

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE, FAST TRACK COURT – 1, PURULIA. Present : Sri Somak Das (J.O. Code-WB00944) Additional Sessions Judge, Fast Track Court No. -1, Purulia <u>Sessions Case No. 183/2019</u> <u>Sessions Trial No. 12 (08)22</u> <u>C.I.S. No. 184/2019</u> <u>CNR No. WBPU01-002290-2019</u> DATE OF JUDGMENT : <u>30th day of June, 2026</u>	
COMPLAINANT	STATE OF WEST BENGAL
REPRESENTED BY	Advocate Aditya Mondal Public Prosecutor in-charge
ACCUSED	Bhola @ Subodh Rajak and Samir Rajak
REPRESENTED BY	Advocate Anadi Chatterjee

Date of Offence	28.10.2017
Date of FIR	29.10.2017
Date of Charge sheet	29.12.2017
Date of Framing of Charges	23.08.2022
Date of commencement of Evidence	12.11.2024
Date on which Judgment is reserved	---
Date of Judgment	30.06.2026
Date of Sentencing Order, if any	NIL

ACCUSED DETAILS							
Rank of the Accused	Name of the accused	Date of Arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428 Cr.P.C.
A-1	Bhola @ Subodh Rajak	29.10.17	24.01.18	U/S 376D of I.P.C	Acquitted	N/A	N/A
A-2	Samir Rajak	29.10.17	24.01.18	U/S 376D of I.P.C	Acquitted	N/A	N/A

LIST OF PROSECUTION WITNESS		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Name not disclosed	Mother of Victim Girl
PW-2	Adari Paramanik	Other witness
PW-3	Name not disclosed	Victim Girl
PW-4	Name not disclosed	Elder sister of victim girl
PW-5	Dr. Subhadip Mullick	Medical Witness
PW-6	A.S.I Rabindranath Basak	Police witness
PW-7	Ex-FHG Sundara Kumar	Police witness

LIST OF DEFENCE WITNESS		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW-1	NIL	NIL

LIST OF COURT WITNESS		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW-1	NIL	NIL

LIST OF PROSECUTION EXHIBITS			
Serial no.	Exhibit No.	Description of documents	By whom proved
1.	P1	Statement of the mother of the V.G recorded u/s 164 Cr. P.C	PW-1
2.	P2	The written complaint	PW-3
3.	P3	Statement of the V.G recorded u/s 164 Cr. P.C	PW-3
4.	P3/1 to P3/4	Signatures of V.G on her 164 statement	PW-3
5.	P4/1	Signature of V.G on seizure list dated 29.10.2017	PW-3
6.	P4/2	Signature of PW-7 on the seizure list dated 29.10.2017	PW-7
7.	P5	Medical examination report of V.G	PW-5
8.	P6/1, P7/1 and P8/1	Signature of PW-6 on three separate seizure lists dated 29.10.2017	PW-6

LIST OF DEFENCE EXHIBITS		
Sr. No.	Exhibit Number	Description
1.	NIL	NIL

LIST OF COURT EXHIBITS		
Sr. No.	Exhibit Number	Description
1.	NIL	NIL

LIST OF MATERIAL OBJECTS		
Sr. No.	Material Object Number	Description
1.	NIL	NIL

J U D G E M E N T

1. The accused persons named above stand trial for the alleged offence punishable under Section 376D of I.P.C.
2. The fact of the prosecution case is that the defacto complainant/ victim girl lodged a complaint before the O.C, Baghmundi P.S to the effect that on

28.10.2017 at about 11.00 a.m, when she was going to the 'bandh' of Ajoy Kumar for taking bath, one Samir Rajak, Bhola Rajak and Mithun Kalindi forcefully took her to the house of Bhola Rajak with a cloth on her face and committed rape on her forcibly and thereby, she was lying in unconscious condition. When she regained her sense, she was driven out from the said house. At that time, the wife of her neighbour Shankar Paramanik was present there. Out of afraid and shame, she could not inform the matter. On 29.10.2017 she narrated the matter to her mother, Smt. Menoka Rajak who took her to P.S and complaint was lodged.

3. On the basis of the said written complaint, Baghmundi P.S Case No. 132/17 dated 29.10.2017 was started against all the three F.I.R named accused persons namely, Samir Rajak, Bhola Rajak and Mithun Kalindi under Section 376D of I.P.C.

