

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, COURT, ISLAMPUR, UTTAR DINAJPUR. Present : Sri Suresh Biswakarma, Additional Sessions Judge, 1 st Court, Islampur, Uttar Dinajpur. J.O Code no. WB00672 Date of the Judgement 3 rd day of April, 2025. Case No. POCSO 72/2024 CNR NO. WBUD05001018-2024 Dalkhola P.S. FIR No.308/2024 dated 11.09.2024 U/s 4/18 of the POCSO Act r/w section 351(3) of the BNS and section 3(1) of the SC & ST (Prevention of Atrocities) Act.	
Complainant	State of West Bengal
REPRESENTED BY	Moktar Ahmed (Special PP)
ACCUSED	Md Rafik @ Mastan
REPRESENTED BY	Md Samser Alam

Date of offence	11-09-2024
Date of FIR	11-09-2024
Date of Charge sheet	07-11-2024 (received on 08-11-2024)
Date of Framing of Charge	20-11-2024
Date of commencement of Evidence	27-11-2024
Date on which Judgement is reserved	29-03-2025
Date of the Judgement	03-04-2025.
Date of the Sentencing Order, if any	04-04-2025.

ACCUSED DETAILS :

Ran k of the Acc use d	Name of Accused	Date of arrest/sur render	Date of releas e on Bail	Offences charged with	Whethe r acquitte d or convict ed	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 468 BNSS,
A1	Md Rafik @ Mastan	11-09- 2024	In custod y.	U/s 4/18 of the POCSO Act r/w section 351(3) of the BNS and section 3(1) of the SC & ST (Prevention of Atrocities) Act.	Convic ted.	Rigorous imprisonment for three (3) years and three months and shall pay a fine of Rs.10,000/- (rupees ten thousand), in default, suffer simple imprisonment for three months more.	On and from 11-09-2024 to date (04-04- 2025).

J U D G M E N T.

This is a criminal case initiated based on a police report, charging the accused with offenses punishable under section 4/18 of the Protection of Children from Sexual Offences (POCSO) Act, section 351(3) of the Bharatiya Nyaya Sanhita (BNS) and section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (SC & ST Act). The accused has undergone trial for these charges.

The prosecution's case can be summarized as follows:

On September 11, 2024, at 8:45 pm, a complaint was filed at Dalkhola Police Station against the accused. Earlier that day, at 2 pm, the victim girl was working in her family's paddy field at Bhagwanpur Mouza, P.O. Jagadishpur under Dalkhola Police Station. The accused was irrigating the adjacent field and was asked to irrigate the victim's field as well. The victim sat nearby, keeping track of time, as they had to pay for irrigation services.

As the accused looked around and confirmed they were alone, he grabbed the victim, forced her to the ground, and removed her clothing. He then inappropriately touched her and attempted to rape her. However, the victim defended herself by striking the accused on the head with her mobile phone. The accused released his grip, and the victim escaped by running home. The accused threatened to harm her. Upon reaching home, the victim recounted the traumatic incident to the complainant and others.

A formal First Information Report (FIR) was filed based on the complaint, leading to the registration of Dalkhola P.S. Case No. 308 of 2024 on September 11, 2024. The accused was charged under various sections of several acts, including:- under section 4/18 of the Protection of Children From Sexual Offences Act, sections 126(2), 115(2), 117(2), 64, 62, and 351(2) of the Bharatiya Nyaya Sanhita and section 3 of the Scheduled Caste & Schedule Tribe (Prevention of Atrocities) Act.

These charges reflect the severity of the alleged offenses and the need for a comprehensive investigation.

The case was assigned to Shri Rathindra Nath Biswas, WBPS, Sub-Divisional Police Officer in Dalkhola, for investigation.

In the course of the investigation, the Investigating Officer visited the crime scene, created a rough sketch map with an index, and interrogated the complainant and the victim girl. He recorded the victim's statement, had her medically examined at Dalkhola Municipal Hospital, and collected the medical

report. The victim was then taken to court to record her judicial statement, and a copy of the statement was obtained.

The accused, Md Rafik @ Mastan, was arrested and taken into six-day police custody. The available witnesses were interrogated, and their statements were recorded under section 180 of the BNSS. However, on September 29, 2024, the investigating officer received a transfer order and handed over the case diary to the Superintendent of Police, Islampur Police District, for further investigation.

The case was reassigned to Shri Rabiraj Awasti, IPS, for further investigation. During his investigation, he seized the victim girl's birth certificate and Tribal certificate as evidence. After completing the investigation, he submitted a charge sheet against the accused, of the offenses punishable under sections 4/18 of the POCSO Act, section 351(3) of the BNS, and section 3(1) of the SC & ST (Prevention of Atrocities) Act.

Based on the materials presented, the accused was formally charged with offenses under sections 4/18 of the POCSO Act, section 351(3) of the BNS, and section 3(1) of the SC & ST (Prevention of Atrocities) Act. The accused was informed of the charges and their implications, to which he responded by pleading not guilty and claimed a trial.

The accused was examined under section 351 of the Bharatiya Nyaya Sanhita (BNSS), 2023, and during this examination, he maintained his innocence, denying any wrongdoing.

The defense strategy, as evident from their cross-examination of the prosecution's witnesses, is a complete denial of the allegations and a claim of innocence.

The sole issue to be determined now is whether the prosecution has successfully proven the charges against the accused beyond a reasonable doubt.

The prosecution presented its case through witnesses testimonies and documentary evidence, as outlined in the appendix. In contrast, the defense did not provide any oral testimony, however, relied on the medical report of the accused.

Decision with reasons

The Ld. Special Public Prosecutor (PP) referenced the birth certificate of the victim girl, marked as Mat Ext-I, to establish that the victim was under 18 years old at the time of the incident. The birth certificate shows her date of birth as July

28, 2008, and it was registered on September 2, 2008. Given that the certificate was issued within two months by the competent authority, the prosecutor argued that its authenticity is unquestionable. Therefore, it's clear that the victim girl was a minor at the time of the incident.

The Ld. prosecutor highlighted the consistency in the testimonies of the prosecution's witnesses, the victim girl, and the de facto complainant, noting that they all described the incident in the same way, without any discrepancies or inconsistencies. This uniformity in their statements supports the prosecution's case. Additionally, the prosecutor argued that the lack of prior animosity between the accused's and victim's families makes it unlikely that the case was fabricated.

The Ld. prosecutor further emphasized that when the accused found the victim alone in a secluded area, he attempted to rape her. However, the victim managed to defend herself by hitting the accused on the head with her mobile phone, thereby preventing a potentially devastating outcome. The Ld. prosecutor noted that the victim's testimony and statements made before the Magistrate are consistent, showing no discrepancies. Moreover, the defense failed to discredit the victim's evidence or that of other prosecution witnesses.

