



S.T 03(01) 2023  
S.C 03(09) 2022  
(Ultadanga PS Case No. 84 dated 15.07.2023)  
Form - A

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,**  
**1<sup>st</sup> COURT, SEALDAH, SOUTH 24 PARGANAS**

**Present - Anirban Das (WB 00691)**  
**Additional Sessions Judge,**  
**1<sup>st</sup> Court, Sealdah,**  
**South 24 Parganas.**

**Date of the Judgment: 29.03.2025**

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**( R- 77 of 2022)**

**(Details of FIR/Crime and Police Station)**

|                |                                                                                                   |
|----------------|---------------------------------------------------------------------------------------------------|
| Complainant    | State of West Bengal<br><br>OR<br><br>Name of the Complainant:- victim                            |
| Represented By | Barun Dutta, Ld. P.P in charge                                                                    |
| Accused        | A-1. Dipu Dolui son of Late Jhantu Dolui of 19/22<br>Canal Circular Road, PS Maniktala Kolkata-54 |
| Represented By | Mr. Sourav Bandapadhyay, LADC                                                                     |



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**Form - B**

|                                      |            |
|--------------------------------------|------------|
| Date of Offence                      | 12.07.2022 |
| Date of FIR                          | 15.07.2022 |
| Date of Charge-sheet                 | 09.08.2022 |
| Date of Framing of Charges           | 19.01.2023 |
| Date of commencement of Evidence     | 24.04.2023 |
| Date on which Judgement is reserved  | N/A        |
| Date of the Judgement                | 29.03.2025 |
| Date of the Sentencing Order, if any |            |

**Accused Details:**

| Rank of the Accused | Name of the Accused | Date of arrest | Date of release on Bail | Offenses charged with | Whether acquitted or convicted | Sentence imposed | Period of Detention Undergone during Trial for purpose of Section 428 CrPC |
|---------------------|---------------------|----------------|-------------------------|-----------------------|--------------------------------|------------------|----------------------------------------------------------------------------|
| 1.                  | Dipu Dolui          | 15.07.2022     | N/A                     | U/S 323/376/392 IPC   | Convicted.                     | Yes              | From 15.07.2022 to 29.03.2025                                              |



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**Form - C**

**LIST OF PROSECUTION / DEFENCE/ COURT WITNESSES**

**A. Prosecution:**

| <b>RANK</b> | <b>NAME</b>        | <b>NATURE OF EVIDENCE<br/>(EYE WITNESS, POLICE WITNESS,<br/>EXPERT WITNESS, MEDICAL WITNESS,<br/>PANCH WITNESS, OTHER WITNESS)</b> |
|-------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------|
| PW 1        | Victim             | Victim                                                                                                                             |
| PW 2        | Purnendu Roy       | Photographer                                                                                                                       |
| PW 3        | Bikash Ch. Majee   | Plan maker                                                                                                                         |
| PW-4        | Ganesh Roy @ Bittu | Other witness                                                                                                                      |
| PW-5        | Subhasish Ghosh    | Other witness                                                                                                                      |
| PW-6        | Dhananjoy Yadav    | Other witness                                                                                                                      |
| PW-7        | Nibedita Das       | Other witness                                                                                                                      |
| PW-8        | Dr. S. Mukherjee   | Doctor                                                                                                                             |
| PW-9        | Dr. Bibek Bhakta   | Doctor                                                                                                                             |
| PW10        | Poonam Singhi      | Judicial Magistrate                                                                                                                |
| PW11        | Dipak Mondal       | 1 <sup>st</sup> IO                                                                                                                 |
| PW12        | Banashree Dutta    | IO                                                                                                                                 |

**B. Defence Witnesses, if any: No DW was adduced**

| <b>RANK</b> | <b>NAME</b> | <b>NATURE OF EVIDENCE<br/>(EYE WITNESS, POLICE WITNESS,<br/>EXPERT WITNESS, MEDICAL WITNESS,<br/>PANCH WITNESS, OTHER WITNESS)</b> |
|-------------|-------------|------------------------------------------------------------------------------------------------------------------------------------|
| DW 1        | N/A         |                                                                                                                                    |
| DW 2        | N/A         |                                                                                                                                    |
| DW 3        | N/A         |                                                                                                                                    |

**C. Court Witnesses, if any: N/A**

| <b>RANK</b> | <b>NAME</b> | <b>NATURE OF EVIDENCE<br/>(EYE WITNESS, POLICE WITNESS,<br/>EXPERT WITNESS, MEDICAL WITNESS,<br/>PANCH WITNESS, OTHER WITNESS)</b> |
|-------------|-------------|------------------------------------------------------------------------------------------------------------------------------------|
| CW 1        | N/A         |                                                                                                                                    |
| CW 2        | N/A         |                                                                                                                                    |
| CW 3        | N/A         |                                                                                                                                    |



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**LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS**

**A. Prosecution:**

| <b>Sr. No.</b> | <b>Exhibit Number</b>       | <b>Description</b>                          |
|----------------|-----------------------------|---------------------------------------------|
| 1              | Exbt. P-1(1)                | Signature of PW1 on written complaint       |
| 2              | Exbt. P-2(1)                | Signature of PW1 on medical report          |
| 3.             | Exbt. P-3(1)                | Signature of PW1 on medical report          |
| 4.             | Exbt. P-4(1)                | Signature of PW1 on statement U/s 164 Cr.PC |
| 6              | Exbt. P-5(1)                | Signature of PW1 on seizure list            |
| 7              | Exbt. P-6/1(2)              | 1 photograph                                |
| 8              | Exbt. P-6/2(2)              | 1 photograph                                |
| 9              | Exbt. P-6/3(2)              | 3 photographs                               |
| 10             | Exbt. P-6/4(2)              | 3 photographs                               |
| 11             | Exbt. P-6/5(2)              | 3 photographs                               |
| 12             | Exbt. P-6/6(2) to P-6/13(2) | 8 photographs                               |
| 13             | Exbt. P-7(2)                | 4 photographs                               |
| 14             | Exbt. P-8(3)                | Rough sketch map                            |
| 15             | Exbt. P-9(3)                | Final sketch map                            |
| 16             | Exbt. P-10(4)               | Signature of PW4 on seizure list            |
| 17             | Exbt. P-11(4)               | Signature of PW4 on label                   |
| 18             | Exbt. P-12(4)               | Signature of PW-4 on lebel                  |
| 19             | Exbt. P-3/1(8)              | Consent letter                              |
| 20             | Exbt. P-3/2(8)              | Medical report                              |
| 21             | Exbt. P-13(9)               | Medical report                              |
| 22             | Exbt. P-14(9)               | Consent letter                              |
| 23             | Exbt. P-4/1(10)             | Statement U/s 164                           |
| 24             | Exbt. P-15(10)              | Envelop containing 164 Cr.PC                |
| 25             | Exbt. P-16(10)              | Order sheet dated 16.7.2022                 |
| 26             | Exbt. P-17(10)              | TIP                                         |
| 27             | Exbt. P-18(10)              | Envelop                                     |
| 28             | Exbt. P-19(10)              | Order sheet                                 |
| 29             | Exbt. P-20(1)               | Signature of PW1 on label                   |
| 30             | Exbt. P-21(1)               | Signature of PW1 on another label           |
| 31             | Exbt. P-22(11)              | Formal FIR                                  |
| 32             | Exbt. P-5/1(11)             | Seizure list                                |
| 33             | Exbt. P-23(11)              | Memo of arrest                              |
| 34             | Exbt. P-24(11)              | Seizure list                                |
| 35             | Exbt. P-25(11)              | Label on the envelop                        |



