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to bring the goat on 21/3/21 then the accused person dragged her by catching her hands and attempted to commit rape upon her. At that time in search of the victim girl when she went to that nearby locality then they heard the sound of shouting of her daughter. Then they rushed to the PO but the accused person fled away.

On the basis of the written complaint, initially the case was started vide Suri P.S Case No. 119/21 dated 23.03.2021 u/s-354/376/511 IPC and Section 6/8/10/12/18 of POCSO Act. against the accused person namely Rathikanta Saha .

After taking charge of investigation, the I.O. visited the PO, prepared rough Sketch Map along with Index and examined available witnesses under Section 161 Cr.P.C., He arrested the accused person and sent him for medical examination and collected the report. Thereafter, he seized the wearing apparels of the victim girl and prepared the seizure list. He seized one brown colour envelope containing urethral swab of the accused person and prepared the seizure list . He sent the victim girl for medical examination but she refused to be examined medically and he collected the report. Thereafter, he was transferred on 28.05.2021. Thereafter, the then I.C handed over the charge of investigation to him on 03.06.2021. After taking charge of investigation he sent the seized articles to FSL for chemical examination and collected the report. Thereafter on completion of the investigation he submitted charge sheet against the accused person, namely, Rathikanta Saha u/s 376(1)/511 of IPC and Section 6/18 of Pocso Act.

Hence, the case proceeded against the present accused person.

After receiving the case record, charge has been framed against the accused person, namely Rathikanta Saha under section 376(1)/511 of I.P.C. and Section 6/18 of POCSO Act.

The charge so framed, were read over and explained to

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the accused person in his own language, to which he pleaded not guilty and claimed to be tried.

Hence, this trial.

In support of the case of the prosecution, prosecution has examined as many as 08 witnesses and has also exhibited several documents, such as written complaint (Ext-1), seizure list of wearing apparels of the VG (Ext-2/1), signature of P.W-05 on the seizure list (Ext-3/1), signature of P.W-6 on the seizure list (Ext-2/2), medical report of the VG (Ext-4), endorsement on the written complaint (Ext-1/1), formal F.I.R (Ext-5), rough sketch map with index (Ext-6 collectively), medical report of the accused person (Ext-7), seizure list regarding wearing apparels of the VG (Ext-2), seizure list regarding urethral swab of the accused (Ext-3) and FSL report (Ext-8).

After closure of the prosecution evidence, the accused person has been examined u/s 313 Cr.P.C. From the trend of cross-examination of the prosecution witnesses and answers, given by the accused person in his examination U/S. 313 Cr. P.C., it appears that the defence case is purely denial of the allegation of the prosecution and he is innocent and has been falsely implicated in this case. No witnesses have been examined on behalf of the defence.

Heard argument of both sides.

Perused the materials on record.

**:- POINTS FOR CONSIDERATION :-**

1. Whether the accused person attempted to commit penetrative sexual assault upon the victim girl?
2. What quantum of punishment, if any, has to be inflicted upon the accused person, if he is found guilty?

**:- DECISION WITH REASONS :-**

Both the points are taken up together for the sake of convenience of discussion and in order to avoid repetition.

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PW. 01 Anila Ankur said that she is the defacto complainant of this case. The victim girl is her daughter. The incident took place in the year 2021 at about 12:00 to 1:00 p.m. Her daughter went to the field to bring the goat when the accused person rebuked her daughter. So her daughter returned back in crying condition and on enquiry her daughter told to her that the accused person rebuked her but she did not mention the reason why the accused rebuked her daughter. Thereafter, she lodged the complaint in the P.S. After writing of the written complaint she signed it. She identified the written complaint (marked as Ext-1). Police seized the wearing apparel of the victim girl produced by her and prepared the seizure list and she puts her signature on it. She identified her signature on the seizure list (marked as Ext-2/1). Thereafter, police brought her daughter to the hospital for medical examination. Thereafter, police brought her daughter to the Court for recording her statement u/s-164 Cr.P.C.

In Cross-examination she said that she cannot say the contents of the written complaint.

PW 02 Shibshankar Ankur said that the defacto complainant is his wife and the victim girl is his daughter. The incident took place in the year 2021 at about 12:00 to 1:00 p.m. His daughter went to the field to bring the goat then the accused person rebuked her and used abusive languages towards his daughter. So his daughter returned back in crying condition and on enquiry his daughter told to his wife that the accused person rebuked her but she did not mention the reason why the accused rebuked his daughter. At the time of the incident he was not present in his house and after returning back he heard the incident from his wife. Thereafter, the village people told his wife to go to the P.S to lodge the complaint against the accused person.

PW 03 the VG said that he knows the accused person. He is present in the Court room (identified). He hugged herself. He did nothing more towards her.

