

Special Case No. 12 of 2023
CNR no-WBBK09000323 2023
Regd No. 12 of 2023

State Vs. Abdul Rafik @ Abdul Latib Khan

This is a case in connection with Indpur P.S. Case No. 47 of 2023, dated- 12.06.2023 U/Ss 363/365 of the IPC and adding section 376(3) of IPC and 6 of the POCSO Act.

Order No. 31
Dated- 15.07.2026

Today is fixed for appearance of the accused on court bail and prosecution evidence.

The sole accused namely, Abdul Rafik @ Abdul Latib Khan is present before the court by filing hazira.

Ld. Advocate for the accused is present before the court.

Ld. Special-PP is also present.

No witness for the prosecution is present before the court.

Ld. Special-PP submits that they will not examine any witness further.

Ld. Defence Counsel submits that necessary order should be passed.

Heard.

Considered.

Perused the materials on record.

Considering the submission of the parties, the recording of evidence of the prosecution is accordingly closed.

Going through the case record, this court does not find sufficient incriminating materials for examination of the accused U/S 313 of the Cr.P.C.

Considering the submission of the parties fix the case today at **2:30 pm** for passing necessary order.

The accused must be present before the court.

Dictated and Corrected by me

A.S.J
Khatra, Bankura

Additional Sessions Judge,
Khatra, Dist.- Bankura
J.O. Code WB00638

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This is a case in connection with Indpur P.S. Case No. 47 of 2023, dated- 12.06.2023 U/Ss 363/365 of the IPC and adding section 376(3) of IPC and 6 of the POCSO Act.

Later Order

Dated- 15.07.2026

The case record is put up before the court for passing necessary order.

The accused namely, Abdul Rafik @ Abdul Latib Khan is present before the court.

Ld. Advocate for the accused is present before the court.

Ld. Special-PP is also present.

It is submitted on behalf of the defence that the prosecution got ample opportunities to examine their all the witnesses, but they have not examined all the charge-sheeted witnesses before this court and considering the materials in the record, necessary order should be passed as per the discretion of the court.

The fact of the prosecution case in short is that the de facto complainant, father of the victim lodged a written complaint to the Officer-In-Charge of the Indpur PS on 12.06.2023 alleging inter alia that there was a Jalsha in their village at Gharpathar on 05.06.2023. Then his younger daughter went to attend the said Jalsha at the evening time. But the victim did not return to the residence thereafter. The de facto complainant came to learn from the reliable source that his elder son-in-law, the accused Abdul Rafik @ Abdul Latib Khan eloped the victim and went away to an unknown place by taking the victim. It is also learnt that the accused had confined the victim to an unknown place. In this situation when the de facto complainant could not trace out the victim then he lodged the written complaint to the Indpur PS.

Receiving the complaint a case being the Indpur PS Case No. 47 of 2023, dated- 12.06.2023, U/Ss 363/365 of the IPC and U/S 6 of the POCSO Act was registered. Subsequently, as as per the prayer of the IO the provision of law provided U/S. 376(3) of the IPC was added against the accused namely, Abdul Rafik @ Abdul Latib Khan.

After completion of investigation, the IO submitted the charge-sheet against the accused namely, Abdul Rafik @ Abdul Latib Khan before this court being the Indpur

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PS charge-sheet No. 80 of 2023, dated- 10.12.2023, U/Ss 363/365 of the IPC along with adding section 376(3) of the IPC and Section 6 of the POCSO Act.

Then charges were framed against the accused on 21.12.2023 U/Ss 363/365/376(3) of the IPC and U/S. 6 of the POCSO Act.

The charges so framed were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

After framing of different schedules and after getting ample opportunities, the prosecution was able to examine only six (06) witnesses, out of sixteen (16) charge-sheeted witnesses.

Some documents have been exhibited on behalf of the prosecution and those are :

- (1) P-X and P-X(1) for identification - Thumb impression of PW-1 on the statement recorded U/S. 164 of the Cr.P.C.
- (2) P-X(2) for identification - Thumb impression of PW-1 on the seizure list prepared in between 11.05 hrs. to 11.25 hrs. on 07.11.2023.
- (3) P-X(3) for identification - Thumb impression of PW-1 on the medical examination report dated- 28.09.2023.
- (4) Exbt. P-1 - Signature of PW-2 on the recovery memo dated 26.09.2023.
- (5) Exbt. P-2 & P-2(1) - Signature of PW-2 on the statement recorded U/S 164 of the Cr.P.C.
- (6) P-X(4) for identification - Thumb impression of PW-2 on the medical examination report dated- 28.09.2023.
- (7) Exbt.P-3 - Signature of PW-3 on the written complaint.
- (8) Exbt. P-4 - Signature of PW-3 on the formal FIR, dated- 12.06.2023.
- (9) Exbt. P-5 - Signature of PW-3 on the seizure list prepared in between 09.15 hrs. to 09.55 hrs.
- (10) Exbt. P-6 - Signature of PW-3 on the zimmanama.
- (11) Exbt.P-5(1) - Signature of the PW-4 on the seizure list prepared in between 09.15 hrs. to 09.55 hrs. on 06.10.2023.
- (12) Exbt.P-5(2) - Signature of the PW-4 on the seizure list prepared in between 09.15 hrs. to 09.55 hrs. on 06.10.2023.
- (13) Exbt. P-7 - Signature of PW-6 on th seizure list prepared in between 11.05 hrs. to 11.25 hrs. on 07.11.2023.