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|    |                  |                                          |
|----|------------------|------------------------------------------|
| 36 | Exbt. P-26(11)   | Label on envelop                         |
| 37 | Exbt. P-27(11)   | Specific portion of statement of accused |
| 38 | Exbt. P-10/1(11) | Seizure list                             |
| 39 | Exbt. P-28(11)   | Label on envelop                         |
| 40 | Exbt. P-29(11)   | Label on envelop                         |
| 41 | Exbt. P-30(11)   | Label on envelop                         |
| 42 | Exbt. P-1/1(12)  | Written complaint                        |
| 43 | Exbt. P-31(12)   | Prayer of the IO for TIP                 |
| 44 | Exbt. P-32(12)   | Challan                                  |
| 45 | Exbt. P-33(12)   | Receipt copy of articles at SFSL         |
| 46 | Exbt. P-34(12)   | Report of FSL.                           |

**B. Defence: N/A**

| Sr. No. | Exhibit Number | Description  |
|---------|----------------|--------------|
| 1       | D-1(1)         | Copy of mail |
| 2       | D-1(1)         | Endorsement. |

**C. Court Exhibits:N/A**

| Sr. No. | Exhibit Number | Description |
|---------|----------------|-------------|
| 1       | N/A            |             |
| 2       | N/A            |             |

**D. Material Objects:**

| Sr. No. | Exhibit Number | Description          |
|---------|----------------|----------------------|
| 1       | Mat Exbt. I    | Ear rings            |
| 2       | Mat Exbt. II   | Bangles              |
| 3       | Mat Exbt. III  | SD card.             |
| 4       | Mat Exbt. IV   | Yellow colour nighty |
| 5       | Mat Exbt. V    | Orna                 |
| 6       | Mat Exbt. VI   | Half sleeve shirt    |
| 7       | Mat Exbt. VII  | Black colour pant    |
| 8       | Mat Exbt. VIII | Mobile phone         |
| 9       | Mat Exbt. IX   | Plastic bag          |



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**JUDGEMENT**

**Fact of the case:-**

The victim of this case (XXX) is a folk singer by profession. As per the complaint of this case, she had become the target of the accused to satisfy his lust.

It was 12.07.2022. The said victim went to Shyambazar to purchase *daal* and was coming back to her residence. When she was crossing the *dhalai road* near Kolkata Station, rain started and to protect her from the rain, she took shelter under a tree at the side of a broken wall. Suddenly one person pressed her face and dragged her towards the canal. As per complaint, XXX tried to resist but the said person assaulted her over her chest, back and face by fist and blows. The said person forcefully committed sexual intercourse with her beside the said canal and took away her mobile, gold bangle and gold ear rings.

It was her version that the said person was not known to her but she could identify him, if he would be produced before her.

Her statement was recorded at Ultadanga PS by the LSI Banashree Dutta.

**FIR**

On the basis of the said statement a specific case was started U/s 376/323/379 IPC vide Ultadanga PS case No. 84 dated 15.07.2022. Later on S.392 IPC was added in the said case.

**Investigation by Police:-**

On starting of the specific case, investigation was initiated, the victim was placed for her medico legal examination and her statement U/s 164 Cr.P.C was recorded by the Ld. JM. The said victim was also placed in the TIP. The accused was also placed for his medico legal examination and after collecting the report from SFSL, the IO submitted CS against the accused person facing trial.

**Charge:-**

On the basis of the materials on record, charge u/s 323/376/392 IPC was framed against the accused person on 19.01.2023 and he pleaded not guilty and claimed to be tried, when the substance of accusation was read over and explained to him.

The case thus entered into trial.



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**Evidence of prosecution: -**

- (1) The victim of this case (XXX) was examined as the **PW-1**.
- (2) According to her, on 12.07.2022 she went to Shyambazar Das Para in a *Dal Mill* to bring the dal from there.
- (3) On her way that after crossing the Chitpur station, heavy rain came and to save herself, she stood at a wall and suddenly one person caught hold of her from her back and the said person pressed her mouth with his hand for which she could not raise any voice and then she was dragged near a canal close to the said spot.
- (4) The victim deposed that the said person suddenly started to assault her at various parts of her body and the said person torn her wearings and the said person forcefully placed his penis into her mouth and she could not raise any voice and the said person forcefully snatched her gold bangle, gold ear rings and mobile and person fled away and she was lying on the ground.
- (5) Somehow, she managed to go to her residence and became physically unable and could not say anything to anyone as she used to stay alone.
- (6) According to XXX two days after the incident she went to Ultadanga PS at 12.30 pm and stated everything to the police officer of Ultadanga PS and that her version was noted down in Bengali Language and it was read over and explained to her and then she put her signature in English, which was proved as Exbt. P-1(1).
- (7) She was taken to R.G Kar Medical College & Hospital for her medical examination. She proved her signature in said medical examination report in Bengali, which was marked as Exbt. P-2(1) & Ext-P-3(1).
- (8) She deposed that her statement was recorded by the Magistrate at Sealdah Court and she proved her signatures in the statement u/s 164 CrPC as Ext-P4(1).
- (9) According to her, she had identified the said person at Alipore Jail in presence of the Magistrate and she also identified the bangles, ear rings and mobile phone and her wearings. She had identified her signature in the seizure list as Exbt. P-5 (1).



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- (10) During cross examination she stated that she was married about 15/16 years ago at village Dakhindari as per Hindu rituals but no issues was born from the said wedlock.
- (11) She stated that the road proceeded towards Shyambazar is very known to her and local people use the road for all purposes and that it is the main approach road to Kolkata station and it is a very busy road with traffic movement for whole day and night.
- (12) She admitted that there was the boundary wall from the station to her house and at the time of the incident there were slums beside the said boundary wall. She also stated that the persons who would reside in the said slum, were not known to her.
- (13) She stated that it took about 10 minutes walking from the said wall mentioned in the examination in chief to her residence.
- (14) She stated that as a performer of *Baul* she had earning of around Rs. 8,000/- 10,000/- per month.
- (15) She stated that she had a small accommodation in a Jhupri and she would generally go there to compose the song and to stay sometimes and that the said Jhupri situated close to Ultadanga station in the plot of railway.
- (16) During cross-examination she affirmed that on the date of incident she was proceeding to bring *dal*.
- (17) She admitted that there were two tea stalls near the said Jhupri and that she used to visit the said tea stalls.
- (18) She had mentioned the names of the members of her team namely Bhairav Das, Babu Roy, Sandhya Roy, Jyostna Sarkar, Anjana Das, Ajit Chakroborty and that they would reside near/close to her residence and that she had cordial relation with them and their family members and that she did not intimate them about the incident which happened with her.
- (19) It also came out from her cross-examination that she had purchased *dal* from the Mill but she could not produce any cash memo of the same and that she did not disclose the name of any such Mill to police.
- (20) She also stated during cross-examination that she had reached home at around 4.00/4.30 pm and up to that time she was at the PO.