The Ld. prosecutor highlighted the consistency in the testimonies of the prosecution's witnesses, including the victim girl, and the de facto complainant. The victim's statement, recorded under Section 183 of the Bharatiya Nyaya Sanhita (BNS), all conveyed the same narrative, with no discrepancies or inconsistencies. This uniformity in their accounts strengthens the prosecution's case.

Moreover, the Ld. prosecutor argued that the absence of any prior animosity between the accused's and victim's families eliminates the possibility of fabricating the case. This assertion underscores the credibility of the witnesses' testimonies. The prosecutor admitted that there's insufficient evidence to support charges under Section 3(1) of the SC & ST (Prevention of Atrocities) Act and Section 351 of the BNS. This acknowledgment suggests that the prosecution lacks substantial proof to proceed with these specific charges.

The evidence presented establishes that the accused attempted to commit perpetrated sexual assault upon a 16-year-old victim girl. Consequently, the accused merits punishment.

In contrast, the Ld. defense counsel argued that the prosecution failed to establish the charges against the accused, citing a lack of evidence to support the claim that the accused attempted to commit penetrative sexual assault on the victim girl.

The Ld. defense counsel referenced the FIR and the victim girl's statement recorded under Section 183 of the BNSS, highlighting inconsistencies between the two documents that the prosecution relies on. Furthermore, the counsel pointed out that during cross-examination, the victim girl acknowledged a scuffle occurred between her and the accused. However, despite both parties being examined on the same date, medical examinations found no injuries on either the victim girl or the accused.

The Ld defense counsel cited the testimonies of PW-4 and PW-5, noting that they claimed the victim girl reported the incident to them. However, the victim girl previously stated to the Investigating Officer that she reported the incident to her paternal uncle, revealing a clear contradiction. The counsel argued that this discrepancy renders the testimonies unreliable, and the court should not rely on doubtful evidence. Additionally, the Ld counsel pointed out that the victim's mother did not testify, and the prosecution failed to provide a reason for the Investigating Officer's decision to withhold her evidence.

The Ld defense counsel further argued that the victim girl's testimony, which included the accused pressing on her breasts, was inconsistent with the medical evidence. Since breasts are soft tissue, pressure from a mature man would likely cause swelling or hematoma. However, Doctor (PW-6), who examined the victim girl, testified that she found no signs of molestation.

The Ld counsel also pointed out discrepancies in the testimonies of the victim girl, her parental uncle, and maternal aunts. While the prosecution's witnesses claimed that the accused dumped the victim girl in the field, the victim girl herself admitted that her clothes did not get soiled. These inconsistencies render the testimonies unreliable and untrustworthy.

The Ld defense counsel further argued that, according to the prosecution's witnesses, the accused's land is located next to the victim's land and features a shallow pump machine. However, the Investigating Officer failed to include the accused's land and the pump machine in the rough sketch map of the place of occurrence. The counsel suggested that if the pump machine existed, the Investigating Officer would have undoubtedly included it in the sketch map. The omission implies that the pump machine did not exist, contradicting the prosecution's witnesses.

The Ld defense counsel further argued that there is a strong motive to falsely implicate the accused, as the de facto complainant had leased 2 decimals of agricultural land to the accused, but wanted to terminate the lease prematurely. However, the accused refused to relinquish the lease, leading the de facto complainant to concoct a false story in collusion with the victim and implicate the accused.

The Ld counsel pointed out that the victim girl admitted during cross-examination that her uncle had leased a portion of agricultural land to the accused for two years. However, her uncle wanted to refund the money to the accused, who was unwilling to release the leased land. This led to an ongoing dispute between them, providing a clear motive for the false implication.

The Ld defense counsel emphasized that the prosecution failed to establish the necessary elements to prove the accused committed an offense under the POCSO Act. Moreover, the counsel argued that there is no evidence to support the charges under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act or criminal intimidation.

The Ld counsel pointed out the inconsistencies in the testimonies of the victim girl, her parental uncle, and the aunts, rendering them unreliable. Therefore, the accused deserves acquittal from the charges leveled against him.

To establish its case, the prosecution must prove the following points beyond a reasonable doubt:

1. The victim girl was under 18 years old at the time of the incident.
2. The accused committed an offense punishable under the Protection of Children from Sexual Offences (POCSO) Act.

In criminal cases, the prosecution typically bears the burden of proof. However, in this case, if the prosecution presents compelling and credible evidence that satisfies the necessary ingredients beyond a reasonable doubt, it will be presumed that the accused committed the offense under the POCSO Act against a minor girl.

In such circumstances, the burden shifts to the accused, who must then rebut this presumption by providing evidence to contradict the prosecution's case.

I will now proceed to examine and analyze the evidence and materials present in the case record. This examination aims to determine the extent to which the prosecution has successfully proven the charges against the accused, warranting a conviction. Conversely, I will also assess whether the accused has provided sufficient evidence to rebut the presumption of guilt and counter the allegations made by the prosecution.

Initially, it's important to note that the accused was charged under Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 aims to prevent atrocities against the scheduled castes and tribes, and provides for

punishment for offenses committed against them. By producing a certificate (Mat Ext-II), the prosecution successfully proved that the victim girl belongs to Schedule Tribe Community. However, upon reviewing the evidence, it becomes clear that the prosecution failed to provide sufficient evidence to prove this charge beyond a reasonable doubt.

In fact, the Special Public Prosecutor candidly acknowledged that the prosecution is unable to establish the accused's guilt under Section 3(1) of the SC & ST (Prevention of Atrocities) Act.

To establish the first ingredient of the case, it's crucial to verify the victim's age at the time of the incident. According to the prosecution, the victim was 16 years old. To support this claim, the prosecution presented the victim's Birth Certificate, marked as Mat Ext-I.

Although the defense disputed the authenticity of the certificate, they failed to provide evidence to contradict it. On the other hand, the birth certificate reveals that the victim's date of birth is July 28, 2008, and it was registered on September 2, 2008. Notably, there was no apparent motive for the victim's parents or relatives to obtain a forged birth certificate at that time.

Furthermore, the certificate was issued by the Sub-Registrar, Birth & Death, Dalkhola-I Gram-Panchayat, which lends credibility to its authenticity. In the absence of any evidence to the contrary, there is no reason to doubt the genuineness of Mat Ext-I.

Considering the date of the alleged offense, September 11, 2024, and the victim's date of birth, July 28, 2008, it is clear that the victim was a minor at the time of the incident.

