

POCSO CASE No. 106 OF 2016

Form A

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, 2ND COURT, PASCHIM MEDINIPUR, SPECIAL COURT UNDER THE POCSO ACT, 2012.	
PRESENT: ASHUTOSH SARKAR, ADDITIONAL SESSIONS JUDGE.	
JO CODE: WB00715	
(Date of Judgment: 30.07.2026)	
POCSO CASE No. 106 OF 2016	
REG NO. 110 OF 2016	
CNR No. WBWM01-007640-2016	
(Details of FIR / Crime of Police Station)	
GOPIBALLAVPUR P.S. CASE NO. 74 OF 2016, DATED 03.10.2016, U/S.376(2)(i) OF THE INDIAN PENAL CODE AND SECTION 6 OF THE POCSO ACT, 2012.	
Complainant	THE STATE OF WEST BENGAL
REPRESENTED BY	MR. SURYA KANTA PALOI (SPECIAL PUBLIC PROSECUTOR)
Accused	SADANANDA NANDI
REPRESENTED BY	MR. BANI KANTA BHATTACHARYA (ADVOCATE)

JUDGMENT:-

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1. Brief facts of the prosecution case are that the victim, a student of class IV, went to take tuition from the accused on 03.10.2016 at about 6:00 am. The wife of the accused was not at home. Taking that opportunity, the accused called the victim inside his house for sweeping. Thereafter, he committed brutal torture upon her and committed rape upon her by removing her clothes. At about 9:30 am, the victim returned home and narrated the incident to her mother. She vomited and had fallen sick. After hearing about the incident from the mother of the victim, her father informed a few villagers and reported the incident to the police station. On the basis of his information, an FIR was drawn up. A police officer investigated the case and during the course of the investigation, the accused was arrested and thereafter he was released on bail. After the completion of the investigation, a charge sheet was submitted against him. Formal charges were framed against him on 07.11.2016 for committing the offences under Section 6 of the POCSO Act, 2012 and Section 376(2)(i) of the Indian Penal Code. He denied the accusation and stood by the charges.

2. The accused did not submit any written statement specifying his defence. He has taken the plea that he scolded the victim as she did not complete her task in time and he punished her. For this reason he has been implicated in this case falsely.

POINTS FOR DETERMINATION:

3. (i) Was the victim a child of below 12 years?
- (ii) Did the accused commit aggravated penetrative sexual assault upon the victim?

EVIDENCE :

4. The prosecution has brought forward eleven witnesses. It has also relied on a few pieces of documentary evidence. No evidence is adduced by the accused to rebut the presumption u/s 29 of the POCSO Act. The sum and substance of the prosecution evidence are as follows:

5. P.W. 1, the victim girl, identified the accused as her tutor and deposed that about 15 students used to take tuition from him. The accused used to impart tuition on the verandah. On the date of the incident, after handing over the class work, the accused asked her to sweep the rooms of his house. When she went inside the room to sweep it, he suddenly entered the room, switched off the light, opened her panties and also his lungi and rubbed his penis on her vagina compressing her mouth. She sustained pain there and when she started bleeding from her mouth, he released her and asked her not to tell any of her family members. Then he sent her to the shop to purchase tobacco and chocolates. She refused to take the chocolates. He gave the same to her brother. After returning home, she narrated everything to her mother and her mother told her father. Her father lodged a complaint with the police station. She had undergone a medico-legal examination in a hospital. She made a statement before a magistrate.

5.1 In the cross-examination, she replied that the incident took place in the house of the accused. The house has two rooms. The accused resides with his wife. Nine boys and six girls used to take tuition from the accused and they used to go and return together. The room she was cleaning was dark. She could not identify the person who he was.

6. PW 2, the father of the victim, is a hostile witness. He stated in his deposition that there was an incident, but he does not remember it.

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One person wrote a complaint and obtained his signature. He does not know its contents. This witness did not support the prosecution's case.

7. PW 3, the mother of the victim, stated in her evidence that the victim went to take tuition from the accused. He closed the door and inserted his penis into her daughter's vagina. She sustained bleeding injuries. After returning home, she narrated the incident to them. They went to the house of the accused and he denied the allegation.

7.1 In the cross-examination, she replied that after the return of her daughter, she went to the Police Station and lodged a written complaint. Her husband returned home at night. They consulted and he again submitted a written complaint. Many others were assembled. One person wrote the complaint and her husband signed it and submitted it to the Police Station. She did not see the incident. No one told her about the incident.

