

	
IN THE COURT OF JUDGE, SPECIAL COURT, ALIPURDUAR, Present :- Shri P.C.Karmakar (WB00651) Judge, Special Court, Alipurduar. [Date of the Judgment] 10.04.2026 Details of FIR/Crime and Police Station Special Case No. 119/2022 <u>CNR-WBJP05-001505-2022</u> Sessions Trial Case No.24/2023 Ref: Falakata PS Case No.611/2022 dated 11.11.2022 U/s. 376AB of IPC r/w Sec. 6 of POCSO Act.	
Complainant	STATE OF WEST BENGAL Defacto complainant Jelekha Mia
REPRESENTED BY	P.P-in-charge– Shri Sanchay Ghosh
ACCUSED	Jakir Hossain
REPRESENTED BY	Shri Arun Tarafder

Form B

Date of Offence	11.11.2022
Date of FIR	11.11.2022
Date of Charge sheet	16.12.2022
Date of Framing of Charges	28.02.2023
Date of commencement of Evidence	24.07.2023
Date on which Judgment is reserved	Nil
Date of the Judgment	10.04.2026
Date of Sentencing Order, if any	Nil

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Accused details:

Rank of the Accused	Name of the Accused	Date of arrest	Date of R/B	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C
1.	Jakir Hossain	12.11. 2022	Custody	Us.376 AB of IPC and u/s 6 POCSO Act	Acquitted	N/A	N/A

Form C

LIST OF PROSECUTION / DEFENCE/ COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW 1	Victim girl	Victim girl
PW2	Jelekha Miya	Defacto complainant /grand father of the victim girl
PW3	Dr Arundhoti Sarkar	Medical Officer
PW4	Dr Suvendu Das	Medical Officer
PW5	Dr Michael Biswas	Medical Officer
PW6	Khusida Begum	Neighbour
PW7	Laili Khatoon	Neighbour
PW8	Jasmina Parveen	Neighbour
PW9	Moqbul Hossain	Neighbour
PW10	Julfikar Ali	Seizure witness

PW11	Sahabuddin Ahamed	Seizure witness
PW12	LC/854,Mampi Barman	Police constable
PW13	Amironnessa	Neighbour
PW14	Pradip Pal	Photographer
PW15	LSI Krishna Barman	Police personnel
PW16	LC/884, Minakshi Barman	Police constable
PW17	LC/870, Anika Roy	Police constable
PW18	Inspector Samit Talukder	Police personnel
PW19	Shri Dibyendu Das	Judicial Magistrate
PW20	Smt Moumita Mallick	Judicial Magistrate
PW21	Abul Kalam Azad Sarkar	IO of this case.

B. Defence Witnesses, if any:

DW 1	Nil	Nil
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C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
CW 1	Nil	Nil

LIST OF PROSECUTION / DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit-1 [PW3]	Medical report of the VG
2	Exhibit-1/1 [PW3]	Signature of PW3 on the Medical report of the VG
3	Exhibit-2 [PW4]	Medical report of the VG
4	Exhibit-2/1 [PW4]	Signatures of PW4 on the Medical report of the VG
5	Exhibit-3 [PW5]	Medical report of the accused Jakir Hossain
6	Exhibit-3/1 [PW5]	Signature of PW5 on the Medical report of the accused
7	Exhibit-4 [PW10]	Signature of PW10 on seizure list dt. 11.11.2022
8	Exhibit-4/1 [PW11]	Signature of PW11 on seizure list dt. 11.11.2022

9	Exhibit-1/2 [PW12]	Signature of PW12 on the Medical report of the VG
10	Exhibit-2/2 [PW12]	Signature of PW12 on the Medical report of the VG
11	Exhibit-5 [PW12]	Signature of PW12 on the on the Seizure list
12	Exhibit-6 [PW14]	Signature of PW14 on the requisition
13	Exhibit-7 [PW16]	Signature of PW16 on the carbon copy of Seizure list
14	Exhibit-8 & 8/1 [PW16]	Signature of PW16 on the CC dt. 02.12.2022 & 03.12.2022
15	Exhibit-9 [PW17]	Signature of PW17 on the CC
16	Exhibit-10 [PW18]	Endorsement of PW18 on the written complaint
17	Exhibit-11 [PW18]	Formal FIR
18	Exhibit-12 [PW19]	164 Cr P C statement of the VG
19	Exhibit-13 [PW20]	164 Cr P C statement of the VG
20	Exhibit-14 [PW21]	Rough sketch map with index
21	Exhibit-15 [PW21]	Command Certificate
22	Exhibit-9/1 [PW21]	Command Certificate
23	Exhibit-4/2 [PW21]	Seizure list dt. 11.11.2022
24	Exhibit-5/1 [PW21]	Seizure list dt. 15.11.2022
25	Exhibit-2/3 [PW21]	Command Certificate
26	Exhibit-8/2& 8/3 [PW21]	Two Command Certificates
27	Exhibit-7/1 [PW21]	Seizure list dt. 30.11.2022
28	Exhibit-16 [PW21]	Zimmanama dt. 30.11.2022
29	Exhibit-10/1 [PW21]	Written complaint

B. Defence:

Sr. No.	Exhibit Number	Description
1	Nil	Nil

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	Nil	Nil

D. Material Objects:

Sr. No.	Material Object No.	Description
1	Nil	Nil

J U D G E M E N T

1. This criminal proceeding originated from the written complaint dated 11.11.2022 lodged by the defacto complainant/grand-mother of the victim girl of this case, namely, Jelekha Miya, W/O Late Abul Hossain of Dakshin Deogaon, PS-Falakata, District-Alipurduar.
2. The complainant stated in the complaint that her grand daughter (VG), aged about 5 years and 6 months, used to live with her in her house and she [defacto complainant] used to work as a day-labourer. It is alleged by the defacto complainant that while she (defacto complainant) went to her work, accused person used to come to her house for last few days and caused sexual assault upon the VG, while she was alone in the house. On 11.11.2022 at about 10:00 a.m., while the complainant was not at home and the V.G. was preparing herself for going to school, accused forcibly committed rape upon the VG after undressing her and lying her on the bed after alluring her in many ways. It is also alleged that accused threatened the VG saying that if she discloses the matter to any one, she will be killed and then he fled away. Hence, the written complaint.
3. On the basis of said written complaint, Falakata PS Case No. 611/2022 dated 11.11.2022 U/s. 376 of IPC r/w Section 6 of POCSO

Act was started against the above noted accused person and on completion of investigation charge sheet No. 752/2022 dated 16.12.2022 U/s. 376AB of IPC and under Section 6 of POCSO Act was submitted against the above stated accused person.

