



FORM-A

In the court of Additional District & Sessions Judge,
1st Court, Sealdah, South 24 Parganas

Present : Smt. Sharanya Sen Prasad,
Additional Sessions Judge, 1st Court cum
Spl. Judge (under POCSO Act),
Sealdah, South 24 Parganas

Judgment delivered on 13.08.2026

Special (POCSO) Trial No.:01 (02) of 2023
Special (POCSO) Case No.: 40/2022

(Narkeldanga PS case No. 380 dated 21.09.2022).

State of West Bengal

VS

- 1. Rabiul Gazi
- 2. Md. Saif @ Mona,
- 3. Md. Azad @ Totla Azad
- 4. Md. Zafar

(Details of FIR/Crime and Police Station)

Complainant	STATE OF WEST BENGAL OR DEFACTO COMPLAINANT 'X'
REPRESENTED BY Ld. P.P.	Asim Kumar
ACCUSED	1. Rabiul Gazi son of Late Samsher Ali of village Sangrampur, PS Baduria, Dist. North 24 Parganas, 2. Md. Saif @ Mona son of Md. Islam of 4, Patua Para Lane, Kolkata-11, PS Narkeldanga. 3. Md. Azad @ Totla Azad son of Md. Reyauddin of 92/H/6, Narkeldanga North Road, Kolkata-11, PS Narkeldanga. 4. Md. Zafar son of Md. Haider of 15/1A, Patua Para Lane, Kolkata-11, PS Narkeldanga.
REPRESENTED BY	Ld. Advocate Rabiul Hoque, Tanvir Rouf,

FORM B

Date of Offence	20.09.2022
Date of FIR	21.09.2022
Date of Charge sheet	19.11.2022
Date of Framing of Charges	01.02.2023
Date of commencement of Evidence	27.03.2023
Date on which Judgment is reserved	N/A
Date of the Judgment	13.08.2026
Date of Sentencing Order, if any	--

Accused details :

Rank of the Accused	Name of the Accused	Date of arrest	Date of released on bail	Offences charged with	Whether acquitted or convicted	Sentenced imposed
1	Rabiul Gazi	22.09.2022	N/A	U/s.366A of IPC		
2	Md. Saif @ Mona	22.09.2022	N/A	376(i)/34 IPC and section 6 of POCSO Act		
3	Md. Azad @ Totla Azad	22.09.2022	N/A	376(i)/34 IPC and section 6 of POCSO Act		
4	Md. Safar	22.09.2022	N/A	376(i)/34 IPC and section 6 of POCSO Act		

FORM-C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESSES, POLICE WITNESS, EXPERT WITNESS, MEDICAL, PANCH WITNESS, OTHER WITNESS.
PW.1	Victim girl	Witness
PW.2	Kalam Sardadr	Witness
PW.3	Kashmira Bibi	Witness
PW4	Dr. Rahit Sarkar	Witness
PW5	Dr. Sanjoy Bandapadhyay	Witness
PW6	Dr. Moumita Bala	Witness
PW7	Arijit Bari	Witness
PW8	Ashwani Patra	Witness
PW9	Ajoy Paul	Witness
PW10	Amartya Chakroborty	Witness
PW11	Md. Afsar	Witness
PW12	Afaque Ali	Witness
PW13	Md. Azad	Witness
PW14	Md. Imtiaz	Witness
PW15	Md. Guddu	Witness
PW16	Soumit Bandapadhyay	Witness
PW17	Ratna Sarkar	Witness

PW18	Md. Abdul Ali	Witness
PW19	Poonam Singhi	Witness
PW20	Shadabur Rahaman Shabbih	IO of this case.
PW21	Ganesh Ch. Garain	Witness
PW22	Mokleshsur Rahaman Majhi	Witness

B. Defence Witnesses, if any :

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

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESSES, POLICE WITNESS, EXPERT WITNESS, MEDICAL, PANCH WITNESS, OTHER WITNESS.
CW.1	---	
CW.2	---	

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS
A. Prosecution :