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- (21) She gave a clear direction or distance of the PO from the points asked to her by the defence.
- (22) She admitted during her cross examination that there were residential places and shops on the other side of the said canal and the said canal is visible therefrom. She also deposed that the said canal was visible from the road and vice versa.
- (23) It was her version during cross examination that when after the incident she was proceeding towards her residence, she did not narrate the incident to anyone though so many persons were crossing the road at that time and I also did not disclose the incident to any person who used to reside adjacent to the PO.
- (24) Question was put to the complainant regarding the said ear rings and bangles and she replied that the said ear ring and bangles were given to her by her husband but she did not have any cash memo or bill of the same and she did not produce the same to police but she stated that the said ornaments were used by her every time.
- (25) Her evidence during cross-examination was that the Po was visible from the railway track.
- (26) It came out during her cross-examination that after the incident she went to her accommodation at the Jhupri and she was there for two days with severe illness but she was not treated by any doctor.
- (27) It was also her corroboration that she was shouting and the accused started to beat her and that due to such assault upon her by the accused for a long time, she had lost her sense and that the accused assaulted her by his both hands.
- (28) She deposed that she had narrated the incident to the doctor when she was examined at hospital.
- (29) She denied the defence suggestion that her husband, since deceased, took a loan of Rs. 45,000/- from the accused and she had lodged this complaint falsely in connivance with her teachers and other friends so that the amount might not be paid to him.
- (30) She also denied the defence suggestion that on 13.07.2022 she went to attend a programme at night and in the said programme a dispute cropped up with the organizers about the payment of



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her performance and that in the said concert a free fight took place and she sustained injury for the said incident.

- (31) The photographer Purnendu Roy was examined as the **PW-2**.
- (32) He had proved the photographs of the PO and the SD card where the soft copies were stored. He stated that he had signed at the back side of every photographs with date.
- (33) According to him, Exbt. P-6/1(2) was the photograph showing the boundary wall of the canal and the Kolkata station, Exbt. P-6/2(2) was the photograph showing the Kolkata station, Exbt. P-6/3(2) were the three photographs showing the hole/blank space under the boundary wall from the road side taking from the side of the Kolkata station, Exbt. P-6/4(2) were the three photographs showing the entry point through the hole the inside the said boundary wall to the bank of the canal (Khaldhar) , Exbt. P-6/5(2) were the photographs showing the bush and the pipe line.
- (34) It was his evidence that on 17.07.2022 he again visited the PO with the IO as per the verbal order of OC, Scientific Wing, DD Lalbazar and at that time I took four snaps and he had proved the same as Ext-P7(2).
- (35) During his cross examination he had produced the copy of the mail received from Ultadanga PS to the Scientific Wing and the same was marked as Ext-D1(2) and it was also deposed by him that in the said mail his name was endorsed and the said endorsement was proved by him and the same was marked as Ext-D1/1(2).
- (36) The Plan maker of the PO was examined by the prosecution as **P.W-3** (Bikash Chandra Majee).
- (37) According to him, on 15.07.2022 as per the verbal order of OC, Plan making section he went to Ultadanga PS and there he met SI Dipak Mondal in connection with Ultadanga PS case No. 84 dated 15.07.2022 and the said SI took him to the South West side of Kolkata Station near electric Poll No. 2/14C.
- (38) According to him, he had noticed one concrete road at the Western side of the railway track and a boundary wall after a gap of 45 meter from the said concrete road and that the Kestopur Khal was after the said boundary wall.



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- (39) It was his evidence that there was one water pipe line running from North to South of the diameter 1.8 meter and the said water pipe line was running parallel to the concrete road and boundary wall.
- (40) It was his evidence in the basis of spot inspection that there was a hole at the said boundary wall due to the erosion of soil at the said spot and its height was 0.6 meter and width was 1.7 meter.
- (41) He deposed that the PO was at a distance of 88 meter to the Southern side from the said hole and the said PO was under the said water supply pipe.
- (42) He also mentioned that there was a *khatal* at the western side of the said boundary wall at a distance of 35 meter towards north from the PO and that there was one big *kadam* tree close to the said PO and that one iron grill gate was there in between the said Khatal and the PO at a distance of 7 meter towards southern side from the Khatal.
- (43) He specifically stated that any human being can take entry through the said hole and that the said PO was not visible to the public at large due to the said boundary wall and that there was no public way at the PO.
- (44) He had proved the sketch maps of the said PO as Ext-P 8(3) and P 9(3).
- (45) During cross examination he deposed that the said PO was not visible from the said *Khatal*.
- (46) It was his evidence that if anyone wanted to go to the PO by taking entry through the said hole, the said person must cross the khatal.
- (47) One Ganesh Roy @ Bittu was examined by the prosecution as the **P.W-4**.
- (48) According to him, on 21.07.2022 he was examined by police.
- (49) He said that on that date at around 07.30 pm he was taking tea in a tea stall opposite to Deshbandhu Park at Shyambazar along with his friend Biswajit Dolui and at that time one police vehicle came there and stopped in front of the gate of the park and that Police came out from the vehicle with a person in their custody and then he alongwith his said friend went to the police vehicle.



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- (50) From his evidence we came to know that there was one area inside Deshbandhu Park namely '*Ladies Park*' and Police went there with the said person and that they have followed the police team there.
- (51) As per his evidence, the said person brought out one black colour plastic packet from a hole at the said place and the police team opened the said packet and from the said packet two pieces gold like bangles and one pair ear ring were brought out.
- (52) According to him, the said ear rings were designed in the style of some small leaf.
- (53) He stated that then the police officer placed the said bangles and ear rings in a packet and a document was prepared by police and he was asked to sign. He had provd his signature as Ext-P 10(4) and he had identified the said ornaments in open court.
- (54) During cross-examination he had described the depth of the hole from where the ornaments were recovered.
- (55) According to his evidence during his cross examination,when police came, the main gate of the *Ladies Park* was under lock and key.
- (56) He deposed that there were security guard at the main gate of Deshbandhu Park but there was no system of any security checking to take entry into Deshbandhu Park.
- (57) He admitted that there was a club room inside the said park and at the time of raid by police, there were members at the said club and that Police did not ask any members of the said club to assist them or did not ask for the key of the gate of Ladies Park and though there were good number of persons at the said park, Police did not ask any of them to assist.
- (58) He admitted that he was arrested by police in several cases.
- (59) The next witness from the prosecution tent is Subhasish Ghosh **(P.W-5)**.
- (60) According to him, the victim XXX was known to him earlier as she was a 'boul' by profession and as she used to perform in various programme and that XXX had informed him on 21/22.07.2022 about the incident of rape upon her by stating that on 12<sup>th</sup> day she went to purchase '*dal*' from any shop at Chitpur



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station area and that when she was coming back, she was bound to take shelter under a shade due to heavy rain and there one person pressed his hand over her face and dragged her towards the bank of the canal and committed assault upon her. According to the said witness he had advised her to go to the PS.