4. On completion of all formalities and after the production of the accused person facing trial in this case, the charge was framed against the accused U/s. 448/376 of IPC and u/s 6 of POCSO Act on 28.02.2023. The contents of the charge were read over and explained to the accused person to which he pleaded not guilty by saying 'ami nirdosh' and claimed to be tried and faced the trial remaining in custody.
5. The defence case, as it transpires from the trends of cross examination of the prosecution witnesses, is that of innocence and denial of the prosecution case. The accused person further pleaded 'not guilty' while he was examined u/s. 313 Cr.P.C and declined to adduce any defence witness in support of his innocence.

Point for Decision

6. Whether the prosecution has been able to prove the case against the accused person as alleged or not.

Decision with reasons

7. In order to bring home the guilt of the accused person the prosecution examined as many as twenty-one (21) witnesses in total and certain documents were marked as Ext.1 to Ext.16 as per the list of exhibits referred above.
8. PW1, victim girl of this case, stated in her evidence that while she was inside her room and combing her hair, and was preparing herself for going to school at 10.00 AM, Jakir put his “nunu” into her private parts (the VG pointed out her vagina) and blood oozed out from her vagina. She went to adjacent house of her Vabhi in crying condition and then Vabhi put ointment into her vagina

and Vabhi asked her what happened and then she narrated her the incident. She further stated that she could not go to school on that day as she felt pain in her vagina and she narrated her Dadi about the incident when her Dadi returned. Her Dadi informed the police over phone and she was taken to hospital being accompanied by a lady police and her Dadi and she was medically examined there and she told the doctor about the incident. She was taken to the hospital twice and she made statement under Section 164 Cr.PC before Ld. Magistrate and put her LTI thereon. She identified the accused in court.

9. PW1 stated in her cross-examination that her house is surrounded by houses of other persons and on the next day of the incident, she was taken before the Magistrate before whom she stated about the incident. She cannot remember after how long of the incident, she met her Dadi and when she met her Dadi, at that time, blood was not oozing out from her vagina. She further stated that when the accused person put his “nunu” into her vagina, at that time, blood was oozing out from her vagina as her vagina was ruptured and she showed her vagina to the attending doctor who examined her and her panty became blood stained on account of such act. On the date of incident, she met her Dadi and on the same date she was taken to the hospital. Rest of her cross-examination is nothing but denial of the suggestions put to her by the defence counsel.

10. PW2, the grandmother of the victim girl and the defacto complainant of this case, stated in her evidence that the VG of this case is her granddaughter and the incident happened 8/9 months ago, at about 10/10.30 AM. On the date and time of incident, she went for her job and the VG was alone in the house and was preparing herself for going to the school and she was combing hair and at that time, Jakir entered into her room and committed “*nongra kaj*” with the VG

by lying her in the bed. She further stated that “*nongra kaj*” means “*Jakir er nunu ta or jaygay lagiye dilo*”. After returning home, she found that the VG was crying and blood was oozing out from her vagina and being asked by her, she narrated her the incident and thereafter, she went to police station with the VG and lodged complaint before Falakata PS. The complaint was jotted down by one Badal Sarkar and after writing the same was read over and explained to her in Bengali and being satisfied about the contents of the complaint, she put her LTI on the complaint. Thereafter, the VG was taken to Falakata hospital for medical examination and she accompanied the VG along with one lady police. She narrated the entire incident to the attending doctor who examined the VG and wrote down the same and she put her LTI on the medical report. At the time of incident, the VG wore one black ganji, one jangiya and one long pant and she handed over all these wearing apparels of the VG to police who seized the same by preparing seizure list whereon she put her LTI. Thereafter, the VG was taken before Ld. Magistrate at Alipurduar Court and she made her statement before the Ld. Magistrate. The VG was taken to Falakata Hospital twice and on the second day, she also narrated the doctor about the incident and put her LTI on the medical examination report. Police seized the birth certificate of the VG by preparing a seizure list whereon she put her LTI and received the original birth certificate by putting her LTI on the zimmanama. At the time of incident the VG was aged about 6/6½ years and at the time of incident, the VG used to reside with her and nobody else was residing there at that time. She identified the accused in court.

11. PW2 stated in her cross examination that on the date of incident, she left her home for her job at about 8.00 AM and on that date her work was in the house of Aziz doctor and after returning her

house she was informed about the incident and she found her granddaughter (VG) crying and she was ill and blood was coming out from her vagina and she further came to learn that Jakir inserted his 'nunu' into the vagina of her grand-daughter (VG). She also came to learn that the VG was shouting at that time. It takes five minutes to reach her house from the house of Aziz doctor and there are many houses situated beside the road in between her house and the house of Aziz doctor and she had talking terms with the persons and neighbours residing beside the road from the house of Aziz doctor to her house. She further stated that there was no blood stained in the bed sheet and she took the VG to the doctor after one hour when she met the VG after the incident and she first went to the PS and thereafter went to the doctor accompanied by lady police. She admitted that the name of wife of the accused Jakir Hossain is Ajifa Bibi and she also knows Amirulnesha and Jasmin Parvin who are her neighbours and also admitted that Ajifa Bibi lodged a complaint against herself, Amirulnesha and Jasmin Parvin before happening of the instant incident. She further stated that on the date of the incident, the VG went to the school and she herself took her from the school. Rest of her cross-examination is nothing but denial of the suggestions put to her by the defence counsel.

12. PW3, the MO, stated in his evidence that on 11.11.2022 she was posted at Falakata Super Speciality Hospital as Medical Officer and on that date he examined one victim girl, C/o. Jelekha Mia, aged about 6 years in connection with Falakata P.S Case No.611/22 dt.11.11.2022 and the victim girl was brought and identified by lady constable having no.854, Mampi Barman attached to Falakata P.S accompanied by grand mother of the VG namely, Jelekha Mia. She further stated that on examination no external injury was seen and she referred the VG to Gynecologist for further opinion. She proved the

medical report of the victim prepared by her in her own handwriting bearing her signature and seal as **Ext. 1** and her signature was marked as **Ext.1/1**.