Sr. No.	Exhibit Number	Description
1	Exhibit-P-1 (1)	Statement of the VG U/s 164 Cr.PC
2	Exhibit-P-2(4)	Medical report of Md. Azad.
3	Exhibit-P-3(5)	Medical report of Md. Zafar
4	Exhibit-P-4(6)	Consent letter of VG
5	Exhibit-P-5(6)	Medical examination report of VG
6	Exhibit-P-6(6)	Report with X-ray plat
7	Exhibit-P-7(7)	Consent letter of accused
8	Exhibit-P-8(7)	Medical examination report of accused
9	Exhibit-P-9(7)	Consent letter of accused
10	Exhibit-P-10(7)	Medical examination report of accused
11	Exhibit-P-11(10)	TIP
12	Exhibit-P-12(11)	Signature in the rescue Memo
13	Exhibit-P-12/1(12)	Signature in the rescue Memo
14	Exhibit-P-13(15)	Signature of PW-15 on seizure list
15	Exhibit-P-14(16)	Memo of Arrest
16	Exhibit-P-15(16)	Memo of Arrest
17	Exhibit-P-16(17)	Requisition issued by LSI
18	Exhibit-P-17(17)	Statement of Sathi Sardar
19	Exhibit-P-18(17)	Formal FIR
20	Exhibit-P-19(18)	Signature of PW-18 on the seizure list
21	Exhibit-P-20(19)	Order sheet dated 22.09.2022
22	Exhibit-P-21(19)	Sealed envelop containing signature of victim
23	Exhibit-P-22(19)	Sealed envelop containing the SD card

24	Exhibit-P-23(20)	Certified extract copy of GDE no. 2050 dated 21.09.22
25	Exhibit-P-12/2(20)	Signature of PW-20 o the seizure list
26	Exhibit-P-24(20)	Extract copy of GDE no. 2082 dated 21.09.22
27	Exhibit-P-25(20)	Extract copy of GDE no. 2116 dated 21.09.22
28	Exhibit-P-26(20)	Carbon process requisition
29	Exhibit-P-27(20)	Memo of arrest
30	Exhibit-P-28(20)	GDE No. 2173 dated 22.09.2022
31	Exhibit-P-29(20)	Seizure list dated 23.09.2022
32	Exhibit-P-30(20)	Relevant portion of the statement of accused Md. Azad Totla
33	Exhibit-P-31(20)	Extract copy of GDE no. 2321, 2328,2337,2349 dated 23.09.22
34	Exhibit-P-32(20)	Seizure list dated 24.09.2022
35	Exhibit-P-33(20)	Vaccination card of VG
36	Exhibit-P-34(20)	Aadhar card of VG
37	Exhibit-P-35(20)	Extract copy of GDE no. 2378,2385,2420 dated 24.09.22
38	Exhibit-P-36(20)	Extract copy of GDE no. 2562 dated 26.09.22
39	Exhibit-P-13/1(20)	Seizure list dated 27.09.2022
40	Exhibit-P-37(20)	Relevant portion of the statement of accused Md. Saif
41	Exhibit-P-19/1(20)	Seizure list dated 27.09.2022
42	Exhibit-P-38(20)	Relevant portion of the statement of accused Md. Zafar
43	Exhibit-P-39(20)	Extract copy of GDE No. 2650,2652,2677,2702,2738,2746 dated 27.09.2022
44	Exhibit-P-40(20)	Xerox copy of original office record of OC Narkeldanga PS
45	Exhibit-P-41(20)	Email and reply bearing endorsement of OC Narkeldanga PS
46	Exhibit-P-42(20)	Carbon copy of prayer of IO received by hospital
47	Exhibit-P-43(20)	Requisition of DCP (ESD)
48	Exhibit-P-44(20)	Reply from CESE
49	Exhibit-P-45(20)	Report of SFSL
50	Exhibit-P-46(21)	Rough sketch map
51	Exhibit-P-47(21)	Final sketch map
52	Exhibit-P-48(22) to P-48/6(22)	7 snaps.

