

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) 64 of 2023
IA NO: CRAN/5/2026**

Bablu Barman

Vs.

The State of West Bengal & Anr.

For the Appellant : Mr. Hillol Saha Podder, Advocate

For the State : Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Abhijit Sarkar, Advocate

Heard and Judgment on: 18.03.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against judgment of conviction dated April 19, 2023 and order of sentence dated April 20,

2023 passed by the learned Special Court (POCSO)-cum- Additional Sessions Judge, Dinahata, Cooch Behar in POCSO Case No.28(D) of 2020, POCSO Trial No.06(03)202.

2. By the impugned judgment of conviction, the learned Trial Judge held the appellant before us to be guilty of the offence committed under Section 5(m) of the Act of 2012 and punishable under Section 6 thereof. By the impugned order of sentence, learned Trial Judge imposed imprisonment for life and fine of Rs.10,000/- in default simple imprisonment for further three months for the offence under Section 5(m) of the Act of 2012 and punishable under Section 6 thereof.
3. Learned advocate appearing for the appellant submits that, the prosecution was unable to prove the charges beyond reasonable doubt. He refers to the testimony of the victim at the trial as also of the Investigating Officer. He submits that, the victim recorded her

statement under Section 164 of the Criminal Procedure Code where, the victim claimed that, she was taken to a particular house, and that door of such house was broken by the appellant. Thereafter, she was violated. However, the Investigating Officer in cross-examination stated that, he did not seized any broken door.

4. Referring to the medico legal examination on record, learned advocate appearing for the appellant draws the attention of the Court to Exhibit-2. He submits that, Exhibit-2 does not testimony that, any assault took place let alone penetrative sexual assault on the victim. He refers to the deposition of the Doctor who examined the victim. He submits that, even at the time of the trial such Doctor did not depose that there was any penetrative sexual assault on the victim.
5. Learned advocate appearing for the appellant draws the attention of the Court to the cross-examination of the victim. He submits that, the victim admitted she was

tutored by her parents to depose at the trial and that, she was also tutored to record her statement under Section 164 of the Code of Criminal Procedure.

6. In such conspectus, learned advocate appearing for the appellant submits that, the appellant should be acquitted.
7. Learned advocate appearing for the State draws the attention of the Court to the contents of the statement recorded under Section 164 of the Code of Criminal Procedure of the victim. He submits that, the victim clearly implicated the appellant at the trial through her testimony.
8. The impugned judgment and order, emanates out of a police complaint being Exhibit-1 dated July 26, 2020. Police on receipt of Exhibit-1 registered the same as First Information Report, conducted investigations and submitted a charge-sheet. Appellant was placed under trial after framing of charges as against the appellant

under Section 448 of the Indian Penal Code, 1860 and Section 6 of the Act of 2012.

9. Appellant pleaded not guilty to the charges framed. Appellant therefore faced trial.
10. To establish such charges, the prosecution examined 16 witnesses and tendered various documents and material exhibits as evidence at the trial.
11. On completion of evidence of the prosecution, appellant was examined under Section 313 of the Code of Criminal Procedure where, he denied the allegations made against him. Appellant declined to adduce any evidence at the trial.
12. Charge as against the appellant is that, on July 25, 2020 at 12 noon, the appellant committed house trespass and committed aggravated penetrative sexual assault on the victim.
13. Prosecution Witness no.1 (P.W.1) is the father of the victim. He is the de facto complainant. He tendered the

written complaint in evidence which was marked as Exhibit-1. He also identified his signature in such police complaint which was marked as Exhibit-1/1. He stated that, on the date of the incident, after returning home, the victim, informed him as to the incident whereupon, he lodged the written complaint.

14. P.W.2 is the victim. She stated that, on the date of the incident while she was playing with her friends, the appellant called her and gave her a chocolate. She stated that, the incident took place at the house of one neighbour Kanika. She claimed that, she was raped. She stated that, reported the matter to P.W.1 whereupon the written complaint was lodged.

15. In examination-in-chief, P.W.2 tendered her statement recorded under Section 164 of Criminal Procedure Code which was marked as Exhibit-3. The medico legal examination was tendered in evidence and was marked as Exhibit-2.

16. In cross-examination, she stated that, she deposed as tutored by her parents. She also stated that, she made her statement before learned Magistrate as tutored by her parents.
17. Mother of the victim deposed as P.W.3. She stated that, on the date of the incident, victim was playing with her friends whereupon appellant took the victim by breaking open the fencing by alluring her with chocolate. Thereafter, the appellant committed the sexual assault. The victim reported the matter to her father being P.W.1. Subsequently, P.W.1 lodged the written complaint. After lodging written complaint, police sent the victim to hospital for medico legal examination when she accompanied the victim. She identified her signature on the medico legal examination report. Birth certificate of the victim was seized by the police. P.W.3 identified the seizure list. In cross-examination, P.W.3 stated that at first the victim

narrated the incident to her and that, she reported it to P.W.1, her husband.