4. S.I Sourav Banerjee of Baghmundi P.S was entrusted to investigate the case who after completion of the investigation, submitted charge sheet being no. 136/17 dated 29.12.2017 against all the three F.I.R named accused persons under Sections 376D of I.P.C.

5. The Ld. Chief Judicial Magistrate, Purulia on 01.11.2019 committed this case to the court of learned Sessions Judge, Purulia u/s 209 of Cr. P.C in respect of two accused persons above named (A-1 and A-2) Cognizance was taken under Section 193 of the Code of Criminal Procedure by the learned Sessions Judge, Purulia and on 18.12.2019 he transferred the case to this court for trial and disposal. On 24.12.2019, this Court received the case record.

6. It is to be mentioned here that accused Mithun @ Pellu @ Rajesh Kalindi was under 18 years of age at the time of alleged crime. Hence, Ld. CJM, Purulia vide order dated 15.11.2017 was pleased to split up the case record in respect of said accused and sent the case record to JJB, Purulia for disposal.

6. On perusing the charge sheet and the materials sent with it, on 23.08.2022 charge has been framed against the accused persons above named (A-1 and A-2) under Sections 376D of I.P.C. The substance of charge under the above sections was read over and explained to the accused persons in Bengali to which they

pleaded not guilty by saying “Ami Nirdosh” individually and claimed to be tried.

7. After completion of the evidence of the prosecution, the accused persons were examined under Section 313 Cr. P.C. The accused persons declined to adduce any defence witness on their behalf. The defence case as it appears from the trend of cross examination of the prosecution witnesses and the answers given by the accused persons in examination under Section 313 Cr. P.C is that of total denial of the prosecution case.

POINTS FOR CONSIDERATION

8. In order to ascertain the allegations against the accused persons, the following points are framed for adjudication.

- i. Whether the accused persons have committed any offence punishable under Section 376D of I.P.C ?
- ii. Whether the prosecution has been able to prove the case against the accused persons beyond all reasonable shadow of doubt ?

DECISION WITH REASONS

9. Both the two points are taken up together for consideration for the sake of convenience as they are interrelated.

10. The prosecution, to establish the occurrence and to bring home the charges as labeled against the accused persons, has examined as many as seven (7) witnesses.

11. **The P.W. 1 is the mother of the victim girl of this case.** In her examination-in-chief, she has deposed that VG lodged complaint against Bhola, Samir and Mithun Kalindi. Eight years ago, in the month of Kartick at about 11:00 a.m. the incident occurred and at that time, she went to ‘jungle’ to collect leaves and VG and her another daughter were in the house. VG went to ‘Abhoy bandh’ for taking bath and on the way, Samir and Bhola restrained her and dragged her to the house of Bhola and Bhola and Samir committed rape upon her there by putting cloth on her mouth and thereafter, they drove her out from the house and she returned home. At about 1:00 p.m, she returned home and saw VG was crying

and then she asked her the reason why she was crying and then she told all these to her. Elder sister and mother of Bhola were abusing them for 2 days and then she went to PS along with VG and lodged complaint. Police seized wearing apparels of VG by preparing seizure list wherein she put LTI. She made statement before the Ld. Magistrate who recorded as per her version. After understanding the same to be correctly written, she put her LTI thereon. Her statement U/s 164 Cr.PC had been marked as **Exbt.P1. In her cross examination**, she has disclosed that she had four sons and six daughters and the VG was her 10th child. At the relevant point of time, except VG, all other sons and daughters were married. Her 2nd daughter also resided with her three children in the same compound separately. In between her house and the house of Samir, there was kuli rasta. There were houses of Papan Laha, Mathor Rajak, Banu Rajak and Koka Rajak surrounding to her house. Before lodging complaint, she did not inform about the incident to anybody. One Muslim boy namely Chhutu wrote the complaint and at that time, she herself, her husband and VG was there.

12. **The P.W. 2**, in her examination-in-chief, she stated nothing about the instant case.

