stands vacated.

38. CRA (DB)/55/2025 along with the connected application are **dismissed.**

(Debangsu Basak, J.)

39. I agree.

(Biswaroop Chowdhury, J.)