The victim girl, PW-1, testified that approximately two months prior to her testimony, at around 2:00 p.m., she was in the paddy field for irrigation purposes. While sitting on an ail (a type of field divider) to check the time, the accused, Mastan Kaku, approached her from behind and grabbed her.

The victim girl further testified that the accused attempted to remove her clothing, but she fought back by striking him on the head with her mobile phone. The accused released her after being hit, and she immediately ran towards her house. From a short distance away, she turned back to see if the accused was following her. She warned him that she would report the incident, but he taunted her, asking who she would complain to, now that her father was deceased.

The victim girl further testified that upon returning home, her maternal aunt (mami) noticed her distress and asked what was wrong. Initially, the victim

remained silent and began to cry. Her aunt asked again, and the victim then recounted the entire incident to her.

The victim girl further testified that after the incident, the police took her to the Dalkhola Block Primary Health Centre (BPHC) for a medical examination. Following the examination, the police escorted her to the Islampur Court, where she provided a statement before a Lady Magistrate. The Magistrate then transcribed her statement into writing, which the victim verified and signed with her left thumb impression (LTI).

During cross-examination, the victim girl acknowledged that a dispute is ongoing between her uncle and the accused regarding the leased agricultural land. Nevertheless, she denied all the suggestive questions put forth by the defense counsel.

PW-2, the de facto complainant, testified that approximately two months prior to his testimony, his niece (the victim girl) was in their paddy field for irrigation purposes. She was sitting on an "ail" (a divider in the agricultural field) when the accused arrived, grabbed her from behind, and forced her to the ground. The accused attempted to disrobe her, but she defended herself by striking the accused on the head with her mobile phone.

The witness further stated that the victim girl managed to escape and return home, where she recounted the incident to him. He then immediately went to the police station and filed a complaint against the accused.

The witness further testified that a Munsif (clerk) scribed the written complaint (FIR) based on his instructions and account of events. Munsif read the FIR to him, and after verifying its contents, he confirmed that it accurately reflected his narration. Satisfied with the contents, he signed the FIR. The witness identified and authenticated the FIR as Exhibit P1 and his signature as Exhibit P1/1.

The witness further testified that the police seized his niece's birth certificate and Tribal Certificate from him, documenting the seizure in a proper list that he signed. Later, the police returned these documents to him after he executed a Zimma bond.

The witness identified and authenticated the victim girl's birth certificate as Material Exhibit I (Mat Ext-I) and her Tribal Certificate as Material Exhibit II (Mat Ext-II).

During cross-examination, PW-2 denied all suggestive questions posed by the defense. Specifically, he denied the existence of a dispute between him and the

accused regarding leased agricultural land, contradicting the victim girl's earlier admission.

PW-3 Manashi Hansda, a lady police constable-340, testified that on September 11, 2024, she was stationed at Dalkhola Police Station. As her mother tongue is Santhali, she was called upon by the then Sub-Divisional Police Officer (SDPO) of Dalkhola to translate the victim girl's statement, also a Santhali speaker. Manashi Hansda translated the victim's statement into Bengali, which the SDPO then recorded. Following this, she accompanied the victim girl to Dalkhola BPHC for a medical examination and later escorted her to Islampur Court to record her judicial statement.

PW-4, the victim girl's maternal aunt, testified consistently with the victim girl and PW-2. She stated that approximately two months prior, around 2:30 p.m., the victim girl was in their paddy field for irrigation purposes. The aunt noted that the victim girl returned home early, prompting her to inquire about the completion of the irrigation work. The victim girl replied that it was not yet finished.

When asked why she came home early, the victim girl explained that she was sitting on an "ail" (a divider in the agricultural field) when the accused approached her from behind, grabbed her, and attempted to disrobe her.

During cross-examination, PW-4 denied all suggestive questions posed by the defense.

PW-5, the victim girl's other maternal aunt, testified consistently with the victim girl, PW-2, and PW-4. She stated that on September 11, 2024, around 2:00 p.m., the victim girl was in their paddy field for irrigation. However, the victim girl returned home early, cleaned her feet and hands, and sat quietly.

PW-5 further testified that when PW-4 inquired about the completion of the irrigation work, the victim girl began crying and recounted the incident. She stated that while sitting on an "ail" (a divider in the agricultural field) to watch the time, the accused approached her from behind, grabbed her, and attempted to disrobe her. The victim girl defended herself by hitting the accused on the head with her mobile phone.

During cross-examination, PW-5 denied all suggestive questions posed by the defense.

PW-6 Dr. Shermeen Naaz, the medical officer at Dalkhola BPHC, testified that on September 11, 2024, a 16-year-old victim girl was brought to the hospital by Lady Constable Manashi Hansda (No. 340) for a medical examination. The constable identified the victim girl before her.

Dr. Shermeen Naaz clinically examined the victim girl and found no external injuries. However, the victim girl complained of pain and tenderness in her breasts and appeared emotionally weak. Following the examination, she prepared a written report, which she identified and proved as Exhibit P3, including her signature and seal.

During cross-examination, PW-6 Dr. Shermeen Naaz acknowledged that the victim girl's history revealed an attempt by a 50-year-old man to undress her on the same day. However, the location of the incident was not specified.

She also admitted that she did not find any soil on the victim girl's apparel or person. Additionally, her examination did not reveal any bruises, soiling, or signs of molestation on the victim's person.

PW-7 Bina Bhattacharjee, a lady Home Guard, testified that on November 7, 2024, she was stationed at Dalkhola Police Station. On that day, the de facto complainant produced the victim girl's birth certificate and Tribal Certificate, which the SDPO, Dalkhola seized under a proper seizure list in her presence. She signed the seizure list and identified her signature as Exhibit P6/2.

During cross-examination, Bina Bhattacharjee admitted that she was unfamiliar with the contents of the seizure list.

PW-8 Prarthana Baroi Biswas, the Pradhan of Dalkhola-I GP, testified that she issued a certificate on November 7, 2024, in response to a police requisition. The certificate verified the authenticity of the victim girl's birth certificate and Scheduled Tribe Certificate, both issued from her office. She identified and authenticated the certificate as Exhibit P4.

During cross-examination, Prarthana Baroi Biswas acknowledged that she was unable to read the content of the certificate she issued.

PW-9 Smt. Nabanita Chatterjee, a Judicial Officer, testified that on September 12, 2024, she was serving as a Judicial Magistrate 1st Class at the Islampur Sub-divisional Court. As per the order of the Additional Chief Judicial Magistrate (ACJM) of Islampur, she recorded the statement of a 16-year-old victim girl.