13. PW3 stated in her cross examination that it is not mentioned in her medical examination report about by whom the victim girl was identified and she examined the VG on 11.11.22 at 3.50 pm. She further stated that it is not mentioned in column-8 i.e., the history column as to who narrated her about history of the case.
14. PW4, the MO, stated in his evidence that on 11.11.2022 he was posted at Falakata Super Speciality Hospital as Medical Officer (Gynaecologist). On that date he examined one victim girl, C/o. Jelekha Mia, aged about 6 years in connection with Falakata P.S Case No. 611/22 dt.11.11.22 u/s 376AB IPC read with Section 6 POCSO Act and the victim girl was brought and identified by lady constable having no.854, Mampi Barman attached to Falakata P.S accompanied by grand mother of the victim namely Jelekha Mia. He also stated that he has specifically mentioned in his medical examination report about what he has found on examination of the victim girl. The medical report of the victim prepared by him in his own handwriting, bearing his signature and seal has been marked as **Ext.2**, and his signature thereon has been marked as **Ext.2/1**.
15. PW4, stated in his cross-examination that on examination he did not find any injury on genitalia of the victim girl and he is a gynecologist. He further stated that if a girl of 15 years was subjected to any forceful sexual intercourse, injury on her labia majora, labia minora, hymen and surrounding area may be occurred. He admitted that until and unless a penis penetrates labia majora and labia minora, penis do not get contact with hymen. He also admitted that if a girl of 6 years was subjected to any forceful sexual intercourse, she might have more severe injuries than a girl of 15 years. He further admitted

that vaginal swab is usually taken for getting scientific proof as to whether the patient was subjected to sexual intercourse or not.

16. PW5, the MO, stated in his evidence that on 26.11.2022 he was posted at Alipurduar District Hospital as Medical Officer and on that date he examined one Jakir Hossain in connection with Falakata P.S Case No.611/22 dt.11.11.22 u/s 376AB IPC read with Section 6 POCSO Act and the patient was brought and identified by SI Abul Kalam Azad Sarkar. He also stated that he conducted capability test of the said Jakir Hossain and on examination he found that there is nothing to suggest that the person identified as Jakir Hossain was not capable of performing sexual intercourse and he prepared the medical report of Jakir Hossain by his own hand writing, bearing his signature and seal which has been marked as Exbt-3 and his signature thereon has been marked as Exbt-3/1.

17. The defence declined to cross-examine this witness (PW5).

18. PW6, Khusida Begum, stated in her evidence that the incident occurred about one year ago and at the time of incident she was not in her home and went for her work and after returning to her home she came to know that the VG was raped by Jakir Hossain. She also stated that the incident happened about 10:00 a.m in the house of Jelekha Mia and at the time of incident Jelekha Mia went to her job and the minor victim girl was alone in the house. She further stated that at the time of incident the victim girl was 6½ years old and she came to learn about the incident from para neighbours, the VG as well as from Jelekha Mia and she identified the accused Jakir Hossain in court.

19. PW6, stated in her cross-examination that the name of father of the victim girl is also Jakir Hossain and the name of mother of the victim girl is Sanju. Both the father and mother of the victim girl are alive. She further stated that the father of the victim girl has two

daughters and two sons and that Jakir Hossain is residing with his wife and three children at Jaigaon and the victim girl is residing with her Dida. She further stated that after returning from her job she found that villagers and neighbours were discussing about the incident and then she came to know about the incident. She further stated that it is not possible for her to say the names of the persons who were discussing about the incident in the village. She cannot say the exact date and the names of the persons in whose presence, police interrogated her and she cannot say the name of the school where the victim girl was reading at the time of incident. She admitted that village-Dakshin Deogaon and Madhya Deogaon are adjacent to each other intervened by the road. Rest of her cross-examination is nothing but denial of the suggestions put to her by the defence counsel.

20. PW7, stated in her evidence that the incident occurred about one year ago and she came to know that the VG was raped by Jakir Hossain at about 10:00 a.m in the house of Jelekha Mia. She further stated that at the time of incident she went to her job and after returning her home she came to know about the incident. At the time of incident Jelekha Mia went to her job and the minor victim girl was alone in the house. She also stated that she came to learn about the incident from para neighbours, the victim girl as well as from Jelekha Mia. At the time of incident the victim girl was 6 years old and she identified the accused in court.

21. PW7, stated in her cross-examination that there were many houses surrounding the house of Jelekha Mia and apart from Jelekha Mia, she heard about the incident from the para neighbours but she cannot say their names. She admitted that she has been residing in the same para since her marriage for 18 years, where Jelekha Mia is residing. She knows the surrounding people of her house and they also know her. Rest of her cross-examination is nothing but denial of

the suggestions put to her by the defence counsel.

22. PW8, stated in his evidence that the incident occurred about one year ago at about 10.00 AM in the house of Jelekha Mia and she came to know that the VG was raped by Jakir Hossain. At the time of incident Jelekha Mia went to her job and the minor victim girl was alone in the house. She further stated that the minor victim girl came to her house in her school dress in weeping condition and stated that '*Bhabi, Jakir Hossain amake rape koreche*'. She also narrated before her that blood was oozing out from her private part and she also found blood coming out from her (VG) private part and she put ointment kept in her house in her [VG] private part. Thereafter the VG left her house. She also stated that at the time of incident the victim girl was residing with her Dida in the house of her Dida and nobody else was residing there.

23. PW8, stated in her cross-examination that 'Bhabi' means the wife of elder brother and 'Chachi' means the wife of uncle. She admitted that she stated before the police that the victim girl used to call her as Bhabi and the victim girl came to her house. She saw the victim girl wearing the school dress including the pant and she did not see blood stain in her pant but found blood in her private part. She also stated that she did not show police the ointment which she put in the private of the victim girl. Rest of her cross-examination is nothing but denial of the suggestions put to her by the defence counsel.

24. PW9, stated in his evidence that the incident occurred about one year ago and he came to know that grand daughter of Jelekha Mia was raped by Jakir Hossain. The incident happened at about 10:00 a.m in the house of Jelekha Mia and at the time of incident Jelekha Mia went to her job and the minor victim girl was alone in the house. He further stated that he came to know about the incident from Jelekha Mia and at the time of incident the victim girl was 6 years old

and he identified the accused in court.

25. PW9, stated in his cross-examination that if any incident happens in their village then the same is spreading within the entire village and every body is discussing about it and it is not possible for him to recollect the names of the person in their village who were discussing about the present incident. There are houses situated adjacent to the house of Jelekha Mia and the para people did not state anything to him about the instant matter. He cannot say the date and in whose presence, police had interrogated him.