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In Cross-examination she said that she cannot say the date or month. He did not rebuke her any time. She denied that she stated falsely that he hugged herself.

PW04 Surya Dome said that the defacto complainant is his elder didi. He knows his daughter. He knows the accused person. He is present in the Court that day (identified). In the year 2021 some incident took place between Ratikanta and the victim girl but he cannot say what happened.

In Cross-examination he said that Police did not interrogated him.

PW 05 NVF-50031, Rajib Chakraborty said that he is NVF-50031, now attached to Rangamati Help Line under Shantiniketan P.S. On 24.03.2021 he was posted at Suri P.S. On that date he collected one brown colour envelope as produced by C-922, Uday Kr. Ghosh and prepared the seizure list and he puts his signature on the seizure list. He identified his signature on the seizure list (marked as Ext-3/1).

In Cross-examination he said that save and except putting his signature on the seizure list, he has no personal knowledge regarding the incident.

PW 06 ASI Aditya Kr. Mondal said that he is ASI of police, now attached to Suri P.S. On 23.03.2021 he was posted at Suri P.S. On that date I.O seized wearing apparels of the victim girl and he puts his signature on the seizure list. He identified his signature on the seizure list (marked as Ext-2/2).

In Cross-examination he said that save and except putting his signature on the seizure list, he has no personal knowledge regarding the incident.

PW. 07 LC-1387, Sanjida Khatun said that she is LC-1387 of police, now attached to Suri P.S. On 23.03.2021 she was posted at Suri P.S. On that date she brought the victim girl for medical examination to the hospital but she refused to be examined medically. She identified the report (marked as Ext-4). Thereafter, she brought the victim girl to the Court for recording her statement u/s-164 Cr.P.C.

PW. 08 S.I Jagannath Chowdhury said that he is S.I of

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police, now attached to D.I.B., Birbhum. On 23.03.2021 S.I Arup Kr. Dutta was the then I.C. in charge of Suri P.S. He received the complaint from Anhila Ankur and started the case vide Suri P.S Case No. 119/21 dated 23.03.2021 u/s-354/376/511 IPC and Section 6/8/10/12/18 of POCSO Act. He identified the endorsement (marked as Ext-1/1). Thereafter, he filled up the formal F.I.R.(marked as Ext-5). Thereafter, the then O.C handed over the charge of investigation to S.I Amar Singh and after taking charge of investigation he visited the P.O. He prepared rough sketch map with index (marked as Ext-6) (collectively).He arrested the accused person and sent him for medical examination and collected the report. He identified the report (marked as Ext-7). Thereafter, he seized the wearing apparels of the victim girl and prepared the seizure list (marked as Ext-2). He seized one brown colour envelope containing urethral swab of the accused person and prepared the seizure list (marked as Ext-3). He sent the victim girl for medical examination but she refused to be examined medically and he collected the report. Thereafter, he was transferred on 28.05.2021. Thereafter, the then I.C handed over the charge of investigation to second IO on 03.06.2021. After taking charge of investigation he sent the seized articles to FSL for chemical examination and collected the report. He identified the report (marked as Ext-8.) Thereafter, on completion of investigation he submitted charge sheet against the accused person.

In Cross-examination he said that no birth certificate of the victim girl was seized. They did not verify the genuineness of the aadhaar card of the victim girl. They did not investigate regarding the place of birth of the victim girl. The Lady ASI who tried to record the statement u/s-161 Cr.P.C of the victim girl mentioned to the previous I.O that she failed to collect any type of statement from her and only the victim girl can understand the language of her mother and her mother also only understand the language of the victim girl. The mother of the victim girl has not been examined separately u/s-161 Cr.P.C

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to verify what she understand from the victim girl. The other witnesses including the parents of the victim girl did not tell to the first I.O that the accused person hugged the victim girl. They did not investigate regarding any previous enmity between the accused person and the family of the victim girl. He denied that he submitted the charge sheet without proper investigation or that their part of the investigation is perfunctory.

Now we have to consider as to whether the charge framed against the accused person is applicable or not.

Sole testimony of victim of sexual assault is sufficient to hold accused guilty provided such testimony was natural and convincing. Conviction for sexual assault can be founded on the testimony of the Victim girl alone unless there are compelling reasons for corroboration. The evidence of a Victim girl is more reliable than that of an injured witness.

The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the court should find no difficulty in acting alone to convict an accused where her testimony inspires confidence and is found to be reliable. Corroboration as a condition for judicial reliance on the testimony of the Victim girl is not a requirement of law but a guidance of prudence under given circumstances. The evidence of the Victim girl is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the Victim girl should not be a ground for throwing out an otherwise reliable prosecution case.