8. PW 4, P.W. 5, P.W. 6, P.W. 7, P.W. 8 and P.W. 9 deposed that they do not know about the incident.

9. PW 9 is the doctor. He stated in his evidence that the accused was produced before him, but he refused to undergo a medico-legal examination.

10. P.W. 11, the Investigating Officer of this case, deposed that on 03.10.2016 he took up the investigation of this case. He perused the FIR, examined the de facto complainant, visited the place of occurrence and prepared a sketch map with an index of the scene of the crime. He examined the available witnesses. He seized the wearing apparel of the victim girl from the de facto complainant. He forwarded the victim girl to Gopiballavpur Super Speciality Hospital for her medical examination and collected the injury report. Thereafter, her medico-legal examination

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was done at Medinipur Medical College and Hospital and he collected the report. He submitted a requisition for recording the statement of the victim by a lady police officer. LSI Mampi Biswas recorded the statement of the victim girl. He recorded a statement of the LSI Mampi Biswas. He arrested the accused, Sadananda Nandi. He took him into police custody. He seized the clothing of the accused. He forwarded the accused to hospital for his medico-legal examination, but he refused to undergo a medico-legal examination. He forwarded the victim girl for recording her statement under Section 164 of the Criminal Procedure Code. He forwarded the biological samples of the victim and the accused to the FSL authority. After completion of the investigation, he submitted a charge sheet against the accused.

10.1 In the cross-examination, he replied that after taking charge of investigation of this case, at first he perused the FIR. During the investigation, he came to know that about 15 students went to take tuition from the accused. He did not examine those students. He did not mention in the sketch map the place of occurrence was identified by whom. He did not record statement of the victim and her father to justify the place of occurrence 'G'. He did not cite as witnesses the house owners who have houses near the place of occurrence. He also did not record their statements. The term "sexual harassment" is not mentioned in the injury report. He did not submit a prayer for recording the statement of other students by the magistrate. He did not examine Malati Pal. He consulted the medico-legal examination report of the victim. It is mentioned in the medico-legal report that constable Radha Rani Kotal and Malati Pal were present. On 03.10.2016, he started the investigation of this case at 3:35 pm and on that day he closed the investigation at about 8:05 pm. He reached the place of occurrence at

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3:55 pm. The place of occurrence is about 14 km from the Police Station. On 03.10.2016, he visited the place of occurrence, prepared a sketch map, prepared seizure lists, recorded the statement of eight witnesses and forwarded the victim for treatment at Gopiballavpur hospital. Gopiballavpur hospital is about 14 km from the place of occurrence. The victim came to the Police Station from the hospital. It is not a fact that he did not visit the place of occurrence and submitted the charge sheet without proper investigation.

ARGUMENTS:

11. The learned Special Public Prosecutor submitted in his argument that at the time of the incident, the victim was about 9 years old. The accused was the private tutor of the victim. The offence was committed in the house of the accused. The accused asked the victim to clean his rooms. As soon as she entered the room, the accused switched off the light and committed the offence by compressing her mouth. The victim has proved this incident and her mother corroborated her testimony. The charges have been proved against the accused and he is liable to be convicted.

12. On the other hand, the learned defence counsel argued that the accused is innocent. He was not involved in the alleged incident. The alleged offence was committed in a dark room and the victim could not identify the offender. Even if the offence was committed, it is not proved beyond reasonable doubt that it was committed by the accused. Therefore, the benefit of doubt must be given to the accused. The medical report does not support the allegation made in the FIR. There is no evidence to substantiate the charges. The accused is not guilty and he is entitled to be acquitted.

DECISION WITH REASONS :

13. The burden of proof is upon the prosecution to establish that the accused has committed the alleged offences and the victim was a child, as defined in section 2(d) of the Protection of Children from Sexual Offences Act, 2012. According to the section, “child” means any person below the age of 18 years. The FIR was registered on 03.10.2016 on the basis of a written report submitted by the father of the victim and it has been marked as Exhibit P-4. It has been mentioned in Exhibit P-4 that the victim was about 9 years old. The alleged incident occurred on 03.10.2016. The victim declared to the magistrate and at the time of her deposition in Court that she was about 9 years old. The age of the victim has neither been disputed nor has any contrary evidence been produced by the accused. No proof of age as per Section 94 of the J.J. Act has been produced. Therefore, the age declared by the father of the victim in the written complaint is accepted.