Smt. Nabanita Chatterjee further testified that the victim girl was produced before her by Lady Constable (LC) 340 Manashi Hansda of Dalkhola Police Station. She asked the lady constable to leave her chambers. She then recorded the victim girl's statement in the presence of her guardian. After recording the statement, she read it back to the victim girl to ensure accuracy. The victim girl confirmed that the content was correct. The victim girl then signed the statement

with her left thumb impression (LTI) on a separate sheet. Additionally, the judicial officer provided a certificate on a separate sheet, authenticating the statement.

The Judicial Magistrate verified the victim girl's statement recorded under Section 183 of the BNSS, Left Thumb Impression (LTI) of the victim girl along with a certificate, certificate issued by the Victim Girl's Guardian verifying the statement and the Certificate issued by her confirming the authenticity of the documents.

These documents were marked as Ext-P5, Ext-P5/1, Ext-P5/2, and Ext-P5/3. The Judicial Magistrate also mentioned that the entire process was videographed, and a microchip of the recording was attached in a separate sealed envelope. Notably, the defense declined to cross-examine the Judicial Magistrate.

PW-11 Swapan Adhikari, a casual employee of Dalkhola Municipality, testified that on September 11, 2024, the de facto complainant approached him at night and requested that he draft a complaint. He wrote the complaint based on the complainant's instructions and narration, read it to ensure accuracy, and obtained the complainant's signature once satisfied.

He further testified that he endorsed the complaint's margin as the scribe. He confirmed that the complaint, previously marked as Exhibit P1 (Ext-P1), was the same one he prepared. Additionally, he verified the endorsement he made, which was marked as Exhibit P1/2.

During cross-examination, PW-11 acknowledged that he had no personal knowledge of the incident itself.

PW-12 Rathindra Nath Biswas, a WBPS, testified that on September 11, 2024, he was serving as the Sub-divisional Police Officer at Dalkhola. On that day, the Officer-in-Charge of Dalkhola Police Station, with the approval of a superior officer, assigned him to investigate the case.

Rathindra Nath Biswas, the investigating officer, detailed his investigation process, which included visiting the crime scene, creating a rough sketch map with an index, and examining both the de facto complainant and the victim girl. He recorded the victim girl's statement and arranged for her medical examination at Dalkhola Municipal Hospital, collecting the report afterward. He also examined available witnesses and documented their statements under Section 180 of the Bharatiya Nagarik Suraksha Sanhita (BNSS).

He arranged for the victim girl's judicial statement to be recorded at Islampur Court and collected a copy afterward. The accused was arrested and sent to court, where a request was made for police custody. During this time, the accused was interrogated, and his statement was recorded. However, on September

29, 2024, he received a transfer order and handed over the case files to the Superintendent of Police for further investigation.

He identified and verified several documents, including: the rough sketch map, marked as Exhibit P7, the formal FIR, marked as Exhibit P8 and the endorsement made by the receiving officer, marked as Exhibit P1/3. Additionally, the investigating officer identified the accused.

PW-12's cross-examination revealed some notable omissions and admissions. He acknowledged that the sketch map didn't include the shallow machine or the accused's agricultural land. Additionally, PW-12 admitted that although the accused underwent a medical examination at Dalkhola Primary Health Center, the doctor didn't mention any signs of resistance. Furthermore, he failed to investigate potential enmity between the victim's family and the accused.

PW-10 Sri Rabiraj Awasti, the second investigation officer, took over the case on October 18, 2024, after the Superintendent of Police re-endorsed it to him. He reviewed the materials collected by the previous investigating officer and issued a notice under Section 94 of the BNSS to the de facto complainant on November 4, 2024. The notice requested the complainant to produce the age proof certificate and Tribal certificate of the victim girl.

In response to the notice, the de facto complainant provided the victim girl's birth certificate and Schedule Tribe certificate. These documents were seized under a formal seizure list, prepared in the presence of witnesses. The seizure list, marked as Ext-P6, including the signature, was identified and verified. The documents were then returned to the de facto complainant after executing a Zimma Bond, which ensured their safekeeping and potential use as evidence.

He further testified that he submitted a requisition to the Pradhan of Dalkhola-I Gram Panchayat to verify the authenticity of the victim girl's birth certificate and Schedule Tribe certificate. The Pradhan issued a certificate confirming the documents were genuine. Following the completion of the investigation, he submitted a charge sheet against the accused after consulting with his superior. When questioned by the defense, he denied their suggestive inquiries.

This summarizes the key testimony of the prosecution's witnesses and the relevant evidence available in the case records.

The victim girl's testimony (PW-1) is corroborated by PW-2, PW-4, and PW-5 on key points that she was in the field for irrigation purposes at the time of the incident, she was sitting on an "ail" (field divider) checking the time, the accused approached and grabbed her from behind, he attempted to remove her clothing, but she defended herself by hitting him on the head with her mobile phone and she broke free and ran home.

The testimonies of PW-2, PW-4, and PW-5 provide strong corroboration of the victim girl's account (PW-1). Key points from their testimonies that PW-1 shared the incident with PW-2, PW-4, and PW-5, PW-2 rushed to the police station and lodged a complaint after hearing about the incident.

PW-4 confirmed that PW-1 returned home early, stating that the accused grabbed her from behind while she was sitting on an "ail" and attempted to disrobe her. PW-4's testimony supports PW-2's account, verifying that PW-1 shared the incident with her uncle (chacha), PW-2.

PW-5's testimony revealed that when PW-4 asked the victim girl why she returned early from the field, the victim girl broke down in tears. She recounted the incident, stating that while sitting on an "ail" to check the time, the accused grabbed her from behind and attempted to disrobe her. The victim girl defended herself by hitting the accused on the head with her mobile phone.

The testimonies of the witnesses unequivocally establish the following facts:

On September 11, 2024, at approximately 2:00 p.m., the victim girl was in her family's paddy field for irrigation purposes.

The accused was also irrigating his adjacent field at the same time.

The accused grabbed the victim girl from behind, pinned her down, and attempted to remove her clothing with malicious intent.

He also intentionally pressed on her breasts.

The victim girl (PW-1) provided a detailed account of the incident, describing how the accused sexually assaulted her and attempted to commit penetrative sexual assault. She testified about the incident in detail. Reiterated her account before the Magistrate. Described how the accused grabbed her from behind, pinned her down, and intended to commit rape.

PW-1 testified that she managed to free herself and ran home. She shared the incident with her paternal uncle and maternal aunts. Her relatives corroborated PW-1's testimony, confirming that the accused grabbed PW-1 from behind while she sat on an "ail" checking the time. He pinned her down in the field and attempted to rape her.

The defense disputed the allegations, questioning the victim girl and other witnesses with suggestive inquiries, but they steadfastly denied the defense's assertions. However, mere denial by the defense is insufficient to discredit the testimony of the witnesses, which remains credible and reliable.