18. P.W.4 is the resident of the locality. He stated that, he knew the P.W.1. He identified the appellant in Court. He stated that, on the date of the incident, he heard a hue and cry from the house of the P.W.1 and thereafter, rushed to the spot. On reaching there he heard that the appellant raped the victim in the house of a neighbour. He stated that, he knew nothing more as to the incident.

19. Similar deposition as that of P.W.4 is of P.W.5. He also stated that, he heard a hue and cry and rushed to the spot when on enquiry he learnt about the incident.

20. Again P.W.6 is another resident similarly situated and circumstanced as that of P.W.4 and P.W.5. He heard about the incident.

21. P.W. 7 did not add any value to the case of either the prosecution or the defence. She stated that, she did not know anything about the incident.
22. P.W.8, 9, 10 and 11 are seizure list witnesses. They identified their signatures on the seizure list prepared on July 26, 2020.
23. P.W.12 is the Doctor who examined the appellant on August 13, 2020. He stated that, the appellant was clinically examined and found to be clinically potent. He tendered the medico legal potency test report prepared and signed by him at the trial which was marked as Exhibit-9.
24. The Doctor who treated the victim on July 26, 2020 deposed as P.W.13. He stated that, the victim was brought and identified by a Constable. In presence of staff nurse the victim was examined. The consent of the mother of the victim was obtained for holding such examination. He stated that, on examination, he did not

find her hymen to be ruptured, clinically no foreign body or injury mark on the private part or body part was detected. Her vulval swab was taken. He tendered medico legal examination report in evidence which was marked as Exhibit-2.

25. Another Doctor examined the appellant on September 6, 2020 deposed as P.W.14. He stated that, on medical examination, there was nothing to suggest that, the appellant was incapable of performing sexual intercourse at the time of examination. Potential capability test was tendered to evidence and marked as Exhibit-10.

26. The Investigating Officer who conducted the investigation deposed as P.W.15. She narrated the investigations conducted. She spoke about 164 statement recorded by the victim as also the seizure made.

27. The scribe of the written complaint was examined as P.W.16. He stated that, the complaint was written as per the instruction of P.W.1. He identified his signature on the complaint.
28. As noted above, the appellant was examined under Section 313 of the Criminal Procedure Code, where, he claimed that, the allegations as against him were false. He declined to adduce any evidence at the trial.
29. House trespass and aggravated penetrative sexual assault on a minor are two charges for which the appellant faced trial. Appellant was convicted only under Section 5(m) of the Act of 2012 and sentenced under Section 6 thereof.
30. We therefore, confine ourselves on the provision of the Act of 2012 as the appellant was not convicted under house trespass.
31. The claim of the prosecution is that, the victim was taken to the house belonging to P.W.6 by breaking open

the fence and the door and thereafter aggravated penetrative sexual assault was committed on the victim.

32. The moment, house trespass is not established, it raises reasonable doubt as to the veracity of the claim of the prosecution. Prosecution failed to establish house trespass at the trial. One of the foundational basis of the case of the prosecution therefore failed. The moment the same failed, then, it raises questions on the claim of the prosecution so far as aggravated penetrative sexual assault is concerned.
33. Prosecution did not examine anyone as an eyewitness to the incident. One need not except an eyewitness to an incident of such a nature. The testimony of the victim if it inspires confidence would be sufficient in a given case to convict the accused.
34. In the facts and circumstances of the present case, the victim was violated, she was medically examined.

Doctor who examined her did not find any mark of penetration let alone penetrative sexual assault or aggravated penetrative sexual assault on her private parts. Victim in her cross-examination stated that, she was tutored while she came to depose in Court. She also stated that, she was tutored when she made her statements under Section 164 of the Criminal Procedure Code.

35. There are discrepancies, which in our opinion materially so far as events occurring post incident are concerned. P.W.1, who is the father and the de facto complainant stated that, the victim confided in her as to the incident. Mother of the victim, who is P.W.3 stated, initially victim confided in her and that, P.W.3 informed P.W.1 as to the incident. P.W.1 did not state that, P.W.3 stated about incident to him. These discrepancies, in our view materially and substantially

raises doubt as to the veracity of the claim of the prosecution.

36. We assessed the evidence on record without being persuaded by the last sentence of the victim in cross-examination. The last sentence of the victim is also material. She stated that, it is a fact that, no such alleged incident took place at all as stated by her in her examination-in-chief. That establishes sufficient ground to raise reasonable doubt as to the veracity of the claim of the prosecution warranting acquittal of the appellant. Nonetheless, we assessed the evidence in order to be doubly sure as to whether or not prosecution was able to establish the charges beyond reasonable doubt.
37. We, therefore, set aside the impugned judgment of conviction and sentence.
38. Appellant be released subject to appellant furnishing bail in terms of Section 437A of the Criminal Procedure Code.

39. **CRA (DB) 64 of 2023** along with connected application
are **disposed of** accordingly.

(Debangsu Basak, J.)

40. I agree.

(Biswaroop Chowdhury, J.)