26. PW10, stated in his evidence that the incident occurred about one year ago and he came to know from Jelekha Mia that her grand daughter was raped by Jakir Hossain of their locality and Jelekha Mia was residing in her house with her said grand daughter. The incident happened at about 10:00 a.m in the house of Jelekha Mia and at the time of incident Jelekha Mia went to her job and the minor victim girl was alone in the house and she was preparing herself for going to her school. At that time the accused Jakir Hossain entered into their house and committed rape upon the minor victim girl. At the time of incident the victim girl was 6 years old. He further stated that on the date of incident in the evening he went to the P.S with Jelekha Mia and Sahabuddin Ahamed to hand over the wearing apparels of the victim girl to the I.O. and the IO seized the same by preparing a seizure list where he put his signature and the said signature has been marked as **Exhibit-4**.

27. PW10, stated in his cross-examination that Dangapara Jama Masjid is situated at Madhya Deogaon and the house of Jelekha Mia is situated at Dakshin Deogaon. The distance between the house of Jelekha Mia from Danga Para Jama Masjid is about 1 K.M. He admitted that his house is situated near Dangapara Jama Masjid and Jelekha Mia is not his relative and he is not connected with politics.

He does not know whether Jelekha Mia is the follower of the same political party which he does follow and he used to visit the house of Jelekha Mia whenever require. The contents of the seizure list was read over to him. He denied that as Jelekha Mia is the follower of the same political party which he does follow, that is why he is deposing in favour of Jelekha Mia. He stated before the police how he came to know about the incident from the mouth of Jelekha Mia.

28. PW11, stated in his evidence that the incident occurred about one year ago and he came to know from Jelekha Mia that the VG was raped by Jakir Hossain of their locality and Jelekha Mia was residing in her house with her said grand daughter. The incident happened at about 10:00 a.m in the house of Jelekha Mia and at the time of incident Jelekha Mia went to her job. The minor victim girl was alone in the house and she was preparing herself for going to her school. At that time the accused Jakir Hossain entered into their house and committed rape upon the minor victim girl. He also stated that at the time of incident the victim girl was 6 years old and on the date of incident in the evening he went to the P.S with Jelekha Mia and Julfikar Ali to hand over the wearing apparels of the victim girl to the I.O. and the IO seized the same by preparing a seizure list whereon he put his signature and the said signature has been marked as **Exhibit-4/1**.

29. PW11, he stated in his cross-examination that knows the contents of the seizure list whereon he put his signature. He does not go to the house of Jelekha Mia and Jelekha Mia is not his relative and he is not connected with politics. Rest of his cross-examination is nothing but denial of the suggestions put to him by the defence counsel.

30. PW12, stated in her evidence that on 11.11.2022 she took one victim girl aged about 6 years to Falakata Super Speciality

Hospital for her medical examination and put her signature on the medical examination report prepared by doctor and the said signature has been marked as **Exhibit-1/2**. She further stated that on 15.11.2022 she again took the victim girl to Falakata Super Speciality Hospital for her medical examination and put her signature on the medical examination report prepared by the doctor, and the said signature has been marked as **Exhibit-2/2**. She has further stated that on 15.11.2012 doctor handed over the medical examination report and the vaginal swab of the VG to her and thereafter she again handed over the same to the IO of this case at PS who seized the same by preparing a seizure list and she proved her signature on the said seizure list as Exhibit-5.

31. PW12, stated in her cross-examination that the I.O. of this case was SI Abdul Kalam Azad and she identified the V.G. before the medical officer as per information of the I.O. She personally did not verify any identity proof of the V.G.
32. PW13, stated in her evidence that the incident took place 14 months ago. Her husband was ill and she went to the house of Jelekha for washing the clothes of her husband at about 10.00 AM. She found that the wearing apparels of the victim was opened, the lungi of Jakir was also opened. She found that Jakir was committed rape upon the victim girl beside the chouki in the room of Jelekha. She rushed therefrom and searched Jelekha to inform her. She identified the accused in the court. At the time of incident, the victim girl was six and half years old. Subsequently, she was brought before the Ld. Magistrate for making her statement who reduced her statement into writing and she put her LTI thereon.
33. PW13, stated in her cross-examination that she used to love the grand daughter of Jelekha Mia as her grand daughter. Before 14 months, i.e. at the time of incident, she could speak and also could

speaking loudly. Her house is situated at Madhya Deogaon and the house of Jelekha is situated at Dakshin Deogaon intervened by the village road which was running in front of the house of Jelekha Mia. Villagers used to use that road all times. She came out from the house of Jelekha Mia and went for searching Jelekha in the field through another village road. She did not meet any person on the road while going for search of Jelekha Mia. She could not trace out Jelekha Mia and also did not tell about the incident to anybody and returned her house. After 10/12 days of the incident, she was produced before the Ld. Magistrate and before her production in the court, she went to the PS and therefrom she came to the court in the police vehicle. There were houses situated surrounding the house of Jelekha Mia. Rest of her cross-examination is nothing but denial of the suggestions put to her by the defence counsel.

34. PW14 stated in his evidence that he is a photographer by profession since the year 2016 and on 12.11.2022 he received one requisition from SI Abdul Kalam Azad of Falakata PS in connection with Falakata PS Case No. 611/22, dated 11.11.2022 under Section 376AB IPC r/w Section 6 of POCSO Act. He put his signature on the requisition and his signature has been marked as Exhibit-6. He videographed the statement of the victim girl recorded by the Magistrate in the chamber of the Ld. Magistrate. He came out from the room after making all arrangement for videography of the recording and waited outside of the chamber. After the recording was over, he was called by the Ld. Magistrate and he entered into the room and removed the chip and handed over the same to the Ld. Magistrate.

35. PW14, stated in his cross-examination that he received the requisition for videography of the victim girl from Falakata PS but he has no photography shop. The date on which the videography was made, is generally displayed on the video.

