

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Biswaroop Chowdhury

C.R.A. (DB) 21 of 2022

Bhim Rai

Vs.

The State of West Bengal

For the Appellant

: Ms. Madhushri Dutta

For the State

**: Mr. Nilay Chakraborty, Ld. A.P.P.
Mr. Aniruddha Biswas**

Heard & Judgment on

: March 18, 2026

Debangsu Basak, J.:-

1. Appeal is directed against the judgment of sentence dated July 28, 2022 and order of conviction dated June 29, 2022 passed by the learned Additional Sessions Judge, Kalimpong in Special POCSO Trial No. 03.12.2021, Special POCSO Case No. 16 of 2021 corresponding to

Kalimpong Police Station Case No. 170 of 2021 dated 27.07.2021 under Section 6 of the POCSO Act, 2012.

2. By the impugned judgment of conviction, learned Trial Judge found the appellant guilty of offence committed under Section 6 of the Act of 2012 and under Section 376-AB of the IPC, 1860. By the impugned judgment of conviction, learned Trial Judge sentenced the appellant to life imprisonment under Section 6 of the Act of 2012 and Section 376-AB of the Indian Penal Code, 1860.
3. Learned advocate appearing for the appellant submits that the appellant was falsely implicated. She submits that, the appellant was implicated falsely once prior by the same victim and her family, when the appellant stood trial and was acquitted. She refers to the judgment of the acquittal dated June 21, 2022 passed in Special POCSO Trial No. 1/October/2019 in this regard. She submits that, the same learned Judge, however, convicted the appellant in the present case.
4. Learned advocate appearing for the appellant refers to the evidence on record. She submits that the serological examination did not throw up any conclusive evidence as against the appellant. She submits that, no such incident occurred as claimed by the prosecution.

5. Learned advocate appearing for the appellant submits that, the police complaint was lodged by the uncle of the victim and that too on receipt of a telephonic information. She submits, that there is no eye-witness to the incident. Prosecution failed to establish the charges beyond reasonable doubt.
6. Learned advocate appearing for the State submits that, the charges stood proved beyond reasonable doubt. In this regard, he draws the attention to the Court to the evidence on record.
7. A police complaint was lodged on July 26, 2021 with regard to an incident of aggravated penetrative sexual assault on the victim. Such complaint was registered as an FIR. Police investigated the same and submitted a charge sheet.
8. Learned Trial Judge framed charges on December 22, 2021 as against the appellant under Section 6 of the Act of 2012 and Section 376-AB of the IPC, 1860. Appellant pleaded not guilty and faced trial.
9. To prove the charges as against the appellant, prosecution examined 21 witnesses. Prosecution relied on 22 (twenty two) documentary evidences which were marked as exhibits and four Material Exhibits.

10. Charge against the appellant was that on a date prior to July 26, 2021, appellant committed an aggravated penetrative sexual assault on the victim.
11. P.W. 1 is the victim. She narrated the incident of aggravated penetrative sexual assault on her. She identified the appellant as the perpetrator of the crime. She claims that she was bleeding from her private part.
12. P.W. 2 is the uncle of the victim. He stated that on July 26, 2021, he was informed that the victim was feeling ill. He stated that he took the victim to a doctor. Victim narrated the incident to him. He also stated in 2018, the appellant committed such type of sexual assault upon the victim. He identified his signature on the seizure list which was marked as Ext. 3/a.
13. P.W. 3 is the father of the victim. He stated that on July 24, 2021, he went to attend the last rituals of his relative. The victim was staying at the resident with her grand-mother who was blind. The victim came running towards him with the appellant following the victim. Appellant was bare footed. On seeing the appellant, the victim became frightened. He enquired of the victim when she did not give any reply. He sent the victim to his in-law's house. On July 25, 2021, he was informed that the victim was suffering from illness. On July 26, 2021, he went to the in-law's house and found the victim bleeding from her private part. He took the