B. Defence :

Sr. No.	Exhibit Number	Description
1	Exbt. D-1 (PW20)	Requisition sent through mail

C. Court Exhibits :

Sr. No.	Exhibit Number	Description
1	---	

D. Material Objects :

Sr. No.	Exhibit Number	Description
1	Mat Exbt. 1(20)	Articles containing 8 sealed packets A1, A2, CI, C2, D1, D2, E1 and E2.
2	Mat Exbt. II (20)	Articles containing 4 sealed packets B1, B2, B3 and B4
3	Mat Exbt. III (20)	Articles containing 4 sealed packet F,G,H, and I
4	Mat Exbt. IV (20)	Micro SD card.

J U D G M E N T

1. The fact of the prosecution case, in brief, is that on the basis of a statement of a victim girl OC, Narkeldanga PS initiated Narkeldanga PS case No. 380 dated 21.09.2022 for offence U/s 366A/376DA/120B IPC and section 6 of POCSO Act. It is the allegation that on 20.09.2022 at about 02:30 pm she had some dispute in her house and she went to Boatghat to go to her sister's place and there she met a boy namely Rabiul and he asked her to go to Sealdah with him and proposed to marry her and accordingly, she went to Sealdah and then went to a food shop to purchase food. After purchasing food Rabiul was searching for place to stay and at that time two boys came there and they informed about good place to stay and accordingly, they went with them by auto to Narkeldanga and there one boy came with a scooty and they took Rabiul to see the room and thereafter one of those boys came and asked her to go with him to Rabiul and thereafter they took her in a vacant place near bamboo grove and three persons raped her. The name of one of them is Muna and they raped her for one hour and then they took her in a scooty and started roaming. Then suddenly she saw Rabiul with police and then she raised alarm and jumped from the said scooty and Muna and other two persons fled from there with scooty.

2. On the basis of the recorded statement of the victim OC of Narkeldanga PS initiated the case and endorsed SI Shadaur Rahaman Shabbih to investigate the case and after completion of investigation on 19.11.2022 IO filed charge-sheet in this case being CS No. 265/22 against the accused persons Rabiul Gazi, Md. Saif @ Mona, Md. Azad @ Totla Azad and Md. Zafar for offence under sections 366A/376DA/120B IPC and section 6 of POCSO Act and this court on 22.09.2022 took the cognizance of the offence against the accused persons.

3. On 01.02.2023 charge framed against the accused persons for offence under sections 376 (i)/34 IPC and section 6 of POCSO Act and the substances of acquisitions were read over and explained to the accused persons and to which they pleaded not guilty of the offence and claimed to be tried and accordingly trial initiated.

4. During trial, the prosecution examined total twenty two C/S

6

witnesses who were cross-examined by the defence on behalf of the accused persons. Thereafter, the accused persons were examined under section 351 of BNSS and they pleaded innocence.

5. The Defence case, as revealed from the trend of cross examination of the witnesses and examination under section 351 of BNSS is of innocence and false implication.

Heard arguments of both sides.

6. POINTS FOR DETERMINATION.

1. Whether the accused Rabiul Gazi is found guilty for committing the offence punishable 366A IPC?
2. Whether the accused persons Md. Saif @ Mona, Md. Azad @ Totla Azad and Md. Zafar are found guilty for committing the offence punishable 376 (i)/34 IPC and section 6 of POCSO Act ?
3. Whether the prosecution has been able to bring home the charges against the accused persons beyond any shadow of doubt ?

7. DECISION WITH REASONS.

All the points are taken up together for the sake of brevity and to avoid repetition. It is the prosecution case that accused persons committed penetrative sexual assault to the victim girl.

Learned Special P.P.-in-charge during argument stated that in this case prosecution has examined total 22 C/S witnesses and they corroborated the prosecution case. Victim, PW-1 specifically narrated the fact before police, on dock, before Magistrate and before doctor. Medical report corroborated the prosecution case that the victim was minor and she was subjected to penetrative sexual assault by the accused persons and the accused persons kidnapped her. PW-8 and PW-9 corroborated the facts that accused persons took the victim to Sealdah and they identified the name of the accused persons. PW-11 and PW-12 corroborated the fact that some of the accused persons took the victim by their scooty. PW-13, 14, 15 and 18 corroborated the fact of seizure of scooty and wearing apparels of the accused. PW-16, police officer corroborated the prosecution case and corroborated the fact that he arrested accused Rabiul and Md. Sayed. Ld. Special PP-in-charge prayed for conviction of the accused persons.