36. PW15, stated in her evidence that on 11.11.2022 she was posted at Falakata PS and as per direction of IO SI A K Azad Sarkar, she recorded 161 Cr P C statement of the VG of this case. After recording the statement she handed over the same to the IO. She was interrogated by the IO of this case.
37. PW15 stated in her cross-examination that she was never endorsed as IO of this case. She cannot recollect whether she received any written instruction from the IO or IC Falakata or not.
38. PW16, Lady constable of police, stated in her evidence that, on 30.11.2022 she was posted at Falakata PS and on that date the complainant produced the birth certificate of VG before the IO at Falakata PS and the IO seized the same in her presence and she put her signature on the said seizure list. The signature of the witness on the carbon copy of the seizure list has been marked as **Exhibit-7 (with objection)**. She further stated that on 02.12.2022 she produced one Amiran Necha (PW13) before Ld Magistrate for recording her statement u/s. 164 Cr P C, but her statement was not recorded on that date and the same was recorded on the next date. She proved her signatures on the two CC dt. 02.12.22 & 03.12.2022 as **Exhibit-8 & 8/1**.
39. PW16 stated in her cross-examination that PW13 Amiran Necha was not known to her prior to this case and she was asked to bring the witness to the court by the P.S but she personally did not verify her identity and the IO identified the witness to her. She denied that the IO did not seize the birth certificate of the VG on 30.11.2022 in her presence.
40. PW17, Lady constable of police, stated in her evidence that on 12.11.2022 she brought the VG to Alipurduar court for recording her 164 Cr P C statement in connection with this case, as per the

command certificate issued to her by IO SI Abul Kalam Azad Sarkar.

She proved her signature in the Command Certificate as **Exhibit-9**.

41. PW17 stated in her cross-examination that the IO of this case did not interrogate her in connection with this case and the VG was not known to her prior to this case.
42. PW18, Inspector of Police, stated in his evidence that on 11.11.2022 he received Written Complaint from one Jelekha Mia, defacto complainant (W/o Late Abu Hossain) under his endorsement and signature, (marked as **Exhibit-10**) and started Falakata Ps case No. 611/22 dt. 11/11/22 u/s 376AB IPC and 6 of POCSO Act against the FIR named accused Jakir Hossain and filled up the formal FIR (marked as **Exhibit-11**) under his hand writing and signature and endorsed the case to SI Abul Kalam Azad Sarkar for investigation.
43. PW18 stated in his cross-examination that there is no signature or thumb impression of the defacto complainant in the left hand bottom corner of Exbt-11 (formal FIR).
44. PW19, who was posted as Judicial Magistrate, 3rd Court, Alipurduar 12.11.2022, stated in his evidence that on that date he recorded 164 Cr P C statement of victim girl in connection with Falakata PS case No. 611/22 dt. 11.11.2022 u/s 376AB IPC r/w 6 of POCSO Act as per order of Ld ACJM, Alipurduar. He further stated that being asked by him victim girl voluntarily made her statement which was recorded by him in Bengali language after maintaining all formalities and after writing the same he read over and explained the contents to the victim girl who after understanding the same put her LTI on four pages of the statement which were obtained and identified by him after putting his signature with office seal. He also issued one certificate in the said statement bearing his signature and office seal. The entire 164 Cr P C statement containing pages 1 to 4 has been marked as **Exhibit-12**.

45. PW19 stated in his cross-examination that during recording statement of the victim girl, the victim girl did not state that she used to stay with her maternal grand mother at village-Dakshin Deogaon. She stated that her father, mother, younger brother, elder brother and sister live with her. She did not state that she reads in Falakata Deogaon School and that she stated the fact of alleged rape before her maternal grand mother Jelekha Mia. She did not state the name of any one to whom she stated about the incident of alleged rape. She did not state that she took first aid prior to her treatment at the hospital. From the statement of the victim girl it appears that the incident of alleged rape took place in her own house. As per the statement of victim girl her house is situated at Jaigaon. She did not state that one lady was present adjacent to the PO.
46. PW20, Judicial Magistrate, 2nd Court, Alipurduar as on 03.12.2022, stated in her evidence that on that date, she recorded 164 Cr PC statement of witness Amiran Nechha in connection with Falakata PS case No. 611/22 dt. 11.11.2022 u/s 376AB IPC r/w 6 of POCSO Act as per order of Ld ACJM, Alipurduar. She further stated that being asked by her the witness voluntarily made her statement which was recorded by her in Bengali language after maintaining all formalities. After writing the same she read over and explained the contents to the witness who after understanding the same put her LTI on two pages of the statement which were obtained and identified by her after putting her signature with office seal. She also issued one certificate in the said statement bearing her signature and office seal. The entire 164 Cr PC statement containing pages 1 to 2 has been marked as **Exhibit-13**.
47. PW20 stated in her cross-examination that the case was initiated on 11.11.2022 and she recorded the statement of witness on 03.12.2022. During recording statement of the witness, the witness

did not state the name of the owner of the house, where she went to wash clothes. She did not mention the location of the said house. The witness did not disclose the parental identity of the victim girl, date and time of the incident. The witness did not produce any death certificate of her husband before her (PW20). It is not mentioned in the statement that her statement was not recorded by a police, i.e., she (PW20) was not a man of police.

48. PW21, IO of this case, stated in his evidence that on 11.11.2022 he was posted at Falakata PS as SI of police and on that date he was endorsed with the investigation of Falakata PS case No. 611/22 dt. 11.11.2022 u/s 376AB IPC r/w 6 of POCSO Act by the then IC Inspector Sumit Talukdar. During investigation he visited the PO, prepared rough sketch map with index (marked **Exbt-14**), arranged for medical examination of the VG through LC/854 Mampi Barman by issuing Command Certificate and she put her signature on the said certificate in his presence and proved the Command Certificate as **Exbt-15**. He also arranged for recording 161 Cr P C statement and 164 Cr PC statement of the VG. LSI Krishna Barman recorded 161 Cr P C statement of the VG as per his direction. He entrusted LC/870 Anika Roy to accompany the VG to court for recording her statement u/s 164 of Cr P C by issuing Command Certificate and she put her signature on the said certificate in his presence and he proved the Command Certificate as **Exbt-9/1**. He collected medical reports of the VG and also the medical examination report of the accused and seized the wearing apparels of the VG under proper seizure list dt. 11.11.2022 which has been marked as **Exbt-4/2**. He also seized vaginal swab of the VG under proper seizure list dt. 15.11.2022 which has been marked as **Exbt-5/1**. He entrusted LC/854 Mampi Barman by issuing Command Certificate to collect the vaginal swab. The Command Certificate dt. 15.11.2022 prepared by

