

Form A

IN THE COURT OF THE JUDGE SPECIAL COURT(POCSO ACT) BASIRHAT, NORTH 24 PARGANAS Present :- Sri Sutirtha Banerjee (WB00980) Judge(Special Court)POCSO Act Basirhat, North 24 Pgns [Date of the Judgement] 02/06/2026 Details of FIR/Crime and Police Station CNR-WBNP10-000104-2022 SPL(POCSO) 6/2022 (R. 6 of 2022) Ref: Basirhat P.S. case No. 15, dated 08/01/2022 U/s- 447/341/323/325/188/307/427/34 of IPC and section 8 of POCSO Act.	
Complainant	“X” the de-facto complainant cum father of the V.G. STATE OF WEST BENGAL
REPRESENTED BY	Sri Ramen Chandra Bandapadhayay Special Public Prosecutor
ACCUSED	1. Anup Dey (A1) S/o- Late Gobinda Dey 2. Jahedul Haque Sekh (A2) S/o- Late Maksad Ali of village – Astana Road P.S.- Basirhat 3. Manas Ghosh (A3) S/o- Late Dilip Ghosh of village – Safirabad, P.S. - Baduria, North 24-Parganas.
REPRESENTED BY	Rabiul Islam Baidya

Date of Offence	08/01/2022
Date of FIR	08/01/2022
Date of Charge sheet	28/02/2022 (supplementary C.S. filed on 08.08.2022)
Date of Framing of Charges	29/03/2023
Date of commencement of Evidence	04/12/2025

Date on which Judgment is reserved	01/06/2026
Date of the Judgment	02/06/2026
Date of Sentencing Order, if any	N/A

Accused details:

Rank of the Accused	Name of the Accused	Date of arrest	Date of R/B	Offence/s charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C
A1	1. Anup Dey (A1)	08.01.2022	12/01/2022	u/s- 341/323/325/ 34 of IPC and section 8 of POCSO	Acquitted	N/A	N/A
A2	2. Jahedul Haque Sekh (A2)	Both voluntarily surrendered on 07/02/2022	08/02/2022				
A3	3. Manas Ghosh (A3)						

Form C

LIST OF PROSECUTION / DEFENCE/ COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW 1	X	de-facto complainant cum father of the V.G.
PW-2	Y	V.G.
PW-2	Monirul Islam	Cousin brother of de-facto complainant cum alleged injured

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
DW 1	Nil	Nil

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	Ext. P1	Signature of P.W. 1 on the written-complaint
2	Ext. P2	Signature of P.W. 1 on the formal FIR
3	Ext. P3	Signature of P.W. 1 on the seizure list dated 18/01/2022.
4.	Ext. P4	Writing refusing of the V.G. along with signature of the V.G. on the medico-legal examination report
5.	Ext. P5	Signature of V.G. on the certificate appended to the statement u/s- 164 of Cr.P.C.

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. The instant case was started on the basis of a written complaint, lodged by the de-facto complainant, X [name not disclosed in view of restriction in this regard], of Village [details not mentioned to protect identity of V.G.] before the I.C. Basirhat P.S. on 29/07/2022.
2. The written complaint is to the effect that the de facto-complainant, along with his other co-sharers, owned land, and there was an injunction order with respect to the same and also a direction upon the I.C., Basirhat P.S., to ensure implementation of the same. On 08/01/2022 at about 8.30 a.m. (morning) a gang of miscreants came to the land of the defacto-complainant for taking forceful possession over the land and also outraged the modesty of the V.G. (aged 13+ years) and they also assaulted her. The de-facto complainant and his cousin brother too were assaulted. Finding no alternative, de-facto complainant lodged the complaint.
3. On receiving the above complaint, the I.C. Basirhat P.S. registered the same as Basirhat P.S. case No. 15, dated 08/01/2022 U/s- 447/341/323/325/188/427/34 of IPC. and section 8 of POCSO Act.
4. During the investigation the accused persons namely, Anup Dey was arrested on 08.01.2022 and he secured bail on 12/01/2022, and accused persons namely, Jahedul Haque Sekh and Manas Ghosh voluntarily surrendered on 07/02/2022 and they secured bail on 08/02/2022.
5. The I.O. of the case has, after completion of the investigation submitted the charge sheet u/s 341/323/325/188/34 of IPC and section 8 of POCSO Act on 28/02/2022 and thereafter supplementary C.S. u/s 341/323/325/34 of IPC and section 8 of POCSO Act on 08/08/2022 against all the accused persons.
6. Thereafter copies were supplied to accused persons as per the provision of Sec. 207, Cr.P.C.