Learned Defence Advocates during argument stated that in this case prosecution witnesses did not corroborate the prosecution case. From the evidence of doctor (PW6) and from the medical report it is established that victim stated various types of stories before the doctor. The statement of the victim on dock is not corroborated by her statement stated before Magistrate and police officer. PW-17 also corroborated that the statement which the VG (PW-1) stated on dock are not stated before her. PW-2 and PW-3 the uncle and aunt of victim girl did not corroborate the prosecution case that accused persons kidnapped the victim or committed penetrative sexual assault or not. PW-8 and PW-9 did not corroborate the prosecution case and their evidences is like tutored one. In this case prosecution failed to establish the place of occurrence. The doctor examined the victim on the next date of incident but did not find any injury on the person and private part of the victim. To establish the age of the victim no school document or birth certificate is seized or filed to establish the fact that at the time of incident the victim was minor. GDE dated 21.09.2022 shows the fact how the victim was recovered but the said fact was not corroborated by the PW-11 and PW-12. Ld. Defence Advocates submitted that there are so many lacuna in the prosecution evidence mostly preciously in the evidence of victim and prayed for acquittal of the accused persons.

8. **Section 366A of I.P.C stated that** : Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]

The essential ingredients of the section 366A I.P.C are:

1) The accused induced a minor girl below the age of 18 years;

2) she was induced to go from any place or to do any act;

3) **She was induced with the intent that she might be or knowing it tio be likely that she would be forced or seduced to illicit intercourse with another person.**

9. **Section 376 of I.P.C stated that -**

(1) Whoever, except in the cases provided for by sub-section,

(2) commits rape shall be punished with imprisonment of either

8

description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is

his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(1) Whoever: -

(a) Being a police officer commits rape-

(i) Within the limits of the police station to which he is appointed; or

(ii) In the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) On a woman is his custody or in the custody of a police officer subordinate to him; or

(b) Being a public servant, takes advantage of his official position and commits rape on a woman is custody as such public servant or in the custody of a public servant subordinate to him; or

(c) Being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) Being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) Commits rape on a woman knowing her to be pregnant; or

(f) Commits rape when she is under twelve years of age; or

(g) Commits gang rape, Shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life

and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1- Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2-"Women's or children's institution "means an institution, whether called an orphanage of a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation: 3. - "Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation].

10. **Ingredients of the offence u/s 376 of I.P.C is that -**

- 1) Accused had sexual intercourse with a woman;
- 2) Such sexual intercourse intercourse was under any one of six circumstances enumerated in Sec.375 of the Indian Penal Code.

11. **Section 5 of Protection of Children from Sexual Offences Act, 2012 stated about :** Aggravated penetrative sexual assault.

According to section:-

(1) In this Act, unless the context otherwise requires, -

A person is said to commit "aggravated penetrative sexual assault" if-

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Section 6 of Protection of Children from Sexual Offence Act

stated about the punishment for aggravated penetrative sexual assault:-

(1) Whoever commits aggravated penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

12. It is the prosecution case that at the time of incident victim was minor aged about 13 years. Exbt. P-6 (6), ossification test report shows that as per opinion of the doctor victim was aged about between 12 and 14 years on the date of radiological examination on 07.10.2022. There is no denial of the fact that victim was not a minor at the time of incident.

13. As per evidence of victim girl and PW-17 the police officer recorded the statement of the victim and before PW-17 victim stated that on 20.09.2022 at about 02.30 pm she went to 'boatghat' to go to her sister's house and there she was introduced with a boy namely Rabiul and the boy asked her to go with him to Sealdah to marry him and accordingly she went to Sealdah with him and there they were searching for shop to purchase food and a hotel to stay and there two boys informed them about good place to stay and accordingly, they went with them by a auto to Narkeldanga and there another boy came by a scooty and they took Rabiul to see the room and after sometimes one boy came and asked her to go with him to Rabiul and she went with the boy and they took her in a vacant place adjacent to bamboo grove and they gang raped her. The name of the one boy was Munna and after the incident those three boys took her in a scooty and started roaming and during that period she saw Rabiul with police and she raised alarm and jumped from the scooty and Munna and other two boys fled from there with scooty and then she went to PS with police.