him and bearing signature of Mampi Barman has been marked as **Exbt-2/3**. He sent seized wearing apparels and vaginal swab of VG to RFSL, Jalpaiguri for examination and report but could not collect the said report during his tenure of investigation. He entrusted LC/884 Minakshi Barman to accompany witness Amiron Nechha to court for recording her statement u/s 164 of Cr P C by issuing Command Certificates and she put her signatures on the said Command Certificates in his presence. The two Command Certificates have been marked as **Exbt-8/2 & Exbt-8/3** respectively. He also seized the Birth Certificate of the VG under proper seizure list dt. 30.11.2022 and the Carbon copy of said Seizure List has been marked as **Exbt-7/1** [with objection]. As per the seized birth certificate of the VG, the date of birth of the VG was 16.03.2015. He returned the original birth certificate after obtaining Zimmanama from Jelekha Mia, prepared by him and bearing LTI of Jelekha Mia, which has been marked as **Exbt-16**. He examined available witnesses and recorded their statement u/s 161 of Cr P C, arrested the FIR named accused person and forwarded him to court. He identified the accused person in the Court. The written complaint of this case was written by Badal Sarkar (since deceased), bearing LTI of the defacto complainant which has been marked as **Exbt-10/1** (with objection). Thereafter on completion of investigation and after consultation with his superior officer, he submitted charge sheet bearing No. 752/2022 dt. 16.12.2022 u/s 376AB of IPC r/w Section 6 of POCSO Act against the accused person, namely, Jakir Hossain.

49. PW21 stated in his cross-examination that during his investigation, he did not examine and record statement of any other female witnesses save & except VG (PW1), Jelekha Mia (PW2), Khusida Begum (PW6), Laili Khatun (PW7) and Jasmina Parveen (PW8), Amiron Nechha (PW13) and police officials. He further stated

that during investigation he came to know that the VG used to call PW7 (Laili Khatun) as Dida. He could not ascertain the relation between the VG and PW6 (Khusida Begum), the VG used to call PW8 (Jasmina Paraveen) as Chachi, he could not ascertain the relation between the VG and PW13 (Amiron Nechha). He could not ascertain whether the VG used to call any one of PW6, PW7, PW8 and PW13 as Bhabi or not. During investigation he did not seize any blood stained pant of the VG. He did not examine and record statement of parents of the VG. He also stated that if information of any cognizable offence is received in the PS through telephone, it should be noted in the GDE. He did not get any such GDE in connection with this case. He further admitted that as per the sketch map (Exbt-14) the house of Nurul Amin is adjacent to the house of the complainant, Jahangir Alam is one of the next door neighbours of complainant. He did not examine and record statement of Nurul Amin & Jahangir Alam. There is no mention of house of PW8 Jasmina Parveen in the sketch map (Exbt-14). Vaginal Swab is sent to RFSL to get the scientific proof of the offence alleged. In the CD there is no explanation as to why he could not collect the RFSL report. The alleged incident of rape took place at about 10:00 a.m. according to his investigation. The VG was medically examined at Falakata Super Speciality Hospital on the same day at 3:50 p.m. PW8 (Jasmina Parveen) did not state before him that the VG came to her house crying just after the alleged incident. She stated that she sent the VG to her school. PW10 (Julfikar Ali) did not state before him that he came to know from Jelekha Mia that her grand daughter was raped by the accused. PW 11(Sahabuddin Ahemad) did not state before him that he came to know from Jelekha Mia that her grand daughter was raped by the accused. He examined and recorded statement of PW13 (Amiron Nechha) on 30.11.2022 at 11:35 a.m. The alleged incident of this case took place on

11.11.2022. at about 10:00 a.m. There is no explanation of delay of recording statement of PW13 u/s 161 Cr P C on 30.11.2022 and u/s 164 of Cr P C recorded on 03.12.2022. He denied the suggestion that he made perfunctory investigation and submitted charge sheet after routine table work without collection of any scientific proof and that he deposed falsely.

50. I have heard argument at length on behalf of the prosecution and the accused person, perused the evidence and materials on record and the exhibited documents. I have also carefully gone through the decisions relied on by Ld Special PP and Ld Advocate for the accused person.

51. It was submitted on behalf of the prosecution that the prosecution has been able to examine as many as twenty-one witnesses. It was further submitted that the victim girl as PW1 vividly narrated the prosecution case and PW2, defacto complainant / the grand mother of the victim girl corroborated the evidence of PW1. PW3 is the MO of Falakata Super Speciality Hospital who examined the VG and prepared medical report which has been marked as Exbt-1. PW4 is another MO of Falakata Super Speciality Hospital who also examined the VG and prepared medical report which has been marked as Exbt-2. PW5 is MO of Alipurduar District Hospital who examined the accused person and prepared the medical report which has been marked as Exbt-3. PW6, PW7, PW8, PW9, PW10, PW11 & PW13 are neighbours of the VG and they stated in the same tune that they came to know from PW2/ defacto complainant that the VG that the VG was raped by the accused Jakir Hossain at about 10:00 a.m. in the house of defacto complainant. PW12, PW15, PW16, PW17 are police witnesses, PW14 is the videographer, who video recorded the recording of 164 Cr P C statement by the Ld Judicial Magistrate (PW19). PW18 is the RO of this case. PW19 & PW20 are Judicial

Magistrates who recorded 164 Cr P C statements of the VG and PW13 respectively. PW21 is the IO of this case who submitted charge sheet against the accused u/s 376AB of IPC r/w section 6 of POCSO Act.

52. Ld. P.P.-in-Charge relied on the decisions of the Hon'ble Delhi High Court dated 14/08/2023 in Criminal Appeal No. 50 of 2022 (Ranjeet Kumar Yadav V. State of NCT of Delhi), decision of Hon'ble Apex Court in Criminal Appeal arising out of SLP (Crl.) (D) No. (s) 26453 of 2025 dated 05.08.2025 reported in 2025 INSC 929 (Deepak Kumar Sahu v. State of Chattisgarh), decision of Hon'ble Apex Court in Criminal Appeal No. 325 of 2011 dated 07.03.2025 reported in 2025 INSC 344 (Lok Mal @ Loku V. State of Uttar Pradesh), decisions of Hon'ble Supreme Court uphold conviction in 1984 rape case holding that absence of injuries on the victim's private parts does not necessarily weaken the prosecution's case, the decision of Hon'ble Apex Court in Criminal Appeal No. 769 of 2006 dated 14.01.2021 reported in 2011 (2) SCC 550 (State of U.P. v. Chhoteylal), the decision of Hon'ble Calcutta High Court dated 17.05.1960 reported in AIR 1961 CAL 359 (A.E.G. Carapiet v. A.Y.Derderian), decision of Hon'ble Calcutta High Court dated 21.07.1982 reported in AIR 1983 CAL 337 (Traders Syndicate v. Union of India (Uoi), decision of Hon'ble Apex Court dated 06.11.1984 reported in (1985) 1 SCC 505 (State of U.P. v. M.K.Anthony), decision of Hon'ble Apex Court dated 01.12.2021 in Criminal Appeal No. 1520 of 2021 reported in 2021 INSC 812 (Phool Singh v. State of Madhya Pradesh), decision of Hon'ble Apex Court in Criminal Appeal No. 144 of 2022 dated 08.02.2022 reported in 2022 SCC On Line SC 161 (Nawabuddin v. State of Uttarakhand), decision of Hon'ble Gauhati High Court in Crl. A(J) 65 of 2017 dated 15.12.2018 (Achyutturi @ Babatu v. The State of Assam), decision of