In a prosecution case under the Pocso Act, one of the fundamental facts to be proved by the prosecution is that the victim involved in the case is a child in terms of the provisions of the Pocso Act. In absence of any evidence to prove that the victim in the case is a child in terms of the provisions of the Pocso Act , the prosecution has not established the guilt of the accused u/s 6/18 of the Pocso Act. If on evidence two

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conclusions are possible about the age of minor, one in favour of the prosecution and the other against it, the benefit of doubt should be given to the accused.

The record of age in school admission register is the best evidence. In its absence ossification test may be relied upon although it is not the sure test. It can be proved by birth register which is a public document. In case of age determined by radiological test the margin of error is two years on either side.

From Exbt.1 it appears that in the written complaint the defacto complainant mentioned the age of the victim girl is 17 years .

From Exbt 2 i.e. The seizure list it appears that in the andhar card of the victim girl the date of birth was shown as 13/10/2003.

So from the oral and documentary evidence of the prosecution witnesses it appears that the victim girl was minor at the time of the incident.

Now we have to consider as to whether the prosecution is able to prove the charge against the accused person.

PW. 01 Anila Ankur said that she is the defacto complainant of this case. The victim girl is her daughter. The incident took place in the year 2021 at about 12:00 to 1:00 p.m. Her daughter went to the field to bring the goat when the accused person rebuked her daughter. So her daughter returned back in crying condition and on enquiry her daughter told to her that the accused person rebuked her but she did not mention the reason why the accused rebuked her daughter. Thereafter, she lodged the complaint in the P.S. After writing of the written complaint she signed it. She identified the written complaint (marked as Ext-1). Police seized the wearing apparel of the victim girl produced by her and prepared the seizure list and she puts her signature on it. She identified her signature on the seizure list (marked as Ext-

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2/1).Thereafter police brought her daughter for medical examination. Thereafter, police brought her daughter to the Court for recording her statement u/s-164 Cr.P.C.

In Cross-examination she said that she cannot say the contents of the written complaint.

PW 02 Shibshankar Ankur said that the defacto complainant is his wife and the victim girl is his daughter. The incident took place in the year 2021 at about 12:00 to 1:00 p.m. His daughter went to the field to bring the goat then the accused person rebuked her and used abusive languages towards his daughter. So his daughter returned back in crying condition and on enquiry his daughter told to his wife that the accused person rebuked her but she did not mention the reason why the accused rebuked his daughter. At the time of the incident he was not present in his house and after returning back he heard the incident from his wife. Thereafter, the village people told his wife to go to the P.S to lodge the complaint against the accused person.

PW 03 the VG said that he knows the accused person. He is present in the Court room (identified). He hugged herself. He did nothing more towards her.

In Cross-examination she said that she cannot say the date or month. He did not rebuke her any time. She denied that she stated falsely that he hugged herself.

PW04 Surya Dome said that the defacto complainant is his elder didi. He knows his daughter. He knows the accused person. He is present in the Court that day (identified). In the year 2021 some incident took place between Ratikanta and the victim girl but he cannot say what happened.

In Cross-examination he said that Police did not interrogated him.

PW 05 NVF-50031, Rajib Chakraborty said that he is NVF-50031, now attached to Rangamati Help Line under Shantiniketan P.S. On 24.03.2021 he was posted at Suri P.S. On that date he collected one brown colour envelope as produced

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by C-922, Uday Kr. Ghosh and prepared the seizure list and he puts his signature on the seizure list. He identified his signature on the seizure list (marked as Ext-3/1).

In Cross-examination he said that save and except putting his signature on the seizure list, he has no personal knowledge regarding the incident.

PW 06 ASI Aditya Kr. Mondal said that he is ASI of police, now attached to Suri P.S. On 23.03.2021 he was posted at Suri P.S. On that date I.O seized wearing apparels of the victim girl and he puts his signature on the seizure list. He identified his signature on the seizure list (marked as Ext-2/2).

In Cross-examination he said that save and except putting his signature on the seizure list, he has no personal knowledge regarding the incident.

PW. 07 LC-1387, Sanjida Khatun said that she is LC-1387 of police, now attached to Suri P.S. On 23.03.2021 she was posted at Suri P.S. On that date she brought the victim girl for medical examination to the hospital but she refused to be examined medically. She identified the report (marked as Ext-4). Thereafter, she brought the victim girl to the Court for recording her statement u/s-164 Cr.P.C.