Before Magistrate victim girl stated that her sister's house is at

11

Bitari and she was standing on the bus stop to take bus to go there and at that time one boy asked to marry her and took her to Sealdah and stated her to go to hotel to eat and at that time, one boy came and asked her to go with him and the boy with whom she came asked her to go with that boy without any fear. Then they took a auto and went to Narkeldanga and started walking and thereafter, three boys took her in a scooty and took her in a garden (bagan) inside a village (gram) by the bank of a river and removed her cloths and established relationship like husband and wife and later on, when she saw police she raised alarm and they dropped her and went from there.

14. During evidence, victim girl (PW-1) stated that she left her place to go to her sister's place at Bitari and reached at boatghat and there one person Rabiul offered her roti and laddu and she consumed the same and lost her senses and then she was taken to Moilakhola railway station by Rabiul and boarded at a train and she was taken to Barasat and from there to Sealdah by train and Rabiul threatened her and she requested him to take her back to her home and Rabiul handed over her two three other persons and they took her to Narkeldanga area by a scooty and took her towards a garden and at that time, she jumped from the bike and rushed towards the police. She was taken to garden/bush by three persons and those persons established physical relationship with her and they were returning from the said garden/bush in the motor bike she jumped from the motor bike and that was around 10:00 pm.

PW-17, the police officer recorded the statement of the victim admitted that during interrogation victim did not state her that after consuming food offered by Rabiul victim lost her senses or that she was taken to Moilakhola railway station by the accused Rabiul or that she was taken to Barasat or that from Barasat to Sealdah by train or she was threatened by accused Rabiul.

So, it appears that victim girl stated exaggerated fact before the court than her statement before police officer or before Magistrate and the statement which victim stated on dock raised doubt about the truthfulness of the same and the statement that Rabiul gave her roti and laddu and after consuming those she became senseless and Rabiul took her to Moilakhola railway station and from there to Barasat by train and from there to Sealdah are not acceptable in evidence.

12

15. It is the prosecution case that the incident took place on 21.09.2022. Exbt. P-5(6), medico legal examination report of the victim shows that doctor examined her on 21.09.2022 at about 13.30 pm ie soon after the incident. PW-6 doctor in evidence stated that on 21.09.2022 he examined the victim girl 13 years old in connection with Narkeldanga PS GDE no. 2050 dated 21.09.2022 and on examination she noticed that the vulva was developed as to age, labia majora was thin, darken and same was of labia minora and the hymen was rapture at 3,4,6,7 and 8 of O'clock position, vagina was capacious and on examination she was of the opinion that there was nothing to suggest that the victim was subjected to any recent sexual assault however, further opinion in that regard would be given on receipt of the examination report of the medico legal specimen. During cross examination doctor (PW6) stated that at the time of examination of the victim she did not find any recent injuries over her body and genital parts and on examination of the victim she noticed one old and healed lacerated injury over the hymen and it was not possible to mention the age of such injury and the same was accordingly not mentioned in the report. She also stated that it takes about 2 to 6 months to heal up any lacerated injury depending upon the nature of injury. Doctor also stated that victim did not state her about the fact that any medicine were administered to her to get her senseless.

Exbt. P-45 (20), SFSL report shows that no blood, no semen (no spermatozoo) or any other biologically significant foreign body could be detected on the contents of the items marked A1 (kurti. Leggings, orna) A2, (panty, inner) B1 (vaginal swab & vaginal smear), B2 (nail), B3 (scalp hair), B4 (pubic hair), C1 (full sleeved shirt) C2 (full pant), D1 (T-shirt), D2 (full pant), Ei (full sleeved shirt, E2 (full pant), F (urethral swab & urethral smear), G (urethral swab & Urethral smear), H(urethral swab & Urethral smear) and I (urethral swab & urethral smear)

It is also reported by SFSL that no mark of violence was found in the exhibits marked CI (shirt), C2 (jeans full pant), D1 (T-shirt), D2 (jeans pant), E1 (shirt) and E2 (jeans). No tear mark was found in the items no. (ii) and (iii) of exhibit -A1 (kurti, leggings and orna) but only old tear marks were found in both end side of the seam joint of 4.5 cm of length of the items no. (1) of exhibit -A1. L shaped seam opened as found of 6 cm x 2 cm of size at side seam near thigh area of the item no. (I) of exhibit -A2 (jangia, inner garments). No other mark of violence was found in the exhibit -A2.