The defense counsel drew attention to discrepancies between the FIR and the victim girl's statement recorded under Section 183 of the BNSS, highlighting inconsistencies in the key documents relied upon by the prosecution.

Recording statements under Section 183 of the BNSS holds great significance, as it helps to prevent witness retraction. By recording statements early on, witnesses are less likely to alter their testimonies later, ensuring the integrity of the evidence. This process safeguards the original account of events, reducing the risk of evidence tampering or manipulation.

By maintaining the authenticity of witness statements, Section 183 of the BNSS plays a vital role in the pursuit of justice, enabling courts to rely on credible evidence when rendering verdicts.

In her statement recorded under Section 183 of the BNSS, the victim girl (PW-1) recounted the incident to the Ld Magistrate, who documented it in writing. She explicitly stated that she and the pump owner (the accused) were in the field for irrigation purposes, with no one else present. As per her mother's instructions, she was tracking time to calculate the payment for irrigation rent while sitting on an "ail" (a divider in the paddy field). She walked around the field to check the water level and returned to sit on the "ail". The accused then grabbed her from behind, pinned her to the ground, and climbed on top of her.

She struggled and felt restless as the accused touched her breasts and attempted to remove her clothing (pajama), but was unsuccessful. A scuffle ensued, during which the accused grabbed and inappropriately touched her body. In self-defense, she hit the accused on the head with her mobile phone, causing him to release his grip with one hand. Seizing the opportunity, she escaped and reported the incident to her relatives.

As PW-1, the victim girl unequivocally testified in court that on the day of the incident, she was in her family's paddy field for irrigation purposes. She was sitting on an "ail" to track the time. The accused approached, grabbed her from behind, and attempted to remove her clothing. She defended herself by striking the accused on the head with her mobile phone, prompting him to release her. She then rushed home and recounted the incident to her maternal aunts.

This Court has scrutinized the evidence and found no discrepancies between the victim's statement recorded under Section 183 of the BNSS and her oral testimony in court.

Although the victim omitted some details during her oral testimony, this omission does not create any inconsistencies or doubts about the integrity of her evidence.

The victim's testimony remains consistent, both before the Magistrate and in court, and this court finds no merit in the argument presented by the Ld Advocate regarding alleged inconsistencies.

Additionally, the Ld Counsel highlighted that during cross-examination, the victim girl admitted to a scuffle with the accused. However, despite both parties being medically examined on the same date, no injuries were found on either the victim girl or the accused.

The Ld Counsel argued that this discrepancy raises doubts about the victim girl's testimony, rendering it unreliable and questionable. Therefore, the Court should exercise caution when relying on this potentially doubtful evidence.

It is acknowledged that the victim girl admitted to a scuffle with the accused, which she also mentioned in her statement before the Magistrate. However, a scuffle does not necessarily result in injuries. The absence of injuries on both the victim girl and the accused, as reported by the doctor, does not discredit the victim girl's coherent and credible testimony.

Moreover, the defense failed to provide evidence to suggest that the scuffle was intense enough to likely cause injuries. Therefore, the Court cannot accept the argument presented by the Ld Defense Counsel.

The defense counsel pointed out an apparent contradiction, citing testimonies from PW-4 and PW-5, who stated that the victim girl reported the incident to them. However, the victim girl had previously told the investigating officer that she reported the incident to her paternal uncle.

The defense argued that this discrepancy undermines the reliability of the testimonies, rendering them doubtful and unreliable. Therefore, the Court should exercise caution and not rely on this questionable evidence.

It is established that the victim girl testified that she reported the incident to her maternal aunts upon returning home.

PW-4 confirmed that the victim girl also disclosed the incident to her paternal uncle (chacha).

PW-2, the victim girl's paternal uncle, testified that she recounted the incident to him, prompting him to file a complaint.

The victim girl had previously stated to the investigating officer that she reported the incident to her paternal uncle (chacha). The mere omission by the victim girl to mention reporting the incident to her maternal uncle during her testimony does not warrant dismissing her testimony or that of her relatives.

The Ld Counsel noted that the victim girl's mother was not called to testify. The prosecution failed to provide a reason for the investigating officer's decision to exclude her testimony. This omission raises questions about the completeness of the evidence presented.

The court finds the Ld Defense Counsel's argument to be unpersuasive. The victim girl consistently stated, before the Investigating Officer, the Learned Magistrate, and the Court, that she reported the incident to her relatives, but not to her mother. Therefore, the non-examination of the victim girl's mother does not create any gap or weakness in the prosecution's case

The defense counsel further contended that the victim girl's testimony about the accused pressing her breasts is inconsistent with the medical evidence. Specifically the defense argued that breasts are soft tissue, and pressure from a grown man would likely cause swelling or hematoma. However, the doctor (PW-6) testified that she found no signs of molestation.

The defense counsel argued that this discrepancy renders the victim girl's testimony suspicious, and therefore, the Court cannot rely on it to convict the accused of the charged offense.

PW-6, the doctor who examined the victim girl, clarified that swelling is not a guaranteed outcome when an able-bodied man presses the soft tissue of a minor girl's breasts. The likelihood of swelling depends on the force applied. The doctor's testimony establishes that mere pressing of the breasts does not necessarily result in swelling. This explanation supports the fact that the doctor did not find any swelling during her examination.

The Ld Defense Counsel stressed that the doctor did not find signs of molestation, but failed to acknowledge that such signs are not always visible or detectable.

It is challenging for a doctor to identify signs of molestation, as they may not always be apparent. Therefore, the absence of visible signs does not necessarily mean that molestation did not occur. Notably, the doctor testified that the presence of signs depends on the force applied, which further supports the possibility that molestation may have occurred despite the absence of visible signs.

The defense counsel highlighted discrepancies in the testimonies of the victim girl, her paternal uncle and her maternal aunts. Specifically the prosecution's witnesses (paternal uncle and maternal aunts) testified that the accused pinned the victim girl in the field. However, the victim girl herself stated that her clothes did not get soiled during the incident.

The defense argued that these inconsistencies undermine the reliability and trustworthiness of the prosecution's witnesses' testimonies. Therefore, the accused cannot be convicted based on such unreliable and untrustworthy evidence.

Although the victim girl admitted that her clothes did not get soiled, this fact alone does not discredit her testimony. The accused allegedly dumped her in a dry field, where the likelihood of soiling would be minimal.

Moreover, the defense did not provide any evidence suggesting that the field was muddy or clay-filled. In a dry field, it is plausible that the victim girl's clothes remained clean, and she could have easily cleaned herself immediately after the incident.