Hon'ble Apex Court in Criminal Appeal No. 205 of 2001 dated 25.07.2007 reported in (2007) 12 SCC 122 (B.C. Deva @ Dyava v. State of Karnataka), decision of Hon'ble Orrisa High Court in Criminal Revision No. 620 of 1966 reported in 1969 Cri.L.J. 1000 (M.A. Jalil v. Sayed Iqubal) stating that in case of omission to cross-examine witness, testimony of the witness cannot be disputed. It was further submitted that during examination of the accused u/s 313 of Cr P C, the accused only pleaded not guilty but did not make out any specific case of defence. In view of provisions of section 29 & 30 of POCSO Act, 2012 the accused is liable to be convicted. Lacuna of the IO in the investigation of the case does not affect the prosecution case and if the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. It was further submitted by Ld Special PP that the prosecution has been able to prove the case beyond the shadow of all reasonable doubts and the accused is liable to be convicted as per provision of law.

53. It was submitted on behalf of the accused person that the prosecution has totally failed to establish the charge U/s 6 of POCSO Act brought against the accused person who is totally innocent and has been falsely implicated in this case. Evidences of the prosecution witnesses are not cogent, convincing and reliable. Prosecution has failed to prove the charge U/S 6 of POCSO Act against the accused person beyond the shadow of all reasonable doubt by adducing cogent and convincing evidence. Prosecution has to prove its own case beyond any reasonable doubt. In the case in hand, the age of the victim girl has not been proved by producing the original birth certificate before the court. PW13 Amironnessa is a so-called eye witness of this case but the same has not been mentioned in the written complaint (Exbt-10/1) and also in the evidence of PW1 and

PW2. Unnatural behaviour of PW13 casts a doubt on her evidence which is not credible and she has been projected as an eye witness in this case. After witnessing the alleged incident of sexual assault upon the VG, PW13 did not raise any hue and cry but went to search for the grand mother of the victim girl, this behaviour of PW13 incredible. Evidence of PW1 is not trustworthy and conviction cannot be based on her evidence. PW3 Dr Arundhati Sarkar found no external injury in the body of the victim girl as per Exbt-1 (medical report). PW4, Dr Suwendu Das who is a gynaecologist, also did not find any injury on genitalia of the victim girl as per Exbt-2. So, the alleged case of the prosecution has not been scientifically proved. It was submitted on behalf of the accused person that the prosecution has miserably failed to bring home of the guilt of the accused person as alleged and this is a fit case where the accused person is liable to be acquitted of this case as per provision of law.

54. Ld. Defence Counsel has relied on the decisions of the Hon'ble Calcutta High Court dated 24/11/2021 in CRA No. 317 of 2019 (**Satyajit Roy V. State of West Bengal and Another**), decision of the Hon'ble Calcutta High Court dated 06/02/2020 in Criminal Appeal No. 483 of 2016 (**Litan Sarkar V. State of West Bengal**), decision of the Hon'ble Calcutta High Court dated 02/02/2022 in CRA No. 248 of 2019 and CRAN No. 2 of 2021 (**Ganesh Orang V. State of West Bengal and Another**), decision of the Hon'ble Apex Court dated 18/07/2023 in Criminal Appeal No. 1898 of 2023 reported in **2023 INSC 676 (P. Yuvaprakash V. State Rep. By Inspector of Police)**, decision of the Hon'ble Calcutta High Court dated 21/09/2021 in CRA No. 457 of 2019 (**Sk. Dilkhush Alam @ Sk. Dilkhush Alam v. State of West Bengal**), decision of the Hon'ble Calcutta High Court dated 21/08/2018 in Criminal Appeal No. 541 of 2016 (**Tapan Kisku V. State of West Bengal**), decision of the

Hon'ble Calcutta High Court dated 17/09/2021 in CRA No. 458 of 2018 (**Ranjit Rajbanshi V. State of West Bengal and Others**), decision of the Hon'ble Calcutta High Court dated 27/02/2020 in Criminal Appeal No. 567 of 2015 (**Sitaram Das V. State of West Bengal**), decision of the Hon'ble Calcutta High Court dated 04/05/2017 in CRA No. 736 of 2016 with CRAN No. 1035 of 2017 reported in **(2017) 3 AICLR 86 (Sahid Hossain Biswas V. State of West Bengal)**, decision of the Hon'ble Apex Court dated 26/03/2004 in Criminal Appeal Nos. 1080 and 1081 of 1997 reported in **(2004) 10 SCC 583 : (Vijaybhai Bhanabhai Patel V. Navnitbhai Nathubhai Patel and Others)**, decision of the Hon'ble Apex Court dated 23/05/2025 in Criminal Appeal Nos. 1686-1688 of 2023 reported in **2025 INSC 774 (Agniraj and Others etc. V. State through Deputy Superintendent of Police CB-CID)**, decision of the Hon'ble Calcutta High Court dated 15/07/2021 in CRA No. 757 of 2014 (**Matiur Rahaman V. State of West Bengal**), decision of the Hon'ble Apex Court dated 04/07/2011 in Criminal Appeal No. 1252 of 2011 reported in **(2011) 7 SCC 130 (Krishan Kumar Malik V. State of Haryana)**, decision of the Hon'ble Apex Court dated 06/02/2026 in Criminal Appeal No. ... of 2026[@SLP (C) No. 11868 of 2024] reported in **2026 INSC 134 (Tharammel Peethambaran and Another V. T. Ushakrishnan and Another)**.

55. It was further submitted on behalf of the defence that the principles of reverse burden and presumption of culpable mental state as per provisions of section 29 & 30 of POCSO Act is not automatic and prosecution must prove fundamental facts beyond doubt before invoking these sections and the trial court cannot rely on these sections without sufficient evidence. When inconsistencies, infirmities and absurdities are present in the prosecution's evidence, particularly the foundational aspects of the alleged crime (like penetrative sexual

assault), and presumption u/s 29 of POCSO Act cannot be applied due to lack of foundational proof, the accused is entitled to the benefit of doubt and acquittal. It was further submitted that a long standing dispute between the parties can be a motive for false implication of the accused, casting doubt on the prosecution's case and conviction requires proof beyond reasonable doubt.