- (61) The said witness disclosed his identity as the sole proprietor of a newspaper namely Sangbad Sochhar, during his cross examination and that he had his Press card.
- (62) He deposed during cross-examination that he had visited the spot where the incident took place but none had identified the spot to him. He admitted that there was a basti at a distance from the spot where the incident, as alleged, took place.
- (63) He also stated that the victim was known to him around one year prior to the the incident.
- (64) According to him, he had examined some persons at the said alleged PO but they did not say to me about occurrence of any such incident as alleged by the victim.
- (65) He admitted during cross-examination that his statement was recorded by police at Ultadanga PS and that he had requested the police officer to register a case.
- (66) He stated during the cross-examination that he had the call with the victim for 10/15 minutes.
- (67) Prosecution had placed one Dhananjoy Yadav as the **P.W-6**.
- (68) According to his evidence, on 12.07.2022 he heard about an incident of rape upon a *baul* singer and that he did not know the name of the said lady.
- (69) As per his evidence, on that date at around 3.30 pm he had noticed one person to come out from a hole in the wall situated near his residence and he had identified the accused as the said person in the Court room in presence of the other accused persons.
- (70) He stated that the said wall situated very close to Kolkata station.
- (71) During cross-examination he stated that at that time, he had only one cow and that he used to stay there with some labours. It was



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also his version that there were no slum areas close to his the then place of residence.

- (72) He deposed that the said hole in the wall situated at a distance of 150 ft. from his the then place of residence and that there was one iron gate which was kept under lock and key and the said gate was installed by them and that no one could access to his the then place of residence, if the said gate be kept under lock and key.
- (73) He deposed that for any ingress and egress through the said hole, one has to cross it by sitting position only from the concrete road proceedings towards Kolkta station and that the said hole in the hole was visible from his residence.
- (74) In reply to the question during the cross examination, he stated that he had seen the accused to come out from the hole in the wall from the road and not from his residence.
- (75) From the tent of the prosecution one Nibedita Das was examined as the **P.W-7**.
- (76) According to her evidence, the victim was a student of her as well of her brother Kousik Das.
- (77) She deposed in the manner that on 12.07.2022, the victim had called the elder brother of the said witness and at that time she came to know from the said call that on 12.07.2022 while the victim was coming back, she took shelter under a tree to protect herself from the rain and at that time, one unknown person pressed her face with his hands and dragged her to a bush, assaulted her, torn her wearings and committed rape upon her.
- (78) She deposed that the said victim visited her place in the morning of 13.07.2022 and out of shame, she could not disclose anything to the elder brother of the said PW but narrated in detail about the incident with her and that the said PW advised her to go to the PS.
- (79) It was the evidence that over this matter she was asked to meet the IO and she went to the PS with her elder brother.
- (80) During cross-examination she stated that her statement was recorded at PS.
- (81) According to her, when the victim met her physically, she had narrated the entire incident to her.



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- (82) It was also her version during the cross-examination that on 13.07.2022 the victim XXX visited their place at around 12.00 noon.
- (83) During cross-examination she admitted that she had around 20/25 students but she would not issue any receipt of fees.
- (84) The said witness also stated that XXX did not give any description of the accused to her.
- (85) The doctor, who had examined the victim at the Hospital, (Dr. Swarnali Mukherjee), was examined as the **P.W-8**.
- (86) According to her evidence, on 18.07.2022 she was posted at Department of FMT of RG Kar Medical College and Hospital as PGT and on that date she had examined one victim (XXX) in connection with Ultadanga PS case No. 84 dated 15.07.2022.
- (87) According to the said doctor, as per the statement of the victim, while she was returning to her home, rain started and she took shelter on the side of the road and at that time, the accused had grasp her mouth from behind and pulled her against the wall and started to assault her and afterwards, that the accused threatened her to handover all her ornaments to him and then he had committed forceful sexual intercourse with the said victim.
- (88) As per the said evidence, the victim was examined on taking of her consent and the said letter of consent was proved as Ext-P3/1(7).
- (89) It was the evidence of the said doctor that on examination of the victim, she found some abrasion on the right side of neck, midline of the back and right shoulder. She had also noticed multiple crescentic brownish black scabbed abrasion and brownish black liner scabbed abrasion measuring 1 cm in length, parallel to each other over an area of 10 cm X 11.5 cm and greenish bruise on the back side of right arm above the right elbow joint and 15 cm from shoulder joint.
- (90) The said doctor also noticed two brownish black scabbed abrasion and brownish black liner scabbed abrasion measuring 6 cm and 2 cm parallel to each other on the back side of right arm 9 cm below shoulder joint and 11.5 cm above the elbow joint and one hypo pigmented scar mark was present on the flexor aspect of the



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right forearm measuring 1.4 cm X 0.5 cm situated 3 cm above the right wrist joint and 19 cm below the right elbow joint.

- (91) It was also observed by the said doctor that there was abrasion on the left leg lateral to the left shin bone and abrasion over left leg 2 cm medial to the left shin bone and 2 cm below the left knee joint and greenish bruise on the posterior middle aspect of the right thigh 16 cm above the right popliteal fossa.
- (92) The doctor did not notice any injury in the labia majora but she had noticed one pea sized greenish bruise on the right lip of labia minora. She had also noticed multiple tears at 2 and 9 O'clock position and mild redness at the margins.
- (93) The doctor formed the opinion the evidences came out during the examination, were suggestive of use of vaginal penetration sometimes back ranging from 2-7 days and the incident of commission of any sexual violence could not be ruled out.
- (94) It was also the opinion of the doctor that the injuries which she had noticed over the person of the victim, must occur due to commission of any violence over her by placing her in any rough surface.
- (95) Surprisingly, the defence counsel (Ld. LADC) did not cross examine the said doctor and did not challenge the observations.
- (96) The doctor, who had examined the accused (Dr. Bibek Bhakta), was examined as the **P.W-9**.
- (97) According to the said doctor, on 19.07.2022 he had examined one person namely Dipu Dolui son of late Jhantu Dolui of 44 years of age in connection with Ultadanga PS case No. 84 dated 15.07.2022 and on examination of his genital organ he was of the view that he was capable of performing sexual intercourse on the date and time of examination and that on examination he did not find any genital or extra genital injuries.
- (98) The examination report of the said doctor was proved as Ext- P 13(8). The letter of consent of the accused was also proved as Ext- P 14(8).
- (99) During cross examination the said doctor opined that if any male person was not suffering from any physical or mental illness, he was capable of sexual intercourse.