Although the investigating officer did not seize the victim girl's clothes for examination, this omission does not undermine the credibility of the prosecution's witnesses. Moreover, this case does not involve penetrative sexual assault, which would have necessitated the seizure of clothing as evidence. Therefore, the argument that the prosecution's story is false because the victim girl's clothes were not soiled lacks merit.

The Ld Defense Counsel further argued that the victim girl acknowledged that the accused's land is adjacent to her family's land and features a shallow pump machine. However, the investigating officer failed to include the accused's land and the pump machine in the rough sketch map of the crime scene. The Defense Counsel suggested that if the pump machine existed, it would have been included in the sketch map. The absence of the pump machine in the sketch map implies that it did not exist.

The Defense Counsel further argued that the prosecution's witnesses falsely claimed that the victim and the accused were irrigating the paddy field using the pump machine. This alleged falsehood undermines the credibility of the prosecution's witnesses.

The victim girl and other prosecution witnesses testified that the victim girl was sitting on an ail. The sketch map (Ext-P7) reveals that the place of occurrence (PO) is surrounded by the lands of Mina Hansda, Mathilas Murmu, Rabi Murmu and Som Hansda. Notably, the sketch map does not include the pump machine and the land belonging to the accused. It may be inferred that the location of the incident is situated at a distance from the pump machine. This omission suggests that the investigating officer may not have considered these details relevant to the investigation or the sketch map.

Additionally, the defense did not deny that the accused had installed a pump machine on his land. Given these points the non-inclusion of the pump machine and the accused's land in the rough sketch map is justified. Moreover, any

lapses on the part of the investigation officer do not impact the credibility of the victim girl's evidence.

In the landmark case of *State of Punjab vs. Gurmit Singh* (1996) 2 SCC 384, the Hon'ble Supreme Court held that "*The victim has no control over the investigation agency, and the negligence or lapses of the investigating officer cannot affect the credibility of the victim's evidence.*" Furthermore, in this case, the investigation officer had already identified and fixed the place of occurrence, which corroborates the victim girl's testimony.

The Ld Defense Counsel further argued that the de facto complainant had a strong motive to falsely implicate the accused, as they had leased 2 decimals of agricultural land to the accused but wanted to terminate the lease. The accused refused to relinquish the lease, prompting the de facto complainant to concoct a false story in collusion with the victim girl.

The Defense Counsel pointed out that the victim girl admitted to this fact, but the prosecution suppressed it and failed to explain why neither the de facto complainant nor the victim girl approached the Court with clean hands.

The Defense Counsel argued that based on this fabricated story, the accused has been unjustly detained in judicial custody, violating the principles of natural justice. In this situation, the accused is entitled to the benefit of doubt.

The victim girl acknowledged during cross-examination that a long-standing dispute existed between the accused and her parental uncle (de facto complainant) regarding a leased property. However, the de facto complainant (PW-2) denied this allegation. It was then incumbent upon the defense to produce the lease agreement as evidence or present witness testimony to corroborate the lease. The defense had the opportunity to do so but failed to provide supporting evidence.

Therefore, the defense's claim that the de facto complainant had a motive to falsely implicate the accused is not tenable.

The Learned Defense Counsel stressed that the prosecution didn't provide enough evidence to prove the accused committed a crime punishable under the POCSO Act. This implies that the prosecution failed to establish the essential elements required to secure a conviction under this specific act.

In cases like these, the prosecution must demonstrate that the accused's actions meet the criteria outlined in the POCSO Act, which is designed to protect children from sexual offenses. If the prosecution fails to do so, the accused may not be held liable under this act.

As per the birth certificate of the victim girl (Mat Ext-I), her date of birth is July 28, 2008. Given that the incident occurred on September 11, 2024, this Court finds that the victim girl was approximately 16 years old at the time of the incident.

Additionally, according to the victim girl's testimony, on September 11, 2024, at approximately 2:00 p.m., the accused attempted to rape her in their field while she was engaged in irrigation work. The testimonies of PW-2, PW-4, and PW-5 corroborate the victim girl's evidence. Therefore, based on this corroboration, it cannot be concluded that the accused is innocent.

The Learned Counsel highlighted inconsistencies in the testimonies of the victim girl, her parental uncle and her aunts. These inconsistencies render their testimonies unreliable. Furthermore, the prosecution failed to establish the essential ingredients required under Section 4/18 of the POCSO Act. Therefore, the accused is entitled to acquittal.

Upon examining the statement of the victim girl recorded under Section 183 of the BNSS and her oral testimony, this Court finds no contradictions. The victim girl has consistently presented a coherent narrative, corroborating the content of her judicial statement. It is unreasonable to dismiss the entire testimony of the witnesses based on an isolated portion of the statement. Furthermore, there is no rigid formula requiring witnesses to recount every minor detail of an incident.

The incident occurred on September 11, 2024, at approximately 2:00 p.m., with the accused attempting to rape the victim girl in their field while she was working on irrigation. The victim girl's parental uncle (PW-2) reported the incident to the police station at 8:45 p.m. on the same day, and the victim girl underwent a medical examination at the hospital.

The medical report (Ext-P3) revealed that a 50-year-old man attempted to undress the victim girl, but she managed to escape. However, he still sexually assaulted her by pressing and touching her breasts. Notably, the defense did not deny these allegations and instead confirmed them during the cross-examination of the doctor (PW-6).

In the landmark case of *Mukesh Vs. State* (NCT of Delhi) reported in (2017) 6 SCC 1, The Hon'ble Supreme Court made a significant ruling regarding rape cases. The court held that *"there is no legal requirement to seek corroboration of the victim's testimony, unless the evidence presented suffers from serious inconsistencies"*. This means that the victim's testimony can be considered sufficient evidence, without needing additional corroboration, as long as it is credible and reliable. This ruling aims to support victims of rape and ensure that justice is served.

In the present case, the victim girl provided a detailed and credible account of the incident. Her testimony is found to be reliable, trustworthy, and devoid of any doubts. The Court is persuaded by the victim girl's evidence, which inspires confidence in its accuracy. Given the credibility of her testimony, the law does not require corroboration, and her evidence stands on its own merit.

The Hon'ble Supreme Court has consistently emphasized the importance of sensitive evaluation of evidence in sexual offence cases. The Court has held that *“it's essential to consider the fact that no self-respecting woman would willingly subject herself to the humiliation of testifying about a sexual offence unless it were true”*. This guideline acknowledges the stigma and trauma associated with sexual offences and encourages courts to approach these cases with empathy and understanding.

In this case, it's unlikely that the victim girl's paternal uncle would fabricate a report, thereby humiliating the 16-year-old victim and jeopardizing the family's reputation, solely to regain control of the leased property, if no incident had occurred. Family feuds or rivalries are not always sufficient motives to falsely accuse someone of a crime. Notably, the defense did not claim that the victim girl was coached or tutored to provide false testimony.