7. Charge has been framed on 29/03/2023 under sections 341/323/325/34 of IPC and section 8 of POCSO Act against all accused persons and contents thereof was read over and explained to the accused persons in Bengali to which they pleaded not guilty and claimed to be tried in open Court.

8. Prosecution **adduced 3 witnesses** in support of its case including the V.G. and the de-facto complainant cum father of the V.G. The Ld. Special Public Prosecutor in charge submitted that prosecution evidence may be closed as no useful purpose would be served by summoning rest witnesses. It was held by Hon'ble Supreme Court of India in case titled **Satish Mehra vs. Delhi Administration & Anrs. reported as 1996 JCC 507**, that *"In cases where there is no prospect of the case ending in conviction, the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on the future date"*. Considering the dictum of the Hon'ble Apex Court and submission of the Ld. Special Public Prosecutor and trend of deposition of witnesses related to the de-facto complainant and victim, evidence was closed.

9. The accused persons further pleaded 'not guilty' when they were examined u/s. 313 Cr.P.C and declined to adduce any defence witness from their side.

10. 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.

Point for Decision

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

Decision with reasons

12. As mentioned earlier, in order to bring home the guilt of the accused persons the prosecution was able to examine three witnesses in total.

13. P.W. 1 is the de-facto complainant cum father of the V.G. , P.W. 2 is the V.G.; P.W. 3 is the cousin brother of the de-facto complainant.

14. P.W. 1 the de-facto complainant cum father of the V.G in his examination in chief stated that he had lodged the complaint against 3 persons but failed to identify one of them on dock. He stated that one day in 2022, there was an altercation between his family members and the accused persons over a land dispute, but he was not personally present then. He proved his signature on written complaint and formal F.I.R. and also on a seizure list. He also stated that his daughter had been taken for Medico legal examination but had refused the same. In his cross examination he admitted that he could not say the contents of his written complaint and had heard that only an altercation had taken place between his family members and the accused.

15. P.W. 2 is the V.G. In her examination in chief she stated that some years back there had been an altercation between her relatives and the accused over a long pending land dispute and she had gone to see the same and in the helter skelter she fell down and sustained injury. She had been taken for Medico legal examination but she refused to undergo the same. Her signature on Medico legal examination and endorsement refusing such examination was marked as Exhibit- P-4 she also proved her signatures in the statement under section 164 Cr.P.C. In her cross examination she admitted to have stated before the Ld. Magistrate as per instruction of police.

16. P.W. 3 is the cousin brother of the de-facto complainant cum alleged injured. He admitted to knowing the accused. He also stated that some years

back there had been an altercation between his relatives and the accused over a long pending land dispute and he had gone to see the same and in the helter skelter he fell down and sustained injury. In his cross-examination, he admitted that police had not questioned him and failed to recollect the exact date of the incident. Rest were denials.

17. It is the cardinal principle of criminal law that the prosecution has to prove the guilt of the accused beyond all reasonable doubt and until and unless guilt of the accused is proved, he will be presumed to be innocent. However, Section 29 of the POCSO Act is a departure from the general principle of criminal trial and puts the onus on the accused to rebut such presumption and establish his innocence . This provision creates a reverse burden on an accused to prove his innocence. The statutory presumption u/s 29 of the POCSO Act is against the accused, who has to prove his innocence after discharging the onus of proof by the prosecution. However Section 29 of the POCSO Act has no automatic application irrespective of the standard of evidence adduced in a particular case and without proof of foundational evidence the onus to prove the reverse burden of proof does not come into operation. Before taking recourse to section 29 of the Act so as to make the presumption applicable in the instant case, the prosecution has to lead evidence as to foundational fact of the prosecution case revealing the ingredients of the offence beyond reasonable doubt by leading cogent and reliable evidence . It is only on proof of foundational evidence the onus gets shifted to the accused to prove the contrary in order to discharge the reverse burden of proof as contemplated in section 29 of the POCSO Act. Here the fact that V.G. was a minor at the relevant time has been proved by the prosecution by production of her birth certificate. However the evidence of the de-facto complainant, the V.G. and the cousin brother of the de-facto complainant being another alleged injured -the most

vital prosecution witnesses-suggests that they have not stated anything remotely incriminating against the accused qua the arraigned offences.