13. **The P.W. 3 is the victim girl of this case.** In her examination-in-chief, she has deposed that she lodged a complaint before Baghmundi PS against Samir Rajak, Bhola Rajak and Mithun Kalindi. 9 years back in the month of Kartick at about 11:00 a.m. an incident took place. She could not recollect about the alleged incident. The complaint was written as per her instruction and she signed thereon (**Exbt.P2**). She made statement before the Id. Magistrate who recorded her statement U/s 164 Cr.PC. As per her version, Id. Magistrate recorded the statement and after understanding the same to be correctly written she put her signatures on the statement. Her statement and signatures had been marked as **Exbt.P3** and **Exbt.P3/1 to P3/4** respectively. Police took her Pathardih BPHC for her medical examination. She was medically examined there. She was further taken to Deben Mahato Govt. Medical College & Hospital, Purulia. She was examined there with her consent and she put her LTI on the consent form as well as medical examination report. Police seized her wearing apparels in her presence by preparing seizure list wherein, she put her signature (**Exbt.P4/1**). **In her cross examination**, she has disclosed that she could not say what was written in the

complaint. She also could not recollect when the complaint was lodged at Baghmundi PS. She also could not recollect what she stated before the Id. Magistrate.

14. **The P.W. 4 is the elder sister of the victim girl of this case.** In her examination-in-chief, she has deposed that VG lodged a complaint before Baghmundi PS against Samir Rajak, Bhola Rajak and Mithun Kalindi. 9 years back in the month of Kartick at about 11:00 a.m. an incident took place. She was not present in their house. Her parents went to 'jungle' for collecting leaves. The VG was alone in the house. She heard from the VG that accused Bhola and Samir entered into the house and put cloth in the mouth of the VG. **In her cross examination, she stated that** she could not say what was complained lodged at PS and she had no personal knowledge about the alleged incident.

15. **The P.W. 5 is the Medical Officer.** In his examination-in-chief, he has deposed that on 30.10.2017 he was posted at Purulia Sadar Hospital, Purulia. On that date, he examined the VG with her consent and consent of her mother in presence of on duty sister of the said medical college and hospital. VG was brought and identified to him by JLC/1155 Jyotsna Mahato. On examination, he found old abrasion on the left forearm, no other visible marks of injury on the breast, chest or anywhere else over the body. There was no injury in private parts. After examination, he prepared the report which had been marked as **Exbt.P5. In his cross examination, he disclosed that** on 28.10.2017, the alleged incident took place.

16. **The P.W. 6,** in his examination-in-chief, he has deposed that on 29.10.2017 he was posted at Baghmundi PS as constable. On that date the IO SI Sourav Banerjee seized wearing apparels of three accused persons namely, Mithun Kalindi, Bhola @ Subodh Rajak and Samir Rajak in his presence by preparing three separate seizure lists, wherein he put his signatures which had been marked as **Exbt.P6/1, P7/1 and P8/1** respectively. **In his cross examination, he disclosed that** the family members of all the three accused persons did not took their signatures on the seizure list. He did not know whether the seized wearing apparels of the accused were properly packed, sealed and labelled. Apart from signature on the seizure lists, he did not put the signature on any paper. He did

not find the seized wearing apparels of the accused before the Court.

17. **The P.W. 7**, in her examination-in-chief, she has deposed that on 29.10.2017, she was posted at Baghmundi PS as female home guard no.52. On that date, the IO seized wearing apparels of the VG as produced by her in her presence by preparing seizure list wherein she put her signature as seizure witness which had been marked as **Exbt.P4/2**.

18. This is the sum and substance of evidence of the prosecution.

19. The written complaint (**Exhibit P2**) makes it clear that this is a case of gang rape upon the V.G on 28.10.2017 at about 11.00 a.m, while she was proceeding towards the 'bandh' of Ajoy Kumar Khan to take bath. On the way, the accused persons forcefully took her to the house of Bhola Rajak covering her face with a cloth and committed rape on her and thereby, she became senseless. After regaining her sense, she was driven out from the said house and at that time, wife of Shankar Paramanik (**PW-2**) was present there. On the next day, she informed the matter to her mother.

20. Here, the defacto complainant (**PW-3**) is the sole victim of the alleged incident of rape. None was there to witness the alleged incident. So, the victim is the most vital witness of the prosecution to prove its case against the accused persons. She had full ocular knowledge about the alleged incident. Thus, the entire case rests upon the evidence of the V.G (**PW-3**).