The defense had the opportunity to present the lease agreement as evidence to support their claim that the complainant sought to terminate the lease and the accused refused to relinquish the land, but they failed to do so.

The defense counsel argued that the prosecution has not adequately proven its case, citing lack of convincing and credible evidence, failure to address apparent discrepancies in the testimonies of prosecution witnesses and leaving unresolved contradictions unexplained.

The prosecution's case is not devoid of doubt. Given the uncertain nature of the evidence presented, it is impossible to conclusively prove the accused's guilt in the alleged offense. As a result, the accused is entitled to the benefit of doubt and deserves acquittal from the charges leveled against him.

As previously discussed, the evidence has established that on the relevant date and time, the victim (PW-1) was engaged in irrigation work in her field. The accused was irrigating his adjacent field. The accused verified that they were alone. Taking advantage of the situation, the accused grabbed the victim from behind with ulterior motives and pinned her to the ground. He then climbed on top of the victim, attempting to remove her pants and inappropriately touching her body, including her breasts.

It is also discussed that the victim's testimony is trustworthy and believable. Her testimony is inspiring and build the confidence of the court. The

victim girl has consistently presented a coherent narrative, corroborating the content of her judicial statement.

Additionally, the victim girl's testimony has been consistently supported by PW-2, PW-4 and PW-5. The prosecution witnesses' testimonies are credible and reliable, as the defense failed to discredit their statements. Conversely, the defense failed to provide oral or documentary evidence to substantiate their claim of prior animosity between the accused and the de facto complainant regarding leased property. As a result, it cannot be inferred that the de facto complainant had a motive to falsely implicate the accused.

The defense counsel highlighted some discrepancies, but these are minor and insignificant. These discrepancies and contradictions do not substantially impact the prosecution's case and can be overlooked as they are not critical or fatal to the case.

In sexual assault cases, the victim's testimony doesn't necessarily require corroboration from independent witnesses if the victim's evidence is trustworthy. The victim's evidence is credible and compelling. In such cases, there is no justification to doubt the victim's testimony.

Furthermore, this act was enacted as a special measure to safeguard children, aiming to protect children of tender age and teenagers from abuse. To prevent the exploitation of children during their vulnerable childhood years.

It is a well-established legal principle that a conviction for sexual assault can be based solely on the victim's testimony if the testimony is deemed natural and the testimony is considered trustworthy.

As previously discussed, the evidence of PW-1 is believable and trustworthy. Her testimony is consistently supported by PW-2, PW-4 and PW-5. Additionally, the medical history recorded by the doctor (PW-6) corroborates PW-1's evidence, further establishing its naturalness and trustworthiness.

Regarding offenses under the POCSO Act, the Court has a statutory obligation to consider two key factors:

1. The victim's age: The victim must have been under 18 years old at the time of the incident.

2. Sexual assault: The occurrence of sexual assault must be established.

The burden of proof shifts to the accused, who must rebut these presumptions. If the accused fails to do so, the Court is mandated to act on the presumptions.

The prosecution has presented credible evidence to establish both critical elements that the victim was under 18 years old at the time of the incident and occurrence of sexual assault.

Based on this evidence, the Court finds that on 11-09-2024, at approximately 2:00 p.m., the accused found himself alone with the victim in the agricultural field. He grabbed her from behind, pinned her to the ground, and climbed on top of her. The accused inappropriately touched her body, including her breasts. His actions were motivated by a desire to commit sexual assault on the victim.

A straightforward interpretation of Section 29 of the POCSO Act reveals that the victim was subjected to sexual assault. The Court has a statutory obligation to act upon establishing this fact.

As previously discussed, the prosecution has successfully proven the necessary ingredients. Therefore, pursuant to Section 29 of the Act, a presumption can be drawn that the accused committed sexual assault on the victim girl as defined under section 7 of the Act.

The defense attempted to counter the presumption by asking suggestive questions to the victim (PW-1) and the de facto complainant (PW-2) regarding an alleged ongoing dispute between the accused and the de facto complainant. Although the victim acknowledged this fact, the de facto complainant denied it.

As previously discussed, the defense had the opportunity to substantiate the dispute by producing the lease agreement or presenting oral testimony from a witness to the lease. However, the defense failed to do so. Consequently, the defense was unable to rebut the statutory presumption under the law.

Therefore, considering the oral testimonies of prosecution witnesses coupled with the documentary evidence on the record being revealed from the facts and circumstances of this case and having heard the submissions of Ld. Special Public Prosecutor and Ld. Defense Counsel, the court has delivered its verdict, finding the accused guilty of committing sexual assault on the victim, a minor under 18 years old, under Section 8 of the Prevention of Children from Sexual Offences Act. However, the court found insufficient evidence to support the more severe charge under Section 4/18 of the POCSO Act.

The prosecution did not provide sufficient evidence to support the charges against the accused for the offenses under section 351 of the BNS and section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. As a result, the accused cannot be held liable for these specific offenses.

The accused, Md Rafik @ Mastan, is convicted under Section 258 of the Bharatiya Nagarik Suraksha Sanhita, 2023, for the offense punishable under Section 8 of the POCSO Act.

Hence, it is

O_R_D_E_R_E_D

that the accused, namely, Md Rafik @ Mastan is found guilty of the offence punishable u/s 8 of the Protection of Children from Sexual Offences Act and he is convicted u/s 258 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

The convict is remanded to Judicial Custody till 04-04-2025 for the reflection of his mind. During the detention in Judicial Custody, the Correctional Home Authority shall provide all amenities to the convict.

To date (04-04-2025) for production of convict and hearing on the point of sentence to be imposed upon him.

Judgement is pronounced in open court given under my hand and seal of the court this 3rd day of April, 2025.

Dictated & Corrected by me:

Addl. Sessions Judge,
Special Court (POCSO Act)
Islampur, Uttar Dinajpur.

Addl. Sessions Judge, 1st court,
Special Court (POCSO Act)
Islampur, Uttar Dinajpur.

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	The Victim girl	The Victim girl
PW 2	The victim’s parental uncle	De facto complainant
PW 3	Manashi Hansda	Police Constable/official
PW 4	The victim’s maternal aunt	On fact
PW 5	The victim’s maternal aunt	On fact
PW 6	Dr. Shermeen Naaz	Medical officer/official
PW 7	Bina Bhattacharjee	Home Guard/official

PW-8	Prarthana Baroi Biswas	Official
PW-9	Smt Nabanita Chatterjee	Judicial Officer
PW-10	Rabiraj Awasti (IPS)	2 nd Investigating Officer
PW-11	Swapan Adhikari	Scribe
PW-12	Rabindra Nath Biswas (WBPS)	1 st Investigating Officer.