Nowhere is there any whisper of any sexual assault. Yet they were not declared hostile by the prosecution either. V.G. refused Medico legal examination. The statement of V.G. under section 164 Cr.P.C. is not substantive evidence and can only be used for corroboration/contradiction which occasion also did not arise as prosecution did not declare the V.G. or de-facto complainant hostile. Foundational facts as to alleged offence under section 8 POCSO Act is hence not proved so prosecution cannot get the benefit of section 29 POCSO Act per se and has to stand on its own legs and prove the rest alleged offences against the accused persons. But evidence on record clearly suggests that nothing has been stated by prosecution witnesses qua the accused persons contra the charges arraigned against them either. The V.G. and P.W. 3 also did not name the accused as persons who assaulted them but rather stated they sustained injury due to fall due to the resultant helter skelter.

18. From the documents proved and the evidence of the witnesses recorded, I do not find an iota of evidence which proves or establishes the essential ingredients of the offences u/s 341/323/325/34 I.P.C. and section 8 POCSO Act. Nothing has come in evidence to suggest that accused committed any act/s constituting said offences. In fact their very complicity in alleged offences has been shrouded in doubt.

19. Considering the above, I have no hesitation to conclude that the prosecution has failed to bring home the charges u/s 341/323/325/34 I.P.C. and section 8 POCSO Act and accused persons are hence liable to be acquitted of the charges and this case as per provision of law.

20. Hence, it is,

ORDERED

That the **accused persons A1 to A3** are found not guilty of commission of the offences punishable u/s. 341/323/325/34 I.P.C. and section 8

POCSO Act and stand acquitted of said charges as per provision of Section 235(1) of the Code of Criminal Procedure.

The bail-bonds for the accused would remain in force for the next six (6) months in view of Sec. 437-A Cr.PC. whereupon the concerned sureties shall stand discharged in absence of any appeal being filed in the meantime.

The alamat of this case be destroyed on expiry of statutory period of appeal.

Zimmanama bond if any be made absolute in absence of any appeal being filed in statutory period.

Considering the evidence of the V.G. and de-facto complainant in Court, no need arises to send a copy of this judgement to the informant.

No case is made out for grant of compensation either as V.G. does not appear to have suffered any loss/injury.

Case stands disposed of. Note in relevant registers.

Dictated and corrected by me :

Judge(Special Court)POCSO Act
Basirhat, North 24 Parganas.

Judge(Special Court)POCSO Act
Basirhat, North 24 Parganas.

Spl. (POCSO) 6 of 2022

Order no. dated 01/06/2026

Today is fixed for examination of the accsued persons under section 313 of Cr.P.C.

The accused persons are present by filing hazira.

Ld. Special P.P. is present.

The accsued persons are examined under section 313 of Cr.P.C.

Thereafter, argument is heard.

Fix **02/06/2026** for judgement.

Dictated and corrected by me :

Judge(Special Court)POCSO Act
Basirhat, North 24 Pgns

Judge(Special Court)POCSO Act
Basirhat, North 24 Parganas

/ 02.06.2026

Accused persons are present by filing hazira.

Both the Ld. Lawyer for the accused and the Ld. Spl. P.P. are present.

Today is fixed for passing judgement.

Judgement is ready and prepared in separate sheets and pronounced in open Court.

It is, **ORDERED**

That the **accused persons A1 to A3** are found not guilty of commission of the offences punishable u/s. 341/323/325/34 I.P.C. and section 8 POCSO Act and stand acquitted of said charges as per provision of Section 235(1) of the Code of Criminal Procedure.

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