14. The next question to be decided is whether the victim was sexually assaulted by the accused on 03.10.2016 at his house. Let us analyse the evidence to ascertain the truth. The case was registered on the strength of a written report submitted by the father of the victim. It has been mentioned in the FIR that on 03.10.2016 at about 6:00 am, the victim had been to the house of the accused for taking tuition from him. The accused called her inside the house for cleaning the rooms of his house and committed aggravated penetrative sexual assault. The statement of the victim was recorded by a magistrate on 04.10.2016 and her medico-legal examination was also done on 04.10.2016. There was no delay in lodging the FIR, her medical examination and recording her statement. The victim stated before the magistrate that the accused

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asked her to sweep the verandah. Other 16-17 students were studying in another room. The accused called her into a room and switched off the light, pushed her against a wall, removed her panties and his lungi. Thereafter, he was pushing his penis in her vagina. She cried out and he compressed her mouth. She had a blister on her mouth and it started bleeding. Seeing the blood, he released her and asked her not to tell the incident to anyone. Thereafter, he offered chocolate to her and her brother. After returning home, she reported the incident to her mother.

15. The victim was taken to the hospital for medico-legal examination. It appears from the injury report (exhibit P-10) and the medico-legal examination report (exhibit P-2/1) that she attended the hospital with a history of assault by the accused. It has been mentioned in the injury report that there was no injury or foreign body in her private parts. The doctor did not find any sign of sexual assault on her person. There was no injury to the hymen.

16. The victim stated in her statement before the magistrate that the accused was pushing his penis into her vagina. The mother of the victim stated in her deposition that the victim inserted his penis into the vagina of her daughter. The victim deposed in her evidence that the accused rubbed his penis on her vagina. The medical evidence does not suggest that there was even the slightest penetration. There were about 16-17 other students present at the house of the accused. None of them, including the brother of the victim have been called as witnesses to corroborate the victim and prove the fact that the accused took the victim in a room and committed the sexual assault. The father of the victim and other witnesses did not state that there was any such incident. The mother of the victim is not an eyewitness to the incident.

She admitted in her cross-examination that no one told her about the incident.

17. The victim admitted in her cross-examination that the room was dark and she could not identify the person. The medical evidence does not corroborate the fact that the victim sustained any injuries due to the alleged incident. The information was given to the police station by the father of the victim in writing, but at the time of his deposition in Court, he turned hostile and deposed that he does not remember the incident.

18. There is no clear and unambiguous evidence that the victim was subjected to aggravated penetrative sexual assault by the accused. No one except the victim had the full knowledge of the incident. It was the responsibility of the victim to identify the accused before the Court, but she admitted in her cross-examination that she could not identify the person who he was. In view of such evidence of the victim and due to lack of corroboration by the medical evidence, it cannot be said with certainty that the victim was sexually abused and it was done by the accused.

19. Taking into consideration all the evidence on record, this Court is of the view that the prosecution could not prove the case beyond the shadow of doubt by adducing cogent, convincing and reliable evidence. Therefore, the presumption u/s 29 of the POCSO Act is not available in this case and the accused cannot be held guilty by taking the aid of the presumption of law.

20. There is no proof before the Court that the victim suffered any injuries or trauma due to the alleged incident. No evidence has been produced to show that she had undergone any treatment. Therefore, she is not entitled to get any compensation.

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21. The charge against the accused has not been proved beyond the shadow of a doubt. Therefore, it is held that the accused is not guilty of the charges and he is entitled to be acquitted. Hence, it is

ORDERED

that the accused, Sadananda Nandi, is acquitted under Section 235(1) of the Criminal Procedure Code of the charges under Section 6 of the POCSO Act, 2012 and Section 376 (2)(i) of the Indian Penal Code.

His bonds shall remain in force for six months, as mandated by Section 437A of the Criminal Procedure Code.

Seized articles and documents may be returned to the lawful owner(s) / custodian(s) after the period of appeal is over, if so claimed, or else destroyed as per the rule.

No compensation is awarded to the victim, as she has not suffered any loss or injury due to the alleged offence. No action is recommended against the informant / de facto complainant.

