

**IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE
2ND COURT, COOCH BEHAR.**

**Present : Smt. Mandakranta Saha,
Additional Sessions Judge,
2nd Court, Cooch Behar.**

Judgement delivered on: 9th day of April, 2026

Sessions Case No. 96 of 2013 (CIS No.1410/2014).

ST No. 04(6)2014

C.N.R. No.-WBCB01-002739-2013

**Ref: Haldibari Police Station Case No. 144/2012 dated 19.06.2012
u/s- 366/376/417/493/34 of Indian Penal Code**

State of West Bengal

Vs

1. **Alam Mahammad, s/o Amijan Mahamad of
Village- Jarain Para, PS- Haldibari, Cooch
Behar (A1)**

.....Accused Person.

Charge U/s 366/376 of Indian Penal Code

J U D G M E N T

Form-B

Date of Offence	18.06.2012
Date of F.I.R.	19.06.2012
Date of charge sheet	11.10.2012
Date of framing charge	21.06.2014
Date of commencement of evidence	01.07.2015
Date of judgement	09.04.2026

FIR speaks that on accused promised the minor girl, then aged about 16 years old, of the defacto complainant to marry her.

Under such false representation the accused subjected her to rape on multiple occasions. On 18.06.2012 approximately at 10nA.M while the victim was proceeding to doctor's chamber for medical treatment, the accused forcibly kidnapped the minor girl by pointing knife to her. She was taken to Jalpaiguri by a bus. She was confined in the residence of the accused person. The victim was recovered with intervention of local Police station.

In this context the mother of victim girl lodged complaint before local police station. Accordingly, a case vide Haldibari Police Station, Cooch Behar Case No. 144/2012 dated 19.06.2012 u/s 493/376/417 of Indian Penal Code was initiated. After completion of investigation charge sheet was submitted u/s 366/376/417/493/34 of Indian Penal Code against the accused persons named above.

Charge was framed u/s 366/376 of Indian Penal Code against the above named accused persons. He pleaded not guilty and claimed to be tried.

Prosecution has examined total eleven (11) witnesses for proving the case. The accused person is examined u/s 313 Code of Criminal Procedure, 1973 and he claimed himself as innocent.

No evidence from the side of the defense is adduced.

Points for Determination

Whether the prosecution has been able to prove the offence u/s 366/376 of Indian Penal Code against the accused person beyond reasonable doubts?

List of Prosecution Witnesses Examined

RANK	NAME	NATURE OF EVIDENCE
P.W.- 1	Chandana Mullick	Medical Staff
P.W.- 2	Dr. M. Rudra	Medical Witness
P.W.- 3	Mosaraf Hussain	Defacto Complainant

P.W.- 4	Victim Girl	Injured witness
P.W.- 5	NVF 104 Jyostna Roy	Police witness
P.W.- 6	Moksedul Hussain	Brother of victim
P.W.-7	Sahidul Haque	Public Witness
P.W.-8	Baharul Islam	Public Witness
P.W-9	Dr. Ashok Kumar Chakraborty	Medical witness
P.W-10	Amzad Hussain sarkar	Public Witness
P.W-11	Inspector Naresh Chandra Das	Investigating Officer

List of Prosecution Exhibits

Serial No.	Exhibit Number	Description
1.	Exhibit-1 Series/ P.W.- 1, P.W-5, P.W-9	Medical Report of VG and signatures thereon
2	Exhibit- 2 / P.W.- 2	Potency test report
3	Exhibit- 3 / P.W-4	The statement of VG u/164 CrPC and signatures thereon
4	Exhibit- 4 series/ P.W.-11	The written complaint with signature & endorsement thereon
5	Exhibit- 5/ P.W-11	Formal FIR
6	Exhibit- 6/ P.W-11	Rough Sketch map with index
7	Exhibit- 7/ P.W-11	Seizure List dated 25.07.2012
8	Exhibit- 9/ P.W-11	Charge sheet

Decision with Reasons

It is the duty of the prosecution to establish the charge of offence against the accused person by leading cogent and reliable evidence.

It is alleged that victim gas been kidnapped on her way to doctor's chamber.

Victim (P.W-4) deposed that on 18.06.2012 approximately at 10 A.M the incident occurred. On that very date the accused over repeated phone call asked her to meet him at Anguldekha village. Accordingly she went to that village to meet him. She was then

taken to Jalpaiguri by boarding a bus. She was forcibly taken by accused person. The victim further deposed that she had been forcibly taken to movie hall for watching movie. The accused promised to marry her. Under such promise the accused brought her to his residence. However, on the way to residence of accused the victim has been subjected to rape on a jute field. She was disrobed against her will then committed rape upon her. She was raped under promise of marriage. She was then taken to the residence of accused, but he left his house. Thereafter the parents of accused assaulted her then drove her out of home.