21. On perusing the evidence of **PW-3**, it is crystal clear that she did not make any allegation against the accused persons. She, in her evidence, simply stated that she could not recollect about the alleged incident. So, it can be safely said that there is no evidence involving the accused persons in the crime. She proved the written complaint with her signature (**Exbt.P2**). But, in her cross examination, she deposed completely otherwise by saying that she could not say what was written in the complaint and when the complaint was lodged at Baghmundi P.S.

22. From the statement of the V.G recorded u/s 164 Cr. P.C (**Exbt. P3**), I find that she made allegations against the accused persons. But, so far as the manner of the alleged incident is concerned, there are material discrepancies in her statement

with her version in the written F.I.R (**Exbt.P2**). Here, **PW-3** in her oral testimony did not state anything about the alleged incident. She has not supported the case of the prosecution at all. During her cross examination, **PW-3** candidly deposed that she could not recollect what she stated before the Ld. Magistrate. Considering her evidence, it can be safely said that her evidence is utterly in contradiction with her version in her 164 statement.

23. Beside this, in the present case, the medical evidence also has not corroborated the case of the prosecution of alleged gang rape. On perusing the evidence of attending medical officer of Purulia Sadar Hospital (**PW-5**) as well as medical examination report of the V.G (**Exbt. P5**), it clearly goes to show that there was no injury in her private parts. There was no visible marks of injury on her breast, chest or anywhere else over her body, whereas the V.G in her written F.I.R alleged to be forcible gang rape upon her by the accused persons.

24. Having considered all, I am to hold that the evidence of the V.G suffers from inherent inconsistencies and bristles with contradictions. She is not a credible witness and as such, her evidence is not unimpeachable.

25. **PW-1** is the mother and **PW-4** is the elder sister of the V.G and they had no personal knowledge about the alleged incident. Their evidence is merely a hearsay evidence. But, their evidence have not supported with each other. As per **PW-1**, the V.G and **PW-4** both were present in the house, when she went to 'jungle', to collect leaves, whereas **PW-4** herself deposed that she was not present in their house and the V.G was alone in the house.

26. According to **PW-1**, at about 11.00 a.m, V.G went to 'Abhoy bandh' for taking bath and on the way, the accused persons restrained her and dragged her to the house of Bhola and Bhola and Samir committed rape upon her there by putting cloth on her mouth. But, the elder sister (**PW-4**) deposed completely otherwise. She stated that she heard from the V.G that accused Bhola and Samir entered into the house and put cloth in the mouth of the V.G. **PW-4** stated nothing as regards the alleged incident of gang rape committed upon V.G.

27. Their evidence also have not supported the evidence of the victim on material points.

28. As per F.I.R, the wife of Shankar Paramanik was present, when the V.G was driven out from the house of Bhola Rajak, where the alleged gang rape was occurred.

29. In the present case, the wife of Shankar Paramanik was examined by the prosecution as **PW-2**. Surprisingly enough, **PW-2**, in her evidence, clearly deposed that she neither knew the V.G nor about the alleged incident. Thus, she also has not supported the case of the prosecution.

30. **PW-6 and PW-7** are the police-cum-seizure witnesses who put their signatures on their respective seizure lists and the same had been marked as exhibits i.e. **Exbt.P6/1, P7/1, P8/1 and P4/2** respectively.

31. In the instant case, the prosecution has failed to bring the I.O of this case before this court for adducing his evidence.

32. In the light of above discussion, I find that the evidence of the PWs makes the prosecution case doubtful and disbelieveable.

33. Therefore, I have no hesitation to hold that there is no evidence to show that at the relevant point of time, the accused persons committed rape upon the V.G forcefully against her will. The prosecution has miserably failed to prove its case against the accused persons beyond reasonable doubt and as such, both the accused persons deserve an order of acquittal.

34. **Both the points of consideration are accordingly answered in negative and disposed of.**

Hence, it is,

O R D E R E D

that both the accused persons facing trial, viz., **Bhola @ Subodh Rajak and Samir Rajak (A-1 and A-2) are found and held not guilty** for the offences punishable **under Section 376D of I.P.C** and they are hereby acquitted from this case under Section 235(1) of the Cr. P.C.

The accused persons be discharged from their respective bail bonds and the sureties be discharged.

The seized alat, if any, be destroyed after completion of period of appeal.

Dictated and Corrected by me.

Sd/-

Additional Sessions Judge,
Fast Track Court -I, Purulia.

Sd/-

Additional Sessions Judge,
Fast Track Court-I, Purulia.