PW. 08 S.I Jagannath Chowdhury said that he is S.I of police, now attached to D.I.B., Birbhum. On 23.03.2021 S.I Arup Kr. Dutta was the then I.C. in charge of Suri P.S. He received the complaint from Anhila Ankur and started the case vide Suri P.S Case No. 119/21 dated 23.03.2021 u/s-354/376/511 IPC and Section 6/8/10/12/18 of POCSO Act. He identified the endorsement (marked as Ext-1/1). Thereafter, he filled up the formal F.I.R(marked as Ext-5). Thereafter, the then O.C handed over the charge of investigation to S.I Amar Singh and after taking charge of investigation he visited the P.O. He prepared rough sketch map with index (marked as Ext-6) (collectively).He arrested the accused person and sent him for medical examination and collected the report. He identified the report (marked as Ext-7). Thereafter, he seized the wearing apparels of the victim girl and prepared the seizure list

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(marked as Ext-2). He seized one brown colour envelope containing urethral swab of the accused person and prepared the seizure list (marked as Ext-3). He sent the victim girl for medical examination but she refused to be examined medically and he collected the report. Thereafter, he was transferred on 28.05.2021. Thereafter, the then I.C handed over the charge of investigation to second IO on 03.06.2021. After taking charge of investigation he sent the seized articles to FSL for chemical examination and collected the report. He identified the report (marked as Ext-8.). Thereafter, on completion of investigation he submitted charge sheet against the accused person.

In Cross-examination he said that no birth certificate of the victim girl was seized. They did not verify the genuineness of the aadhaar card of the victim girl. They did not investigate regarding the place of birth of the victim girl. The Lady ASI who tried to record the statement u/s-161 Cr.P.C of the victim girl mentioned to the previous I.O that she failed to give any type of statement from her and only the victim girl can understand the language of her mother and her mother also only understand the language of the victim girl. The mother of the victim girl has not been examined separately u/s-161 Cr.P.C to verify what she understand from the victim girl. The other witnesses including the parents of the victim girl did not tell to the first I.O that the accused person hugged the victim girl. They did not investigate regarding any previous enmity between the accused person and the family of the victim girl. He denied that he submitted the charge sheet without proper investigation or that their part of the investigation is perfunctory.

From the materials on record it appears that the defacto complainant lodged the complaint that her daughter was aged about 17 years. When she went to the field to bring the goat on 21/3/21 then the accused person dragged her by catching her hands and attempted to commit rape upon her. At that time in search of the victim girl when she went to that nearby

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locality then they heard the sound of shouting of her daughter. Then they rushed to the PO and the accused person fled away..

From Exbt.1 it appears that the defacto complainant lodged the complaint to the effect that her daughter was aged about 17 years. When she went to the field to bring the goat on 21/3/21 then the accused person dragged her by catching her hands and attempted to commit rape upon her. At that time in search of the victim girl when she went to that nearby locality then they heard the sound of shouting of her daughter. Then they rushed to the PO and the accused person fled away.

In this case from the materials on record it appears that the defacto complainant lodged the complaint that the accused persons attempted to commit rape upon the victim girl but when the defacto complainant has been examined as PW-1, she said that the incident took place in the year 2021 at about 12:00 to 1:00 p.m. Her daughter went to the field to bring the goat when the accused person rebuked her daughter. So her daughter returned back in crying condition and on enquiry her daughter told to her that the accused person rebuked her but she did not mention the reason why the accused person rebuked her daughter. Thereafter, she lodged the complaint in the P.S. Though the victim girl when was examined as PW-3 she said that the accused person hugged herself. He did nothing more towards her.

In this case the defacto complainant raised the allegation in the written complaint that the accused person attempted to rape her daughter and the victim told in the court that the accused person hugged her but he did nothing more than that towards her but her parents told in the court that the accused person rebuked her. So from the prosecution witness it does not appear that the accused had any intention to commit any type of sexual assault upon the victim girl.

Though the prosecution proved that the victim girl was minor at the time of the incident but the prosecution failed to prove that the accused person committed the attempt to

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cause penetrative sexual assault upon the victim girl on the date of the incident.

On the basis of the above observation, I am of the view that the prosecution has failed to prove the case by producing oral and documentary evidences beyond the shadow of reasonable doubts. So, the accused person is liable to be acquitted.

Hence it is,

**ORDERED**

that the accused person, namely Rathikanta Saha is found not guilty for the offence punishable under Section 376(1)/511 of I.P.C. and Section 6/18 of POCSO Act and he is acquitted under Section 235(1) Cr.P.C and he will be discharged from his bail bond after expiry of six months as per provision of 437A CrPC.

The seized articles, if any, be destroyed after the period of limitation.

Dictated & Corrected

Special(P) Judge, 2<sup>nd</sup> Court,  
Suri, Birbhum

Special (P) Judge, 2<sup>nd</sup> Court,  
Suri, Birbhum  
31.03.2026