In cross-examination P.W-4 admitted that she had maintained relationship with accused since last four to five years from the date occurrence of incident.

She further adduced that the bus, by which she travelled from Anguldekha to Jalpaiguri, was crowded with passengers. She never raised hue and cry inside the bus due to promise of accused for marriage. After reaching Jalpaiguri she with accused enjoyed a movie. After enjoying movie they boarded a bus for Haldibari. After reaching there, both of them walked till Joram village on foot.

Her evidence further discloses that she sustained injuries during alleged incident of rape.

P.W-4 deposed that while the incident of assault occurred upon her at the residence of accused, the neighbours (around 20 people) gathered.

P.W.1 being a hospital nurse remain present during medical examination of the VG.

The medico-legal evidence (P.W-9 and Ext-1/3) speak that no mark of injuries were found in the genitals and extra genital area of the victim. There was no sign of sexual penetration in the vaginal area of the victim. It is therefore evident that there was no sign of any kind of sexual assault upon the victim. Medico-

legal evidence is found to be completely inconsistent with oral evidences of the victim girl.

The contents of evidence of victim show that she travelled with accused in his residence under promise of marriage. Charge u/s 366 IPC is framed against the accused. To bring home the guilt of the accused u/s 366 IPC it is necessary for the prosecution to prove that the accused induced the victim to move out from her residence till Joram village at Haldibari. The prosecution must prove the inducement by deceitful means on the part of the accused.

In the present proceeding except oral testimonies of the victim there is no iota of evidence to prove that she being accompanied by accused travelled to Jalpaiguri then watched movie thereafter by bus went to Haldibari. No witnesses such as the bus conductor is examined to corroborate the version of victim nor any ticket of bus is seized from the possession of the victim. It is found from the evidence of victim that buses, by which she allegedly travelled with accused, were crowded. Such testimony show the existence of various persons in the bus. Despite presence of public in the bus as well as on the road there is no believable evidence as to how victim has been forcibly taken by the accused up to Haldibari. Consequently the evidence of victim, that she has been forcibly taken by bus to Jalpaiguri thereafter to Haldibari, is heard to believe.

It is further alleged by victim that while she has been assaulted by the family members of accused, neighbours assembled there. None of the neighbours of the accused is examined in order to depose that they have seen the accused at the residence of the accused.

PW.3 being the defacto complainant deposed that his daughter had been taken to Jalpaiguri and kept in his residence by the accused. The victim was assaulted and driven out of the house of accused. The testimonies of PW.3 do not disclose any

cogent evidences which would be beneficial for proving guilt of the accused.

Moksedul Hossain, PW.6 adduced that accused took the victim to his residence at Jalpaiguri under the promise of marriage but she had been driven out after being rape and assaulted by accused and his family members. PW.6 further deposed that he on hearing such incident went to the residence of accused but they refused to speak on the subject of marriage thus complaint has been lodged.

Sahidul Haque, PW.7 and Baharul Haque, PW.8 adduced that they heard from the family of victim that she had been taken by the accused to his residence but the family members of the accused assaulted the victim then drove her out.

These testimonies of the witnesses do not corroborate the evidences of the victim. None of them has seen the accused taking the victim girl with him then boarding bus for Jalpaiguri.

Thus being post occurrence witnesses, their testimonies have little evidentiary value to prove the guilt of the accused.

PW.10 deposed that he has no knowledge of facts and circumstances of the case.

The evidence of PW.2 shows that he conducted potency test of the accused and proved the report.

The evidence of IO (PW.11) does not reveal any incriminating material. The IO has not examined neighbours of residence of accused.

The rough sketch map with index show one jute field of the accused. The description of the jute field as found from exhibit-6 is not found to be corroborated by the victim girl. Thus exhibit-6 has little importance in this case.

The victim in her statement u/s 164 Cr.P.C has narrated the detail incident regarding her kidnapping and rape. However, such statement is not fully corroborated by the victim in her oral

evidence. Consequently her statement u/s 164 Cr.P.C loses its value.

In view of the discussions of the evidences on record as well as facts and circumstances of the case, the version of the victim with regard to the manner and occurrence of the incident is found to be highly improbable.

Hence, it is,

ordered

that accused person namely Alam Mahammad is acquitted u/s 235(1) Cr.P.C from the charge U/s 366/376 of IPC.

Accused person is discharged from bail bond.

Sureties are discharged from their bonds.

Alamat property, if any, be disposed of after expiry of appeal period.

Dictd. & Cortd. by me.

Judge, (Special Court under POCSO Act) -cum-
Addl. District & Sessions Judge,
2nd Court, Cooch Behar

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Addl. District & Sessions Judge,
2nd Court, Cooch Behar
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