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Heard arguments of both sides.

It is seen that out of six (06) witnesses examined on behalf of the prosecution, the PW-1, is the mother of the victim and she states before the court that around 00.00 am about three months ago from the date of her deposition the accused took away the victim to Doban from the village Garpathar where one Mela was going on. Police recovered the victim from Doban after one and half months. She also states that she made statement before the Ld. Judicial Magistrate, Khatra. But it is seen that the PW-1 who is the mother of the victim states before the court that she came to learn the incident from her villagers. In view of this, the PW-1 was declared hostile. In her cross-examination, the PW-1 failed to say the date of birth of the victim. So, the minority of the victim cannot be ascertained by the deposition of PW-1.

The PW-2 is the victim herself and she states before the court that about 5 to 6 months ago from the date of her deposition before the court one local fair was organized in their village and she along with Sarifunnesha visited the said local fair and therefrom the accused took her away to Doban who is the aunt of the accused and the place was at Uttar Pradesh and the accused kept her there for two months and after that the accused brought her to his village at Mallickdanga under PS Taldandgra and there she resided one day. She stated that police recovered her on 26.09.2023 and her signature on the recovery memo was marked as Exbt. P-1. She made statement to the Ld. Judicial Magistrate, Khatra. She also stated that she has completed her primary education. But considering her examination-in-chief the victim was declared hostile by the prosecution and with the permission of the court she was cross-examined.

In her cross-examination by the defence the victim stated that she voluntarily went to the house of her Jamaida on the day of incident. The victim also admits that she used to visit the house of the accused which is the matrimonial home of her elder sister. So, the eloping and forceful taking away of the victim by the accused do not reveal from the statements of the victim on dock.

The PW-3 is the father of the victim. He in his examination-in-chief stated that in the month of June, 2023 there was a function in their village and the victim went to attend the said function around 07.00/07.30 pm. But subsequently he came to learn that the victim fled away with the accused Abdul Latib. Thereafter, police recovered the victim after three months from Uttar Pradesh. Then the PW-3 lodged the complaint to the Indpur PS. PW-3 also failed to say the age of the victim. So, the evidence of PW-3 does not ensure the minority of the victim.

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The PW-4 is a police witness who seized the Adhar card and school certificate of the victim by preparing a seizure list. His signature on the said seizure list is marked as Exbt. P-5(1). PW-4 states nothing more about this case.

PW-5 is also a police witness who is a constable of police and he signed the seizure list prepared in between 09.15 hrs. to 09.55 hrs. on 06.10.2023 and his signature is marked as Exbt. P-5(2). So, the evidence of PW-5 does not provide any specific incriminating materials against the accused.

Similarly, the PW-6 is a police witness who is a lady constable. She is also a signatory to the seizure list prepared in between 11.05 hrs. to 11.25 hrs. on 07.11.2023 and her said signature is marked as Exbt. P-7.

These are the entire evidence from the side of the prosecution. The prosecution failed to examine the remaining witnesses and the reason is best known to the prosecution.

The prosecution submits that they examined witnesses at the best of their ability.

On the other hand, Ld. Defence Counsel submits that the prosecution fails to bring even an iota of evidence before the court and so that, the accused should be acquitted.

In view of the above materials in the case record, this court finds that there is no convincing evidence against the accused for holding him guilty in this case.

It is the principle of administration of criminal justice that the prosecution is to prove its case beyond all reasonable doubt. But it is seen that in the instant prosecution case there is no cogent and convincing incriminating material against the accused.

In other words, the prosecution case lacks proper evidence against the accused and the court is of the opinion that there is no believable incriminating material against the accused in relation to the allegation of the prosecution. On the other hand, the age of the victim could not be proved conclusively showing that the victim was a minor at the time of the incident and she was forcibly taken away by the accused against her will.

Therefore, the entire materials on record reflect that the prosecution fails to prove the guilt of the accused before this court in the eye of law. So, the accused is held not guilty and he is entitled to an order of acquittal.

Hence, it is,

Ordered

that the accused namely, **Abdul Rafik @ Abdul Latib Khan** of this case is held not guilty of the offences punishable U/Ss 363/365/376(3) of the IPC and U/S. 6 of the

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POCSO Act and as such, he is acquitted of the said charges U/S 232 of the Cr.P.C.

The accused be set at liberty by discharging him from his bail bond at once.

Seized Alamat, if there be any, be confiscated to the state after the expiry of the period of appeal.

Dictated and Corrected by me

A.S.J
Khatra, Bankura

Additional Sessions Judge,
Khatra, Dist.- Bankura
J.O. Code WB00638