

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
SECOND COURT, AND
JUDGE SPECIAL COURT, (P.O.C.S.O, ACT) AT RAIGANJ
DISTRICT: UTTAR DINAJPUR

Present: Ms Varsha Bansal Agarwal
Addl. Sessions Judge, 2nd Court,
&
Judge (P.O.C.S.O Court), at Raiganj
JO Code – WB01307

Judgment is delivered on 01st day of July, 2026.

POCSO Case No. 04 of 2021
S.T. No. 06(11)/2022
CNR No. WBUD01-000035-2021

STATE

: V e r s u s :

Ganesh Das

....Accused person

Charge: u/s 365 of IPC and Sec. 6 of P.O.C.S.O. Act.

Ld. Spl P.P for the State - Mr. Subhasish Paul
Ld. Advocate for the defence - Mr. Pratap Kar

J U D G M E N T

At the outset, it needs to be mentioned that the instant case is under the Protection of Children from Sexual Offences Act, 2012 which mandates that the Special Court shall ensure that identity of the child is not disclosed at any time during the course of investigation or trial. Keeping in view the mandate of POCSO Act and the guidelines delineated by the Hon'ble Apex Court, the name and identity of the victim is withheld.

1. Verset :-

The de-facto complainant lodged a complaint before the I/C, Hemtabad PS by stating that on 13.12.2020 at about 02:00 PM, the minor daughter of the de facto complainant aged about 15 years left her house but thereafter, she did not return. He searched her everywhere but did not find her. After long search, he came to know that accused Ganesh Das kidnapped his daughter with ulterior motive and confined her in unknown place. Thus, the complaint.

2. Investigation :-

On the basis of the above complaint, the instant case being Hemtabad PS case No.246/2020, dt. 15.12.2020, u/s 365 of IPC had been initiated against the accused namely Ganesh Das. The case was endorsed to SI Prabhash Saha for investigation and he took up the charge of investigation. During investigation, victim recovered from the house of the relative of the accused and Section 6 of POCSO Act was added. After completion of investigation I.O. submitted Charge-Sheet against the above named accused person vide CS no. 11/2021 dt. 22.01.2021 u/s 365/342 of IPC r/w Sec. 6 of P.O.C.S.O. Act.

3. Commitment :-

Copy of this case was served to the accused person in term of Sec. 207 of CrPC. As this Court is Special Court deals with POCSO cases as such, case is taken for trial and disposal.

4. Framing of Charge :-

On the basis of materials available on record, charge was

framed on 29.11.2022 against the accused namely Ganesh Das Sec. 365 of IPC and Sec. 6 of P.O.C.S.O. Act. The charge was read over and explained to the said accused person, to which he pleaded “not guilty” and claimed to be tried.

5. Points for Ruminations :-

- 1) Whether the victim girl was below the age of 16 years on the date of incident to attract the provisions of the Protection of Children from Sexual Offences (P.O.C.S.O.) Act, 2012 ?
- 2) Whether prosecution has been able to prove charge against the accused person beyond reasonable doubt ?

6. Evidence Adduced :-

In the course of trial, Prosecution examined 08 witnesses who are as follows :-

- 1) PW1- Victim,
- 2) PW2- Father of the victim girl,
- 3) PW3- Harilal Debsharma, co-villager,
- 4) PW4- Anil Debsharma, co-villager,
- 5) PW5- Grand-uncle of the victim,
- 6) PW6- Uncle of victim,
- 7) PW7- SI Prabhash Saha, IO,
- 8) PW8- Ataur Rahaman, Scribe.