- victim to the hospital with help of P.W. 2. Later, he was informed by P.W. 2 that the victim was sexually assaulted by the appellant. He identified his signature on the seizure list. He stated that the appellant left his slippers at his residence which was seized.
14. The doctor who examined the victim on July 26, 2021 deposed as P.W. 4. She stated that the victim was brought to the emergency section of the hospital at 9-15 p.m. on July 26, 2021. The victim confided in her as to the aggravated penetrative sexual assault committed by the appellant on her. She stated that on examination she found one vulval haematoma with bleeding and that there was also erosion at the point of entrance. She referred the victim to Gynecologist for further examination. Hymen was seen to be ruptured. She tendered her report which was marked as Exbt. 7, the consent form which is marked Exbt. 8, bed head ticket was marked as Exbt. 9, discharge certificate was marked as Exbt. 1. Other medical papers were tendered in evidence and marked as Exbt. 11 while two other bed head tickets were marked as Exbt. 12.
15. Lady Sub-Inspector who is a witness to the seizure deposed as P.W. 5. She tendered her evidence which was marked as Exbt. 13/a.
16. Similarly, the other seizure list witnesses deposed as P.W. 6 and P.W. 7.

17. The scribe of the written complaint deposed as P.W. 8. He identified his signature on the written complaint which was marked as Exbt. 2/a.
18. The doctor who treated the appellant on August 7, 2021 deposed as P.W. 9. He tendered his prescription which was marked as Exbt. 14.
19. The doctor who treated the victim on July 26, 2021 deposed as P.W. 10. He stated that the victim confided in her that she was sexually assaulted by the appellant. He tendered the prescription which was marked as Exbt. 12.
20. The doctor who examined the victim on July 30, 2021 deposed as P.W. 11. He stated that since the victim was admitted in the hospital and since there was bleeding from the vagina of the victim, she was advised to be sent to the operation theatre for examination under anesthesia. The victim was examined. He narrated the findings on such examination. He stated that there was no hymen. There was small vaginal wall and haematoma with small erosion of posterior aspect of vaginal orifice. There was no active bleeding and no surgical intervention was done.
21. The medical officer in the department of forensic medicine deposed as P.W. 12. He stated that the appellant was examined regarding his capability. The report was tendered in evidence and marked as Exbt. 15. He stated that there was nothing to state that the appellant was incapable

- of performing sexual intercourse as found on the date of medical examination.
22. The Judicial Officer before whom the victim recorded her statement under Section 164 of the Cr.P.C. deposed as P.W. 13. The signature of the Judicial Officer was tendered in evidence and marked as Exbt. 1/d.
 23. The Interpreter who assisted the recording of the statement under Section 164 of the Cr.P.C. before the Judicial Officer deposed as P.W. 14. She tendered her signature on such statement which was marked as Exbt. 1/e.
 24. The seizure list witness deposed as P.W. 15. He tendered his signature which was marked as Exbt. 6/b.
 25. P.W. 16 is another seizure list witness whose signature was tendered and marked as Exbt. 6/c.
 26. A police constable deposed as P.W. 17. He identified his signature in the seizure list of July 28, 2021 which was marked as Exbt. 4/b.
 27. Another Police Official deposed as P.W. 18. He tendered the underwear which was marked as Exbt. 4. He identified his signature on the seizure list which was Exbt. 16/a.
 28. Similarly, another seizure list witness of July 28, 2021 deposed as P.W. 19. He tendered the material exhibit which was marked as Exbt. 4 and identified his signature on the seizure list which was marked as Exbt. 16/a.

29. The forensic expert deposed as P.W. 20. He narrated about the articles that were sent for forensic examination. He tendered the forensic report at the trial which was marked as Exbts.
30. Investigating Officer deposed as P.W. 21. She narrated the manner in which the investigation was conducted. She also stated that she facilitated the recording of the statement of the victim under Section 164 of the Cr.P.C.
31. On conclusion of the evidences of the prosecution, the appellant was examined under Section 313 of the Cr.P.C. In such examination, the appellant claimed that the charges as against him were false. He denied his involvement in the case. He claimed to be innocent. He also declined to adduce any evidence in support of his claim.
32. The appellant was convicted in respect of second police complaint relating to aggravated sexual assault against the same victim. The earlier complaint resulted in an acquittal by virtue of the judgment of acquittal dated June 21, 2022 passed in Special POCSO Trial No. 1/October/2019.
33. In light of such previous police complaint and the judgment of acquittal, we need to assess the evidence presently placed on record in order to arrive at the conclusion as to whether or not the appellant was falsely implicated.