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- (100) The Ld. JM (Poonam Singhi), who had recorded the statement of the victim u/s 164 CrPC and who also held the TIP, was examined as **P.W-10**.
- (101) The Ld. JM proved the statement u/s 164 CrPC as Ext-P 4/1(9).
- (102) As per the evidence of the Ld. JM, on 05.08.2022 she held the TI parade in connection with this case at Presidency Correctional Home and the report was proved as Ext-P-15(9).
- (103) According to the evidence of the Ld. JM, the victim being the only witness had identified one Dipu Dolui as the person who had committed sexual intercourse with her.
- (104) As per the said evidence as well as the report, the accused stated at the time of the TIP that he was falsely implicated in this case and that his only fault was that he went to meet the victim in intoxicated condition and had asked her to back Rs. 45,000/- which the accused had given to the husband of the said victim.
- (105) On the basis of the said statement of the victim u/s 164 CrPC as well as the said report of the TIP, the Ld. JM deposed that the victim did not state in her statement under section 164 Cr.P.C from where she was coming back and that she did not mention any specific date and time of the incident and that the said victim did not mention about any broken wall or khalpar in her statement and she did not give any description of the ornaments.
- (106) The Ld. JM also stated that the said victim did not state to her any specific place of her body where she was assaulted and that her mobile phone was stolen or any description of the accused.
- (107) The first IO of this case SI Dipak Mandal was examined as **P.W-11**.
- (108) According to the said witness, on 15.07.2022 on the basis of a recorded statement of the victim, Ulatadanga PS case NO. 84 dated 15.07.2022 was initiated and the case was endorsed to him for investigation. He had proved the formal FIR as Ext-P-22(11).
- (109) According to him, he had placed the victim at RG Kar Medical College and Hospital for her preliminary medical examination and the same was done on 15.07.2022 and on that



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date he had requested the Scientific Wing, DD Lalbazar to make arrangement for preparation of sketch map of the PO and taking of snaps of the PO and the same was done on that very date. He also deposed that on 15.07.2022 he had seized the wearing apparel of the victim by preparing a seizure list and the same was proved as Ext-P 5/1(11).

(110) It was his evidence that initially the case was started U/s 376/323/379 IPC but after recording of statement of the victim U/s 164 Cr.P.C, section 392 IPC was added in this case by the order of Ld. ACJM, dated 16.07.2022.

(111) The said witness had arrested the accused on 15.07.2022 in front of his residence under Memo of Arrest and Inspection Memo and the same was proved as Ext-P-23(11).

(112) The said IO also seized wearing apparel of the accused from his house on 15.07.2022 under seizure list, which was proved as Ext-P 24(11).

(113) As per the evidence, the said IO also seized one mobile phone from the accused.

(114) The accused was forwarded to the court and he was sent to PC for seven days and during PC period the statement of the accused was recorded and he stated to the IO that if he would be taken to the spot, he would help the police team to find the stolen bag, ear rings and bangles. The portion of the statement of the accused was proved as Ext-P-27(11).

(115) According to the IO, on the basis of the statement, a raid was conducted and the police team went to a place where the statue of Dr. Suresh Chandra Bhattacharyya was situated at Deshobandhu Park near Ladies park at 176 RD Street, PS Ultadanga, Kolkata-04 and after reaching there, the accused brought out one old used black colour plastic bag from a bush near the said statue and on opening of the said bag one pair of gold like ear rings and one pair of bangles looks like gold were recovered and the same were seized in presence of two witnesses namely Ganesh Roy and Biswajit Dolui and the accused also put his signature in the seizure list by which the same were seized and the said seizure list was proved as Ext-P-10/1(11).



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- (116) As per the IO, the Medico legal examination of the accused was conducted on 19.07.2022 at RG Kar Medical College and Hospital.
- (117) During cross-examination he stated that in the complaint it was not mentioned that the accused forcefully pressed his penis to the mouth of the victim or that the said accused took the *ijjat* of the victim or that the said accused had torn the wearings of the victim.
- (118) It was the evidence of the IO that the victim did not give any description of the accused in the complaint but stated that she could identify the accused if shown to her.
- (119) The second IO of this case, LSI Banasree Dutta was examined as the **P.W-12**.
- (120) According to her, on 15.07.2022 she had recorded the statement of the victim of this case as per her version in Bengali language and after recording of the same it was read over and explained to the victim and she admitted that the contents was correct and she put her signature in English and the said statement was proved as Ext-P-1/1(12).
- (121) According to her, on 29.07.2022 she made the prayer for TI parade of the accused and the same was allowed and that on 05.08.2022 the said TIP was held at Presidency Correctional Home by the Ld. JM, 6<sup>th</sup> Court, Sealdah.
- (122) It was her evidence that she had forwarded to the SFSL the box containing the vaginal swab of the victim, one shirt and pant of the accused, one nighty and orna of the victim, vaginal swab and smear of the victim in a container, urethral swab and semen of the accused in a container along with a brief statement of fact and collected the said report, which was marked as Ext P-34(12).
- (123) The said IO had submitted the CS.
- (124) During her cross-examination she deposed that the victim did not state to her that the accused forcefully inserted his penis into her mouth and she could not raise any voice or that the said accused had torn her wearing apparel.
- (125) The IO denied the fact that the photograph of the accused was shown to the victim prior to holding of the TIP.



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(126) It was the evidence of the IO that she did not examine any person who would reside close to the PO.

**Examination of the accused persons u/s 313 CrPC:-**

The accused person was examined u/s 313 CrPC by following the guideline of the Hon'ble High Court Calcutta as passed in CRA 609 of 2012 (CRAN 03 of 2024).

The incriminating materials came out in the evidence of the PWs were placed to the accused in his mother tongue (Bengali) and its exact English translated version was recorded in open court in presence and hearing of the Ld. Counsel for the accused and Ld. PP in charge.

The accused specifically replied that the victim identified him as he was the neighbour of the said victim.

The accused also stated that near the statue of Dr. Suresh Chandra Bhattacharya, the police officer handed over one plastic packet to him and asked him to hold it and snaps were taken. He also said that in his presence, police gave Rs. 300/- to Ganesh Roy(PW-4).

He also admitted that he was capable of sexual intercourse.

He claimed himself as innocent and he denied to place any DW.

**Decision with reasons:-**

1. In this case, charge was framed for offence U/s 376/323/392 IPC and the allegation against the accused was that he had committed rape upon the victim, assaulted her and snatched her bangle and ear-top.
2. As per provision of section 375 IPC, a man is said to commit 'rape' if he penetrates his penis to any extent, into the vagina, mouth, urethra or anus of a woman or inserts any object or a part of a body, not being the penis, into the vagina, urethra or anus of a woman.
3. It is fact that in a case of commission of offence of rape, the victim is the best witness.
4. In the instant case, the said victim was examined as the PW-1.
5. According to her evidence, she went to bring *daal* from Shyambazar and when she was returning, the accused dragged her to a bush beside the canal and first pushed his penis to her mouth and then committed forceful sexual intercourse with her.