Let copies of the judgment be forwarded to the Secretary of DLSA, Paschim Medinipur and the District Magistrate of Paschim Medinipur with the request to inform the *de facto complainant* of her right to prefer an appeal against the judgment u/s 372, Cr.P.C., if necessary, by availing free legal aid as per the direction of the Hon'ble Calcutta High Court, passed in connection with CRA 266 of 2020 with CRAN 1 of 2020, *Sabitri Bhunya vs. The State of West Bengal and others*, vide order dated 29.03.2022.

Dictated & corrected by me,

Additional Sessions Judge,

Additional Sessions Judge,
2nd Court, Paschim Medinipur,
Special Court under the POCSO Act,
JO Code No. WB00715
30.07.2026

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FORM B

DATE OF OFFENCE	03.10.2016
DATE OF FIR	03.10.2016
DATE OF CHARGE SHEET	04.11.2016
DATE OF FRAMING OF CHARGES	07.09.2016
DATE OF COMMENCEMENT OF EVIDENCE	16.03.2017
DATE ON WHICH JUDGMENT IS RESERVED	23.07.2026
DATE OF THE JUDGMENT	30.07.2026
DATE OF SENTENCING ORDER, if any	NIL

Accused details:

Rank of the Accused	Name of Accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C
1.	Sadananda Nandi	03.10.2016	07.11.2016	U/s. 376(2)(i) of the Indian Penal Code and Section 6 of the POCSO Act, 2012.	Acquitted u/s 235 (1) Cr.P.C.	Nil	36 days.

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Form C

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	The victim girl	Victim witness
PW-2	The father of the victim	Other witness
PW-3	The mother of the victim	Other witness
PW-4	Gouranga Pal	Other witness
PW-5	Sourav Pal	Other witness
PW-6	Barun Sau	Other witness
PW-7	Dipankar Pal	Other witness
PW-8	The younger brother of the victim	Other witness
PW-9	Budhuram Namta	Other witness
PW-10	Dr. Sundarlal Hembram	Medical witness
PW-11	Rajib Kumar Mahanti	Police witness

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW-1	Nil	Nil
DW-2	Nil	Nil

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

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		WITNESS, OTHER WITNESS)
CW-1	NIL	NIL
CW-2	NIL	NIL

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit P-1 PW-1	Signature of the witness on the consent letter for medico-legal examination.
2.	Exhibit P-2 PW-1	Signature of the witness on the medico-legal examination report.
3.	Exhibit P-2/1 PW-	The medico-legal examination report of the victim.
4.	Exhibit P-3 PW-1	Signature of the witness on the statement recorded u/s 164 of the Criminal Procedure Code.
5.	Exhibit P-3/1 PW-	Statement of the victim girl recorded u/s 164 of the Criminal Procedure Code.
6.	Exhibit-P-4 PW-2	Written complaint.
7.	Exhibit-P-4/1 PW-2	Signature of the witness on the written complaint.
8.	Exhibit-P-4/2 PW-11	Endorsement of I.C. Mihir Kr. Dey on the written complaint.
9.	Exhibit-P-5 PW-11	Seizure list dt. 03.10.2016.
10.	Exhibit-P-5/1 PW-2	Signature of the witness on the seizure list dt. 03.10.2016.
11.	Exhibit-P-6 PW-11	Seizure list dt. 05.10.2016.
12.	Exhibit-P-6/1 PW-9	Signature of the witness on the seizure list dt. 05.10.2016.
13.	Exhibit-P-7 PW-10	Refusal note of the accused.
14.	Exhibit-P-8 PW-11	Formal FIR.
15.	Exhibit-P-9 PW-11	Sketch map with index.
16.	Exhibit-P-10 PW-11	Injury report.

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B. Defence:

Sr. No.	Exhibit Number	Description
1.	Exhibit D-1/DW-1	NIL
2.	Exhibit D-2/DW-2	NIL

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1.	Exhibit C-1/CW-1	NIL
2.	Exhibit C-2/CW-2	NIL

D. Material Objects:

Sr. No.	Material Object Number	Description
1.	MO-1 PW-	NIL
2.	MO-2 PW-	NIL

Dictated & corrected by me-

Additional Sessions Judge, 2nd Court,
Paschim Medinipur cum Special Court
under the POCSO Act,
JO Code No. WB00715.
30.07.2026