56. On scrutiny of the evidences of prosecution witnesses, I find that :-

(i) PW1 is the victim girl, who stated in her evidence in chief that the incident took place *when she was inside her room and combing her hair while preparing herself for going to the school* and blood oozed out from her vagina and she went to the adjacent house of her Vabhi who put ointment into her vagina and she felt pain her vaginal and could not go to school on that date. But the PW1 stated in her statement u/s 164 of Cr P C before the Ld Magistrate that she went to school after alleged incident of this case and there is no mention of putting ointment by her Vabhi into her vagina. Accordingly it transpires that evidence of the VG is not trustworthy, cogent, believable and unblemished.

(ii) According to evidence of PW2 the incident happened at about 10:00/10:30 a.m. and after returning home she found the VG crying and blood was oozing out from her vagina. She narrated the entire incident to the attending doctor who examined the VG. She admitted in her cross-examination that Afija Bibi (wife of the accused) lodged a complaint against herself, Amironnessa (PW13) and Jasmin Parveen (PW8) before happening the incident of this case and on the date of incident the VG went to the school and she herself took her from the school.

(iii) According to the written complaint dated 11.11.2022 the alleged incident took place about 10:00 a.m. in the house of the

complainant, wherein the VG was alone at that time and the accused entered into the house, put off her wearing apparels and forcibly committed rape upon her after placing her on the bed and threatened her not to disclose the incident to any one and fled away therefrom. The victim girl did not narrate the incident to that extent as stated in the written complaint but the PW2 stated as per the written complaint as if she was an eye witness of the alleged incident of sexual assault upon the VG. The VG only stated that “kharap kaj” was done with her and Jakir put his ‘nunu’ into her private parts and blood oozed out from her vagina.

(iv) According to the evidence of PW3, Dr Arundhati Sarkar, on examination no external injury was seen and the victim girl was referred to Gynaecologist for further opinion.

(v) According to the evidence of PW4, Dr Suwendu Das, on examination he specifically mentioned in his report about what he had found on examination of the victim girl. It transpires from his cross-examination that on examination he did not find any injury on genitalia of the victim girl and if a girl of six years was subjected to any forceful sexual intercourse, she might have more severe injuries than a girl of fifteen years in her labia majora, labia minora, hymen and surrounding area.

(vi) PW6 & PW7 heard about the incident from their neighbours PW1 and PW2. PW9 and PW10 heard about the incident from the defacto complainant PW2.

(vii) According to the evidence of PW8, the victim girl told her, “Bhabi, Jakir Hossain amake rape koreche” and PW8 found that blood was coming out from private part of the victim girl and she put ointment in the private part of the victim girl.

(viii) PW10 and PW11 are witnesses of fact of seizure of wearing apparels of the victim girl by the IO at the PS but those

wearing apparels have not been produced before this court and FSL report examination of those seized wearing apparels came before this court.

(ix) Evidence of PW13 who is a so-called eye witness of the incident is not convincing, trustworthy and reliable. After witnessing the alleged incident she did not raise any hue and cry or protest but rushed to search for PW2 to inform her about the incident. This version of her evidence is quite unnatural. Moreover, her 161 Cr P C statement was recorded on 30.11.2022 and 164 Cr P C statement was recorded on 03.12.2022 and there was no explanation of delay before the IO.

(x) As per evidence of PW21 (IO of this case) the victim girl used to call PW8 (Jasmina Parveen) as 'Chachi' and he could not ascertain whether the victim girl used to call any one of PW6, PW7, PW8 and PW13 as 'Bhabi' or not and he did not seize any blood stained pant of the victim girl and he could not collect the RFSL report. Moreover, PW8 did not state before him that the victim girl came to her house crying just after the alleged incident.

(xi) The evidence of the prosecution witnesses are contradictory to each other and those are not trustworthy, cogent, believable and unblemished.

(xii) It is the settled principle of law that in a case of sexual violence, the victim is the best witness and conviction can be based on the basis of sole testimony of the VG, provided that the evidence of the VG is held to be trustworthy, cogent, believable and unblemished.

(xiii) Evidence of the victim girl adduced before this court, her 164 Cr P C made before the Ld Magistrate is contradicted by the Exbt-1 and Exbt-2 Medical Reports and the Medical Reports falsify the evidence of the victim girl, PW2, PW8 and PW13 and it transpires

that evidences of PW1, PW2, PW8 and PW13 are full of embellishment and falsehood.

(xiv) As per evidence of PW2, Afija Bibi (Wife of accused Jakir Hossain) lodged a complaint against PW2, PW8 and PW13 before happening of the instant incident and as such there is every chance that the accused person has been falsely implicated in this case.

(xv) It is quite unbelievable that the victim girl went to school on the fateful date after the alleged incident in which blood was oozing out from her private parts.

57. In order to prove a case **U/s. 6 of POCSO Act** prosecution has to establish that the accused committed aggravated penetrative sexual assault upon the minor victim girl aged about 6 years.

58. In the case in hand, from the evidence of the prosecution witnesses it does not transpire that it was the the accused who committed aggravated penetrative sexual assault upon the minor victim girl aged about 6 years. The ratio of the decisions relied on by the Ld Special PP is not applicable under special fact and circumstances of this case, specially when the evidence of the victim girl appears to be full of embellishment and she appears to be a tutored witness.

59. Considering the evidence and materials on record, the facts and circumstances of this case, argument of both sides and ratio of the decisions relied upon by the Prosecution and Defence counsel, I have no hesitation to conclude that the prosecution has failed to bring home the charge **U/s. 6 of POCSO Act**, brought against the accused person and he is liable to be acquitted of this case as per provision of law.

60. Hence, it is,

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ORDERED

that the accused person, namely, **Jakir Hossain** is found not guilty for commission of the offence punishable Under Section **6 of POCSO Act**. He is acquitted of this case as per provision of Section 235(1) of the Code of Criminal Procedure corresponding to Section 258(1) of BNSS.

61. The accused be set at liberty at once, if he is not wanted in connection with any other case.
62. The alat of this case, if any, be destroyed on expiry of statutory period of appeal.

Dictated & corrected by me:

(Paresh Chandra Karmakar)
Judge, Special Court,
Alipurduar.