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6. During her cross-examination she affirmed that on the date of incident she went to bring *dal* and it was stated by her that she had purchased *daal* from a mill but she did not mention the name of the said mill but she stated that it was at Shyambazar.
7. Therefore, it is clear that the victim did not place any false story before this court about the fact that she went to bring *daal* from Shyambazar.
8. It was the version of the victim that when she was returning to her place of residence, she took shelter under a tree in front of a broken wall to save herself from the rain and at that time one person suddenly pressed her mouth from her back and dragged her towards the canal through the hole of the said broken wall.
9. Existence of the hole was established from the evidence of the PW-2, Ext-P-6/3(2), PW-3 and PW-6.
10. The PW-3 specifically mentioned the diameter of the said hole in the wall and it was also mentioned by the said PW that the said hole was created due to erosion of soil and that any human being can take entry through the said hole.
11. I have considered the diameter of the said hole in the wall as stated by the said PW-3, who is by profession a Plan Maker of Kolkata Police. The said diameter is enough for entry of any human being through it. The photograph [Ext-P-6/3(2)] also supports the version of the PW-3.
12. The evidence of the victim was that she was dragged by the accused through the said hole. The evidence of the PW-3 as well as the relevant photograph made it clear that the said event was possible in reality.
13. The defence could not show anything which can counter this version of the prosecution.
14. As per the version of the PW-1, the said wall situated close to the Kolkata station and it was supported by the PW-2, PW-3 and the PW-6.
15. The photographs proved in this case as well as the sketch map conjointly prove that the said wall was close to Kolkata station.
16. The version of the victim was that she was dragged towards the canal through the said hole in the wall.



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- 17.** The PW-3 had mentioned the existence of water pipe line after the said wall and that the place of occurrence was after the said pipe line. He had mentioned the height of the said pipe line. It was his specific opinion that the said PO was not visible from the main road as the said pipe line was the vision barrier in between the main road and the said PO.
- 18.** The specific photograph of the said place also comes in support of the version of the PW-3.
- 19.** The existence of a *Khatal* also came out from the evidences of the PW3 and PW-6 but at the same time it also came out that the PO was not visible from the said *khatal*.
- 20.** The argument of the defence was that as there were residential places near to the said wall, it can be presumed that no such incident can happen beyond the vicinity of any person.
- 21.** I am not inclined to accept this version. This is because, from the photographs as well as the sketch-map, I do not find existence of the residential places close to the particular spot, where the incident of rape happened. It was also established from the evidences mentioned above, that the said particular spot was not visible from the approach road to the Kolkata station.
- 22.** The argument of the defence counsel was that why the victim did not raise any alarm, when she was dragged by the accused through the hole. The answer lies in the evidence of the victim. She deposed that as the accused pressed his hands over her mouth, she could not raise any hue and cry.
- 23.** The next point of argument of the defence was that though the victim was dragged from the main road, but none had seen the incident and how it was possible.
- 24.** It is fact that the said road was the approach road to Kolkata Station but at the same time we must keep it in mind that on that date of incident, it was raining heavily and as such, there was remote chance of noticing the incident by the persons crossing the said road at that particular time.
- 25.** The version of the victim was that she stated to the police that the said accused was not known to her but that she could identify him, if he would be placed before her. The said victim identified this



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particular accused during the TIP. The said report of the TIP was proved in this case and I did not find any irregularity in the process of holding the said TIP.

- 26.** Moreover, the PW-6 deposed that he had seen this particular accused to come out through the said hole in the wall on 12.07.2022 at around 3.30 pm. The said date and time of the incident matched with the evidence of the PW-1.
- 27.** In her examination in chief, the victim deposed that after the incident of occurrence of rape upon her, the accused fled away and that she was lying on the ground and that she had proceeded towards her residence at around 4.00/4.30 pm. The time period stated by the victim matched with the time, when the PW-6 had seen the accused to come out through the said hole in the wall. Moreover, this PW-6 correctly identified this accused amongst the other accused persons in the open court.
- 28.** The defence failed to establish anything relying upon which, the evidence of the PW-6 can be viewed with suspicion or it can be considered that the said PW was a pocket witness of police and that he was an interested witness having some gain if the accused be convicted.
- 29.** The statement of the said victim was recorded by the Ld. JM u/s 164 CrPC and the victim narrated the same incident in her said statement, which she had stated before this court as witness. It was not suggested by the defence during the cross-examination of the said victim that she had placed some tutored version of police before the Ld. JM.
- 30.** From the evidence of the PW-8 (doctor) it appears that the victim stated to her during her examination that while she was returning to her home, rain started and she took shelter on the side of the road and at that time, the accused had grasped her mouth from behind and pulled her against the wall and started to assault her and afterwards, the said accused threatened her to handover all her ornaments to him and then he had committed forceful sexual intercourse with the said victim.



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- 31.** The Ld. Counsel declined to cross examine the PW-8 and accepted the entire version of the said report including the version of the victim made before the doctor.
- 32.** The statement of the victim was recorded at the PS by the LSI B. Dutta (PW-12) and the said statement was proved in this case as Ext-P-1/1(12). the victim also stated that she made her statement to the said officer of PS.
- 33.** If we place the said statement of the victim recorded at PS, the statement recorded by the Ld. JM u/s 164 CrPC, her version made before the doctor and her evidence before this court, it will appear that there are no gaps between them. The victim did not retract from her stand at any point of time. The said statements of the victim were recorded at different time frames and at different places. She took the same stands at all time. The defence failed to break the hard nut. It proved that the victim placed a true fact, relying upon which, the instant case was started.
- 34.** Let us now consider the medical examination report of the victim [Ext-P-3/2(8)]. The said victim was examined at hospital on 18.07.2022. As per the version of the victim, the incident took place on 12.07.2022. This means that she was examined more or less 5 days after the incident.
- 35.** The allegation of the victim was that she was dragged, assaulted by the accused and the said accused committed forceful sexual intercourse with her by placing her on the field beside the canal.
- 36.** The doctor had noticed several abrasions, bruise, and related injuries over the neck, shoulder, forearm, knee joint and the doctor opined that the same were suggestive of the fact that the said victim was subjected to violence by placing her on rough surface. I have already stated that this opinion of the doctor was not challenged by the defence as the Ld. Counsel declined to cross-examine the doctor.
- 37.** Therefore, we have to consider this version of the doctor in the light of the version of the victim.
- 38.** It is fact that it is not the case of the prosecution or the defence that there were any eye-witness of the incident. The incident, as complained of, took place in between the victim and the accused



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and they are the best witnesses of the incident. Out of them we got the statement of the victim at different forum and we got the version of the accused during the TIP where he stated before the Ld. JM that he was falsely implicated and he also stated that he went to the house of the victim in intoxicated condition and asked her to pay the old loan of Rs.45,000/-. The said accused made his statements during his examination u/s 313 CrPC and he had only denied the allegations and did not take any specific defence or did not utter the facts which he had stated before the Ld. JM during the TIP.

39. If we weigh the said statements of the victim and the accused, the balance tilts in favour of the victim as her every stands were supported by cogent oral or documentary evidence.
40. The evidence of the victim was that she was dragged by the accused and she was assaulted by him by placing her over the land (bush). From the medical examination report of the victim it appears that the victim sustained several injuries over the posterior aspects of shoulder, neck, forearm etc and the doctor specifically opined that the victim faced the physical violence and the same was caused by placing her on rough surface. The doctor had noticed multiple crescentic scabbed abrasions over the shoulder of the victim and the same might be marks of violence by the nails.
41. According to the evidence of the victim, the accused first inserted his penis to the mouth of the victim and assaulted her and then committed forceful sexual intercourse on her.
42. During examination, the doctor noticed injuries over *labia majora* and multiple tears at 2 and 9 O'clock position and mild redness at the margin. It was the opinion that the same was due to sexual violence and the same was 2-7 days' old.
43. The incident, as per the evidence, took place on 12.07.2022 and the date of examination of the victim was 18.07.2022 and the time gap as per the opinion of the doctor matched with the evidence on record.
44. The evidence of the PW-9 shows that the victim was capable of sexual intercourse.