13

So, SFSL report did not corroborate the fact that there was any violence upon the victim or there was any penetrative sexual assault upon the victim three accused persons.

16. Exbt. P-23(20) GDE no. 2050 dated 21.09.2022 shows that said GDE entered in the registered at about 04:10 hours and as per the said GDE shows that as per GDE no. 2043 police parting returned to the PS along with rescued minor girl (VG) and her friend Rabiul Gazi after making enquiry into the received information. GDE no. 2043 dated 21.09.2022 lodged at 00:25 hours shows that SI S.R Shabbih along with force left PS for SEC. Sector area round. Exbt. P-23(20) did not establish any information received vide GDE No. 2043 dated 21.09.2022. Moreover, GDE no. 2050 dated 21.09.2022 also shows that police officer S. I SR Shabbih after getting information promptly started manhunt with Md. Afsar, Afaque Ali and Rabiul Gazi and on the Narkeldanga Main road in front of 15/H/1, Narkeldanga North Road, Kolkata-11, a black colour scooty having one female and two pillion riders crossed and no sooner had the scooty passed or crossed heard a shouting/screaming and accordingly, turned back and found the female pillion rider was screaming and was trying to get down and they all shouted loudly directing them to stop but they did not and however, the pillion rider somehow got down and the miscreants fled away and the female pillion rider was identified as missing VG by the said Rabiul Gazi and the victim girl narrated that accused persons took her to a secluded place where an unknown boy was present and thereafter they clogged her mouth with her orna and they one by one made physical intercourse with the victim and after that they made her sit in their scooty.

Md. Afsar PW-11 with whom police went to the spot to search the victim girl in evidence stated that they were in search of the wife of the person (Rabiul Gazi) along with the police force and they found the said lady at North road under Narkeldanga PS and the said lady was sitting in a scooty and then the said lady was taken to PS leaving the said scooty at the said spot. PW-12 Afaque Ali in his evidence stated the same that they were in search of the wife of the person (Rabiul Gazi) along with the police force and they found the said lady at North road under Narkeldanga PS and the said lady was sitting in a scooty and then the said lady was taken to PS leaving the said scooty at the said spot.

So, the evidence of victim girl that she jumped from the running scooty or the GDE statement of SI SR Shabbih that victim somehow get

14

down from the scooty is not corroborated by the prosecution witnesses PW-11 and PW-12 with whom police went to search the victim.

PW-8 and PW-9 in evidence stated that in the middle part of the year 2022 at around 10:30 and 10:45 pm two male persons and one lady came to the hotel Apayan and purchased food and went away and the witness identified Md. Azad and Rabiul Gazi as those two persons. Exbt. P-11 (10) shows that they identified Md. Azad and Rabiul Gazi during TIP. During cross examination, they stated that so many people visited the hotel every day and they can not identified all of them. PW-9 also during cross examination admitted that persons who were brought to their hotel by police were only identified by him and he was deposing before the court as stated by the police.

So, it appears that police took the accused to the hotel for identification as per evidence of PW-8 and PW9 and as per evidence of PW-11 and PW-12 victim was sitting on the scooty when they along with police found her.

17. PW-18 Md. Abdul Ali, seizure witness during cross-examination stated that he can not say the full contents of the document where he was asked by the police to sign and can not state the exact topography and premises number of marriage hall and can not state the registration number of the seized scooty. During examination in chief this witness (PW-18) stated that one black scooty was found standing close to the marriage hall and police prepared some documents.

So, prosecution failed to establish the fact that the scooty involved in the incident was seized vide seizure list Exbt. P-19/1(20).

PW-20, SI Shadabur Rahaman Shabbih during evidence in chief stated that when they were crossing the Narkeldanga North road to search out the victim, one scooty crossed them and three male and one female were in the scooty.