B. Defence witness, if any : Nil. C. Court witness, if any : NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr. No.	Exhibit Number	Documents
1.	Ext- P1	The Written complaint
2.	Ext- P1/1	Signature of PW-2 on the FIR
3.	Ext- P2	Zimma Bond
4.	Ext- P3	The victim girl’s medical report
5.	Ext- P4	Certificate issued by PW-8
6.	Ext- P5	The victim girl’s statement recorded u/s183 of the BNSS.
7.	Ext- P5/1	Victim girl’s LTI
8.	Ext-P5/2	Guardian’s Certificate
9.	Ext-P5/3	Certificate issued by the Magistrate
10.	Ext-P6	Seizure list
11.	Ext- P1/2	Endorsement made by PW-11 on the FIR
12.	Ext- P7	Rough sketch map of the P.O. with the index.
13	Ext-P8	Formal FIR including signature of recording officer
14	Ext-P1/3	Receiving endorsement on the FIR

B. Defence :

Sr. no.	Exhibits	Document
1.	Ext-D1	Accused’s medical document (OPD ticket)

C. Court Exhibits : NIL.

D. Material Objects:

Prosecution:

Sr. No.	Exhibit	Material
1.	Mat Ext-I	Victim girl’s birth certificate
2.	Mat Ext-II	Victim girl’s Tribal certificate

E. Defence: Nil. F. Court : NIL

Dictated & Corrected by me:

Addl. Sessions Judge,
Special Court (POCSO Act)
Islampur, Uttar Dinajpur.

Addl. Sessions Judge, 1st court,
Special Court (POCSO Act)
Islampur, Uttar Dinajpur.

Case No. POCSO 72/2024

04-04-2025.

Md Rafik @ Mastan, the convict, has been produced from judicial custody after being found guilty under Section 8 of the POCSO Act. Earlier, he was sent to judicial custody to allow for reflection of his mind.

Today's hearing is scheduled for the court to pronounce the sentence. Before doing so, the court will hear the convict's submissions on why he should not receive adequate punishment.

The Special Public Prosecutor argued that the convict committed a serious offense, noting that the victim was approximately 16 years old at the time of the incident. The prosecutor emphasized that the victim's defensive actions, striking the convict on the head, likely prevented further harm and protected her future. Given the severity of the offense, the Public Prosecutor requested the maximum punishment for the convict.

The Defense Counsel countered that the 50-year-old convict has a poor financial situation and is the sole breadwinner for his family, including two unmarried daughters. The convict, Md Rafik @ Mastan, has a responsibility to arrange marriages for his two unmarried daughters, who have reached the age of marriage. This is an additional personal circumstance that the court may consider during sentencing.

He emphasized that the convict has been in judicial custody for a lengthy period without any adverse reports from the Correctional Home Authority, indicating he is not a habitual criminal. The Defense Counsel argued that the convict was a victim of circumstances and that the crime committed was not severe. He requested leniency and suggested that the convict be considered under the Probation of Offenders Act.

The convict also prayed for mercy.

The court cannot consider the Probation of Offenders Act, 1958, for the convict in this case, despite his age and dependent family members.

The Hon'ble Calcutta High Court's decision in Prakash Shaw vs. State of West Bengal indeed set a significant precedent. The Hon'ble Court ruled that individuals convicted under the Protection of Children from Sexual Offences Act, 2012 cannot avail the benefits of the Probation of Offenders Act, 1958. This judgment implies that convicts under the Protection of Children from Sexual Offences Act, 2012 will not be eligible for probation, emphasizing the seriousness with which such offenses are treated.

The court has established that the convict is guilty of committing sexual assault on a minor under 16 years old. The Protection of Children from Sexual Offences Act, enacted by the Parliament in 2012, aims to safeguard children from sexual abuse and exploitation. This comprehensive law defines a child as anyone below 18 years old and provides punishment based on the severity of the offense.

The convict took advantage of the victim's vulnerability and committed a serious offense. He grabbed the minor girl from behind, pinned her down, and touched her inappropriately, including her breasts, with the intention of satisfying his sexual desires. The convict's actions were driven by his own desires, without consideration for the severe impact it would have on the minor victim's life and future.

Section 8 of the Protection of Children from Sexual Offences Act, 2012, mandates a minimum imprisonment term of 3 years, extendable to 5 years, and a fine for committing sexual assault.

The case records clearly indicate that the victim was a minor, under 16 years old, and the convict's actions were driven by his own desires, without consideration for the severe impact it would have on the minor victim's life and future.

The court has determined that a suitable punishment for the convict, considering the facts and circumstances of the case, as well as the nature of the offense, is Imprisonment for 3 years and 3 months along with a fine of Rs. 10,000 (Rupees ten thousand) for the offense punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012.

Considered.

Hence, it is

ORDERED

that the convict Md Rafik @ Mastan is sentenced to undergo Rigorous Imprisonment for three years and three months for the offense punishable u/s 8 of the Protection of Children from Sexual Offences Act, 2012 and to pay a fine of Rs. 10,000/- (Rupees ten thousand) only. In default of payment of fine, he will suffer Simple Imprisonment for three months more.

The period of detention already undergone by the convict in any manner in this case be set off U/s. 468 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

When asked, the convict expressed a desire to seek assistance from the Legal Services Authority to file an appeal. Therefore, the Court directs that a copy of the judgment, witness statements, and the convict's statement recorded under Section 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023 be forwarded to the Secretary, District Legal Services Authority, Uttar Dinajpur at Raiganj. This will enable the convict to receive assistance in preparing and submitting an appeal against the judgment and sentence imposed upon him to a higher forum.

The entire fine amount will be handed over to the victim girl, if the same is realized.

The Secretary, District Legal Services Authority, Uttar Dinajpur at Raiganj is requested to pay a sum of Rs.50,000/- (Rupees fifty thousand) only to the victim girl as

compensation for her rehabilitation in terms of Rule-7 of the Protection of Children from Sexual Offences Rule, 2012.

Let a copy of this judgement be sent to District Magistrate, Uttar Dinajpur at Raiganj for information.

Let a certified copy of the judgement be handed over to the convict at once.

Sentence is pronounced in open Court. Given under my hand and seal of this Court this 4th day of April, 2025.

Dictated & Corrected by me:

Addl. Sessions Judge,
Special Court (under POCSO Act)
Islampur, Uttar Dinajpur.

Addl. Sessions Judge, 1st court,
Special Court (under POCSO
Islampur, Uttar Dinajpur.