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45. The defence could not place any other evidence, from where it can be said that any other person was involved in the incident of assault and sexual violence over the victim.
46. The accused was found to come out through the said hole in the wall by the PW-6 and the accused could not establish it was not he and that he was not present there.
47. The said accused stated before the Ld. JM that he went to the victim to get back his old loan but he did not take this stand during his examination u/s 313 CrPC.
48. The accused failed to erase his presence at the said spot at that particular date and time and he could not create any shadow of doubts on which the court can consider something in his favour.
49. According to the evidence of the victim, the accused snatched her gold ear rings and bangles and for that allegation charge u/s 392 IPC was framed against him.
50. From the evidence of the PW-4 it appears that in his presence, the said ornaments were recovered by police from a place namely *Ladies'Park* in side the campus of Deshabandhu Park from a hidden place behind a statue.
51. As per the evidence of the PW-11(first IO), the statement of the accused was recorded and the said accused disclosed that he could lead the police team to the said place, where the ornaments were kept in a concealed place and the portion of the said statement was proved as Ext-P-27(11).
52. From the evidence of the PW-4, we got a detailed description of the said process of search and seizure led by the accused. It was his evidence that he was taking tea in a nearby tea stall with his friend Biswajit Dolui. He was cross examined in full and during his cross-examination, the presence of the said witness with Biswajit Dolui was established. The prosecution could not create any doubt about his presence.
53. It was the version of the defence that the said witness was a stock witness of police and that he was arrested in several cases. The PW-4 admitted that he was arrested in several cases but denied the fact that he was a stock witness.



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- 54.** The accused admitted during his examination u/s 313 CrPC that he was taken to Deshabandhu Park and that he was taken behind the statue of Suresh Chandra Bhattacharyya at the said park. It was his plea that police officer handed over one black plastic packet to him and took snaps. It was also his statement that the police officer gave Rs. 300/- to the PW-4 to act in favour of police.
- 55.** By placing the said version, the accused wanted to prove that nothing was recovered in his presence and everything was created to keep him inside the net.
- 56.** The statements made by the accused during his examination u/s 313 CrPC, was not placed to the PW-4 during his cross-examination. So, it normally crops up whether the accused took the correct plea or whether he had placed some points to mislead the court.
- 57.** The accused admitted the fact that he was taken to the spot from where the recovery was shown. The defence failed to establish anything cogent and convincing to go against the said version of the accused.
- 58.** Therefore, the defence plea that the entire episode of search and seizure was concocted, has no legs to stand.
- 59.** It was the allegation of the victim that after commission of rape, the accused fled away taking the ear rings and bangles from her. For that allegation, charge u/s 392 IPC was framed against the accused.
- 60.** The main ingredients of the said offence is that the accused committed theft as defined u/s 378 IPC and that for commission of the said theft, the accused hurt the victim and kept her under wrongful restraint.
- 61.** In this case, from the evidence of the victim it appears that she was assaulted by the accused and the said version was corroborated by the PW-8. The said articles were recovered from a concealed place on the basis of the statement of the accused. There are no grounds to disbelieve any part of the said event of recovery of the ornaments. Moreover, the said ornaments were identified by the said victim in open court during her evidence. The



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defence failed to raise any doubt about the ownership of the said ornaments.

- 62.** So, without any hesitation it can be said that the ingredients of S.392 IPC was also established against the accused facing trial.
- 63.** Let us turn our eyes to another side. Whether the victim had described the incident to any other person or not.
- 64.** On this point, the evidence of the PW-7 is very relevant.
- 65.** As per the evidence of the victim, the incident took place on 12.07.2022. The PW-7 deposed that the victim met her on 13.07.2022 and narrated the entire incident to her. It was also her evidence that the said victim had informed the incident to the elder brother of the said PW-7 over telephone on 12.07.2022 but out of shame, she could not explain in details and that she had divulged the episode to the PW-7, when she met her on 13.07.2022.
- 66.** The PW-7 stated that she had advised the victim to go to the PS.
- 67.** During her cross-examination she affirmed the time of visit of the victim at her place on 13.07.2022 and she again stated that when the said victim met her face to face, she had stated the entire incident to her.
- 68.** Therefore, by way of cross-examination, the defence admitted the presence of the victim at the house of the PW-7 on 13.07.2022 and as a consequence, it was also established that the victim explained to the said PW-7 about the incident.
- 69.** Question was put to the said witness during cross-examination that the victim did not give any description of the accused to her. It is not clear to me why this question was put to the said witness. This witness deposed regarding the incident which she heard from the victim. She did not utter a single word about the accused. This witness corroborated the version of the victim, which she had stated at different forums at different times.
- 70.** The argument of the Ld. Counsel of the accused was that though the victim stayed at her residence after the said incident, she did not inform the same to any of her neighbours though she had good relation with her neighbours. Against this argument, my humble question to the Ld. Defence Counsel is that whether it was really



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an *incident*, which can be shared with the persons of the locality. I think that the victim's first intention was to save herself from social stigma.

71. From the evidence of the PW-7 it appears that the said victim narrated the entire incident to the said PW-7 as she had trust upon the said witness. The evidence of the said PW-7 was scanned by me. I did not find anything to disbelieve the said version.
72. It was another argument of the Ld. Counsel for the accused was that though the incident took place on 12.07.2022 and though the victim narrated the incident to the PW-7, but she had lodged the complaint on 15.07.2022 and the delay was not explained anywhere by the victim. According to the Ld. Counsel, the delay was fatal and my attention was drawn to the famous maxim of principle of equity- *delay defeats equity*.
73. It was the opinion of the Hon'ble Apex Court that delay can only be a ground to arouse suspicion[(2004)1 SCC 215 :: AIR 2004 SC 536(Vidyadharan ~vs~ State of Kerala)]. It was also the opinion of the Hon'ble Court that not merely because of the delay it can be concluded that the FIR was lodged after much deliberation [(2005) 9 SCC 94::AIR 2004 SC 2466(State of Punjab ~vs~ Ajaib Singh)]
74. The Hon'ble Apex Court also held that it is the duty of the court to consider the totality of the evidences on record and to decide whether the delay adversely affected the prosecution or the defence [(2007)2 SCC 170(Ramdas ~vs~ State of Maharashtra)].
75. The ratio of the above observations of the Hon'ble Apex Court can be considered in the light of the present case. It is fact that the victim did not go to the PS immediately after the incident, though it was her duty to inform the same to police without delay. At the same time, we must consider that the said XXX was a victim of an offence of sexual violence. We must also keep in mind the society from where the said victim came. It is admitted fact that the victim reside in a slum area and obviously, disclosure any such incident to the members of the locality will be a story and she will be stigmatized. This factor should be considered as the ground for delay in lodging of the complaint.