PW-11 and PW-12 the persons who were with the PW-20 to search the victim stated in their evidence that they saw the victim was sitting on a scooty.

PW-20 further stated that the victim led them to a place which was 49 Narkeldanga North Road which was the complex of the police quarter and there is a pond inside the said campus which is full of bush and victim led them to the bank of the said pond and stated that at the said spot three persons committed sexual intercourse with her except Rabiul Gazi.

15

Medical report of the victim did not show that victim sustained any kind of injury on her person or there was any injury on the person and private part of the victim. SFSL report also did not corroborate the fact that there was any incident of force used.

PW-20 during cross examination admitted that as per GDE 2050 dated 21.09.2022 victim did not make any allegation against the accused Rabiul Gazi and PW-20 also stated that from the time of recovery of the victim Rabiul Gazi was all along with them.

18. Hon'ble Apex Court in its various judgments stated that sole testimony of the prosecutrix is sufficient for conviction of the accused in case of rape but the same must be trustworthy.

In this case, the statement of the victim is not corroborated by medical evidence (Exbt. P-5(6) and SFSL report (Exbt. P-45(20)). The statement of the victim that she was gang raped by the accused persons or accused persons committed penetrative sexual assault on the victim is not corroborated by the doctor (PW-6) or from the medical evidence (Exbt. P-5(6) or SFSL report Exbt ((P-45(20)). The statement of the victim that accused Rabiul Gazi gave her roti and laddu and she became unconscious and he took her to Sealdah station is not established in this case by the prosecution evidence. Before doctor also victim stated several statements. The fact of place of recovery of the victim is also not established in this case. PW-8 and PW-9 stated that police took the accused to them for identification. Place of occurrence is also not established in this case by the prosecution evidence.

19. Hence, considering all the aspects this court holds the view that prosecution of this case miserably failed to establish the fact beyond all reasonable doubt that accused person namely, Rabiul Gazi is found not guilty for committing the offence punishable under section 366A. The prosecution also miserably failed to establish the fact beyond all reasonable doubt that the accused persons namely Md. Saif @ Mona, Md. Azad @ Totla Azad and Md. Zafar are found not guilty for committing the offence punishable under section 376(i)/34 IPC and section 6 of POCSO Act and they deserve to be acquitted from this case.

20. Hence, it is -

Ordered

that the accused person namely, Rabiul Gazi is found not guilty

16

for committing the offence punishable under section 366A of IPC and he is acquitted from the said charges U/S 258 of B.N.S.S.

that also the accused persons namely, Md. Saif @ Mona, Md. Azad @ Totla Azad and Md. Zafar are found not guilty for committing the offence punishable under section 376(i)/34 IPC and section 6 of POCSO Act and they are acquitted from the said charges U/S 258 of B.N.S.S.

21. Rabiul Gazi, Md. Saif @ Mona, Md. Azad @ Totla Azad and Md. Zafar are hereby directed to furnish bail of Rs. 500/- each with one registered surety each in satisfactio of Ld. ACJM, Sealdah in compliance with Section 437A of Cr.P.C or section 481 of B.N.S.S and same will remain in force for a period of six months from this date and they are further directed to appear before the Hon'ble Appellate Court if they received any order for appearance against this judgment and order from the Hon'ble Appellate Court.

22. The seized alamats, if any, be disposed of in accordance with law, after expiry of the period of appeal.

23. The Court Inspector, Sealdah is directed to comply with the provisions of Reg.445 of the Police Regulations of Bengal.

24. The defacto complainant has the right to prefer an appeal under proviso to section 413 of BNSS and if necessary, to avail free legal assistance through the Legal Services Authority concerned to prefer and prosecutes such appeal.

25. Let a copy of this judgment be sent to the District Magistrate, South 24 Parganas and the Secretary, District Legal Services Authority, South 24 Parganas for due intimation to the victim.

Dictated & corrected by me.

Judge.

Spl. Judge (under POCSO Act)-cum-ADJ,
1st Court, Sealdah, South 24 Parganas.
(J.O. Code WB00690)
13.08.2026