

District : South 24 Parganas.

**IN THE COURT OF THE JUDGE, SPECIAL COURT
DIAMOND HARBOUR, SOUTH 24 PARGANAS**

**Present: Sri Jai Prakash Singh, Judge, Special Court
JO Code No. WB00860**

**Special Case No. 59 of 2022
Special Trial No. 16 (12) of 2022
Mandir PS Case No. 376/2022**

The State of West Bengal

-versus-

Pabitra Halder

Charge Under Section:376 (2) (n) of IPC & 6 of POCSO Act.

Date of delivery of Judgment : 14th day of June, 2023.

J U D G E M E N T

Today is fixed for examination of the accused person
u/s 313 Cr.P.C.

The accused person is present by filing hazira.

The record is taken up for examination of the accused
person u/s 313 Cr.P.C. On perusal of the entire materials on
record as well as evidence adduced by the prosecution
witnesses I do not find any circumstances against the accused
person which is required to be explained by him. As such
examination of the accused person u/s 313 Cr.P.C is hereby

dispensed with. The accused is also declined to adduce any defence witness.

The record is taken up for hearing argument.

Heard both sides. Perused the materials on record.

Considered.

The record is taken up for passing order.

This case has emerged out of Mandir Bazar PS Case No. 376/2022 dated 29/9/2022 under Section 376 (2) (n) of IPC and section 6 of POCSO Act which was initiated on the basis of written complaint of one ABC (name changed, mother of the VG) of Village- XYZ (name changed) under P.S. Mandir Bazar, South 24 Parganas.

The prosecution case in nutshell is that the accused had love affairs with the minor victim girl and during that period the accused committed rape upon the minor victim girl on several occasions. In the month of January 2022 one-day the minor victim girl was found missing as such the de facto complainant who is the mother of VG, started to search her daughter and subsequently found in the house of the accused and came to know that the accused committed rape upon the minor victim girl several times. The accused had also refused to marry VG as such VG consumed poison to end her life and subsequently treated at hospital. The entire incident was reported to the local police station to which police started Mandir Bazar PS Case No. 376/2022 dated 29/9/2022 under Section 376 (2) (n) of IPC and section 6 of POCSO Act against the sole accused and investigated the case.

During investigation, the investigating officer recorded the statement of the witnesses under section 161 of the Code of Criminal Procedure, seized some documents and articles and also placed the minor victim girl before the learned JM, 3rd Court, Diamond Harbour for recording her statement under Section 164 of the Code of Criminal Procedure and after completion of investigation submitted charge sheet No. 446 of 2022 dated 23/11/2022 under section 376 (2) (n) of IPC and section 6 of POCSO Act against the sole accused Pabitra Halder to which this Court was pleased to take cognizance of offence and proceeded with the trial.

On 15/12/2022 the accused person was present before this Court as such charge was framed against him for the offence punishable under Section 376 (2) (n) of IPC & 6 of POCSO Act and the same was read over and explained to him to which he pleaded not guilty by saying “AMI NIRDOSH” and claimed to be tried. Hence this trial.

Points for determination:

- 1.** Whether the accused person has committed rape/aggravated penetrative sexual assault upon the minor victim girl and thereby committed the offence punishable under Section 376 (2) (n) of IPC alternatively under section 6 of POCSO Act?
- 2.** Whether the prosecution has been able to prove its case beyond reasonable doubt?

Decision with reasons.

In order to prove its case the prosecution has examined as many as 4 witnesses. They are:-

PW1 Mother of VG

PW2 VG

PW3 Uttam Halder and

PW4 Bhaskar Halder

Signature of the de facto complainant in the written complaint and seizure list dated 30/9/2022 are marked as Exhibit 1/1 and Exhibit 2/1 respectively. Signatures of the de facto complainant in the statement of VG recorded under section 164 CRPC are marked as Exhibit 3/1 and 3/2. Signatures of VG in the statement recorded under section 164 CRPC are marked as Exhibit 2/3 and 2/4 and signature of VG in the medical report is marked as Exhibit 4/1.

During examination **PW1** who is the mother of minor victim girl and de facto complainant, deposed that the alleged incident took place in the month of January 1 year ago. VG daughter had love affairs with the accused and after knowing about the said love affairs she along with other family members rebuked VG to which VG fell sick and treated at the hospital. She further deposed that during treatment she came to know that her daughter consumed poison as such she lodged the instant complaint against the accused.

PW2 is the minor victim girl who deposed that she had love affairs with the accused and when her family members came to know about the said love affairs they rebuked her to which she consumed poison and subsequently treated at the hospital. She further deposed that the accused did nothing wrong with her.

During cross-examination this witness deposed that as per instruction and tutored by police she gave her statement before the learned Magistrate under section 164 CRPC.

PW3 and **PW4** have deposed that they heard that the minor victim girl had love affairs with the accused and when the family members of VG came to know about the said love affairs, they rebuked VG to which she consumed poison and subsequently treated at the hospital.

On going through the entire evidence on record, I find that the aforesaid witnesses have deposed nothing about the alleged incident of committing the offence of rape/aggravated penetrative sexual assault upon VG by the accused. Victim girl has clearly stated that she had love affairs with the accused and when her family members came to know about the said love affairs, they rebuked her to which she consumed poison. She also deposed that the accused did nothing wrong with her. The de facto complainant is the mother of the minor victim girl who also stated during her examination that VG had love affairs with the accused as such she along with other members of her family rebuked VG to which VG consumed poison and treated at the hospital. Both the aforesaid witnesses have stated nothing against the accused in respect of the fact that the accused committed rape/aggravated penetrative sexual assault upon the minor victim girl as such I have no hesitation to hold that the accused person has not committed the alleged offence as such he is entitled to be acquitted from this case.

In the light of my aforesaid discussion, I would like to surmise that the prosecution has failed to drive home the charge as levelled against the accused under Section 376 (2) (n) of IPC & 6 of POCSO Act.

Hence it is,

ORDERED

that the accused person **Pabitra Halder** is found not guilty for the offence punishable under Section 376 (2) (n) of IPC & 6 of POCSO Act. Accordingly, he is hereby acquitted from this case and as per provision of Section 232 Cr.P.C and be set at his liberty at once.

The accused is also discharged from his bail bonds.

Seized articles, if any, be destroyed after expiry of the period of appeal.

Dictated and corrected by me.

Judge, Special Court,
Diamond Harbour,
South 24 Parganas
14.06.2023

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