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76. From the evidence of the PW-7 it appears that the said victim had disclosed the incident of sexual assault and violence upon her on the very next day of the incident. So, it is found that the said victim disclosed the facts to the persons relied upon by her and the said fact was also proved properly during evidence. Under the circumstances, I am of the view that the delay, as caused, was not fatal for the case of the prosecution and the totality of the evidences on record do not lead me to find any ground to disbelieve the version of the victim and the involvement of this accused behind the incident was also established.
77. It was the defence plea that to deprive the accused from recovery of the loan amount of Rs.45,000/-, this case was falsely initiated. It was the duty of the defence to prove that the husband of the victim took any loan from him. No such evidence was produced.
78. In respect of the injuries over the person of the victim, it was the defence plea that the victim went to attend a programme on 13.07.2022 and there a dispute cropped up over the incident of payment of her professional fees and a free fight took place and she sustained injuries from that free fight. The victim denied the said fact. It was a new case made out by the defence. It was not the case of the prosecution that the victim went to attend any concert on 13.07.2022.
79. As this plea was taken by the defence, so the burden was upon the defence to establish the said plea and in this case, the defence failed to discharge the said burden. Moreover, the accused did not take such plea during his examination u/s 313 CrPC and as such this plea did not create any adverse impact over the merit of the case.
80. In sum, all the arrows were aimed to this accused only the said arrows hit him directly.

**Observation:-**

On the basis of my discussion, I am of the view that the charge u/s 376/323/392 IPC was established against the accused.



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Hence, it is

**ORDERED**

that the charge u/s 376/323/392 IPC was established against the accused person namely, *Dipu Dolui*.

He is facing trial from custody.

The said convict will be produced from custody at 3.30 pm to hear him on the point of sentence and imposition of sentence.

Seized alamats, if any, be disposed of as per the provisions of Code of Criminal Procedure.

D/C by me

*Addl. Sessions Judge,  
1st Court, Sealdah*

*(Anirban Das) (JO 0691)  
Addl. Sessions Judge  
1st Court, Sealdah*

**Later dated 29.03.2025**

The convict *Dipu Dolui* is produced from J/C.

He claimed himself as innocent and submitted that on the date of incident he had assaulted the victim at the spot which is the place of occurrence of this case. He submitted that he did not commit rape upon her or did not snatch the ornaments of the victim. He submits that his family members including his daughter are present and they will suffer a lot if he will be in custody.

He prayed for sympathetic approach from the court.

Ld. PP in charge submits that considering the fate of the victim, appropriate sentence be pronounced.

Ld. Defence counsel also prayed for consideration of the sentence considering the family condition of the convict.

The conviction is founded on a robust framework of such evidence, which, when viewed holistically, forms an unbroken chain pointing unequivocally to the guilt of the convict. The evidence presented in this case reveals a complete chain of circumstances.

*Rape is one of the most terrible crimes on earth and it happens every few minutes.*

In case of an offence of rape, the justification for the conviction is multifaceted and compelling.



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I have already discussed that from the evidence of the doctor and her unchallenged testimony, the incident of forceful sexual intercourse was proved. The accused was also seen by the PW-6, when he was coming out from the place of occurrence.

Sections 375 and 376 IPC have been substantially changed by the Criminal Law (Amendment) Act, 1983 and several new sections were introduced by the new Act i.e. Sections 376-A, 376-B, 376-C and 376-D. The fast-sweeping changes introduced, reflect the legislative intent to curb with iron hand, the offence of rape which affects the dignity of a woman. [*Dinesh ~vs~ State of Rajasthan, (2006) 3 SCC 771*]

The *helplessness of the victim* is another crucial factor that adds to the heinousness of the act. Victims of sexual violence who are particularly vulnerable, whether due to age, physical condition or circumstances, are afforded special consideration in criminal jurisprudence. Their inability to defend themselves magnifies the culpability of the perpetrator and the shock value of the crime. In this case, the victim was dragged by pressing her mouth from her back and she did not get any scope to resist.

The *societal impact* of such a crime should also be taken into consideration at the time of choosing the actual sentence to give a message to the society at large.

Keeping all the said parameters, appropriate sentence should be pronounced.

**Considering all the circumstances, the impact of the incident on the society, I think it prudent to pass the following sentence:-**

**O R D E R E D**

**The Convict *Dipu Dolui* is sentenced u/s 235 CrPC to suffer R.I for 07(seven) years and to pay fine of Rs. 10,000/- (Rupees ten thousand only) for offence u/s 376 IPC and in default of payment of the fine amount, the said convict will suffer S.I for 10 (ten) months more in addition of R.I for seven years.**

**The said convict is sentenced u/s 235 CrPC to suffer S.I for 06(six) months and to pay fine of Rs. 1,000/- (Rupees one thousand only) for offence u/s 323 IPC and in default of payment**



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**of the fine amount, the said convict will suffer S.I for 1 (one) month more in addition of S.I for six months.**

**The said convict is sentenced u/s 235 CrPC to suffer R.I for 04(four) years and to pay fine of Rs. 3,000/- (Rupees three thousand only) for offence u/s 392 IPC and in default of payment of the fine amount, the said convict will suffer S.I for 3 (three) month more in addition of S.I for four years.**

**The period undergone by the convict in custody during the investigation and trial of the instant case, will be set off as per provision u/s 428 CrPC and all the sentences will run concurrently.**

**The fine amount mentioned above, if realised, will be handed over to the victim as compensation.**

Let a copy of this judgement be handed over to the convict free of cost.

The convict is informed in open court in Bengali language (which is his mother tongue) that he has the right to prefer appeal against this judgement and that he has the right to avail legal aid for filing of the said appeal by taking assistance of the District Legal Services Authority South-24 Parganas.

The Superintendent Presidency Correctional Home is directed to assist the convict so that he may get legal aid, if applied for.

The Secretary DLSA South 24-Parganas is also directed to take proper steps so that the convict can file appeal from the J/C by taking legal aid, if needed.

**Compensation to the victim:-**

In the instant case, the victim being a folk artist (*Baul* singer), faced the dark side of the life which was beyond her imagination. She was a victim of sexual act of the convict to satisfy his lust. So, in my view, the fine imposed upon the convict in the banner of compensation, is not adequate.

We could not save the said victim lady from such incident and the same made a permanent scar mark over her mind. The trauma of the said victim can not be evaluated by way of monetary compensation. But being the court, I think that she should be adequately compensated as per the provision of S.357A Cr.P.C.



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Following the guideline of NALSA in this regard, I think that if a sum of **Rs.1,00,000/- (Rupees one lakh only)** be awarded to the victim in addition to the fine imposed upon the convict, that will be just and proper and the said sum can be used for the rehabilitation of the victim.

The said amount has to be paid by the State Govt within 30 days from the date of communication of this order and the said sum is to be paid from the Victims Compensation Fund or other scheme or fund established by the State Government for the purposes of compensating and rehabilitating victims under Sec. 357A Cr.P.C or any other law for the time being in force.

Let a copy of this judgement be sent to the Secretary, DLSA South 24-Parganas, the District Magistrate, South 24-Parganas at Alipore, Superintendent, Presidency Correctional Home, for taking appropriate action.

Dictated & Corrected by me

*Addl. Sessions Judge,  
1st Court, Sealdah*

**(Anirban Das)** (JO 00691)  
*Addl. Sessions Judge  
1st Court, Sealdah*