34. Victim recorded her statement under Section 164 of the Cr.P.C. which was marked as Exbt. 1. There she claimed that she was sexually assaulted by the appellant.
35. Incident occurred on July 24, 2021. She was medically examined on July 26, 2021. Two doctors who examined her being P.W. 4 and P.W. 10 corroborated the version of the victim that she was bleeding from her private parts. Before both the doctors being P.W. 4 and P.W. 10, she stated that she was sexually assaulted by the appellant.
36. That there was a penetrative sexual assault on the victim stands established by the testimony of the victim as corroborated by the medical examination and the testimonies of the P.W. 4 and P.W. 10.
37. Issue is to whether the appellant is of the guilty of the same or not.
38. Victim claimed that it is the appellant who perpetrated the penetrative sexual assault on her. There is no eye-witness to the incident. Victim was cross-examined at length. Her testimony at the trial was not shaken by such cross-examination. As noted above, victim is consistent in her statement that the appellant is the perpetrator as will appear from the statement recorded under Section 164 of Criminal Procedure Code, statements made to P.W. 4 and P.W. 10 during her medical examination and her testimony at the trial.

39. Therefore, we do not find any ground to disbelieve the version of the victim, particularly, when even after elaborate cross-examination her testimony was not shaken. We also keep in mind the fact that her version stands corroborated by two medical practitioners.
40. It is trite law that an accused can be convicted on the basis of the testimony of the victim if such testimony is found to be reliable and trustworthy. In the facts and circumstances of the present case, we find no material on record to justifiably doubt the veracity of the testimony of the victim.
41. The previous case resulting in acquittal is no consequence in the sense that in the present case, the prosecution was able to prove beyond reasonable doubt aggravated penetrative sexual assault on the victim perpetrated by the appellant. Merely because, the appellant was acquitted in the previous criminal complaint of the same nature, *ipso facto* does not raise a presumption of innocence in favour of the appellant. We need to test and evaluate the evidence led at the trial to arrive at a finding as to whether or not the charges stood established beyond reasonable doubt. As noted above, we are of the view that the charges brought as against the appellant were established beyond reasonable doubt in the facts and circumstance of the present case.

42. Learned Trial Judge proceeded to award the maximum punishment prescribed by law after finding the appellant guilty under Section 6 of the Act of 2012. We deliberated upon the quantum of punishment imposed by the learned Trial Judge in view of the fact that the bandwidth of the punishment commences at not less than 20 years and goes upto life.
43. Learned Trial Judge gave reasons for the quantum of punishment as awarded. Quantum of punishment can be interfered with on the basis of compelling reasons.
44. We find no ground to interfere with the quantum of punishment so imposed as there are cogent reasons for grant of the same.
45. In such circumstances, we find no ground to interfere with the impugned judgment of conviction and order of sentence dated June 28, 2022 and June 29, 2022 passed by Special Judge, POCSO Court cum Additional Sessions Judge, Kalimpong in Special POCSO Trial No. 03.12.2021, Special POCSO Case No. 16 of 2021 corresponding to Kalimpong Police Station Case No. 170 of 2021 dated 27.07.2021 under Section of the POSO Act, 2012.
46. Impugned judgment and order is affirmed. Sentence awarded shall run concurrently. Period of detention undergone shall be set off against the sentence undergone.

47. CRA (DB) 21 of 2022 is **dismissed**.

(Debangsu Basak, J.)

48. I agree

S.D.

(Biswaroop Chowdhury, J.)