Prosecution has also produced some documents which were marked as follows :-

Exhibit Number	Nature of documents.
Exbt:P1/PW1	Statement of victim u/S 164 of CrPC
Exbt:P2/PW7	Seizure list dated 18.12.2020
Exbt:P2/1/PW2	Signature of PW1 on seizure list

Exbt:P2/2/PW7	Signature of PW7 on seizure list
Exbt:P3/PW2	Zimmanama
Exbt:P4/PW4	Zimmanama
Exbt:P5/1/PW2	Signature of PW2 on consent form
Exbt:P6/PW8	Written Complaint
Exbt:P6/1/PW2	Signature of PW2 on written complaint
Exbt:P6/2/PW7	Endorsement of RO on the written complaint
Exbt:P6/3/PW8	Signature of PW8 on written complaint
Exbt:P7/PW7	Formal FIR
Exbt:P7/1/PW7	Signature of RO on the formal FIR
Exbt:P8/PW7	Rough sketch map with index
Exbt:P8/1/PW7	Signature of PW7 on rough sketch map
Exbt:P9/PW7	Medical examination report of accused

7. Decision with reasons:-

After appraisal of the testimony of prosecution witnesses, I find that the prosecution witnesses have adduced their evidence as follows:-

P.W.1 victim stated in her examination in chief that the incident took place in the year 2020, December. At the relevant time, she was studying in class IX. She knows accused Ganesh Das whom she identified on dock. She has further stated that accused Ganesh Das resides in Asam. He used to work in a jute factory at Kakarsingh. She used to reside in the said locality at the relevant time. She has also stated that police recovered her from the house of her maternal aunt namely Pratima Das in Asam. After recovery, police sent her

to hospital for her medical examination. She was also brought before the Court for recording of her statement u/S 164 of CrPC in which she put her signature and proved the statement as Exhibit:P1/PW1. She went to Asam to the house of her maternal uncle and aunt on her own. Accused also went there. Finding both of them missing together, her father lodged this case against accused Ganesh. She voluntarily made her statement before the Lady Magistrate. Police brought accused and her together from Asam to Hemtabad PS after $\frac{3}{4}$ days of her arrival.

In her cross-examination, she stated that she left her house as her father rebuked her. She made her tutored statement before the Ld. Magistrate. On being asked by the Ld. Court, she stated that she made tutored statement before the Ld. Magistrate.

P.W.2 father of the victim stated in his examination in chief that victim is his daughter. In the year 2020, she was a student. He knew the accused who used to work in a jute bag factory at Kakorsingh near his house. He has further stated that his daughter was not studying properly. He rebuked her and she left the house without informing him. Finding her missing, he lodged diary. Subsequently, his daughter and accused was found from the house of Pratima Das. He handed over the birth certificate of victim to the police under seizure list in which he put his signature. Police returned the original birth certificate under Zimmanama. Police produced his daughter for her medical examination but he did not give the consent for her medical examination and put his signature on the consent form. He also put his signature in the written

complaint which was lodged over the incident of missing of victim. He proved his signature on the written complaint as exhibit P6/1/PW2, his signature in the seizure list as exhibit P2/1/PW2, Zimmanama as exhibit P3/PW2, another Zimmanama as exhibit P4/PW2 and consent form as exhibit P5/1/PW2.

In his cross-examination, he admitted that he has heard from his elder brother who went to Asam during recovery of victim that accused was also present there. He cannot say the purpose of visiting the house of Pratima Das by victim and the accused.

P.W.3, Hari Lal Debsharma stated in his examination in chief that the complainant is his neighbour. Complainant lodged complaint against accused Ganesh Das. He has further stated that he has no knowledge about any incident. Police did not interrogate him.

P.W.4, Anil Debsharma in his examination in chief stated that the complainant is his neighbour. Complainant lodged complaint against accused Ganesh Das. He has further stated that he has no knowledge about any incident. Police did not interrogate him.

P.W.5, Uncle of the complainant, stated that complainant is his nephew. Complainant lodged complaint against accused Ganesh Das. He heard that for about 6 years ago, accused Ganesh Das took the daughter of the complainant away from his house. Complainant told him about the same. Police did not interrogate him.

P.W.7, S.I Pravash Saha, stated that presently he is posted at D.I.O, Hemtabad as S.I of Police. On 15.12.20 he was posted at Hemtabad P.S under the same capacity. At that time SI Silip Kr. Roy was the O.C of Hemtabad PS. He knows his handwriting and signature having been worked with him. On that day he received one complaint from complainant by putting his signature and endorsement on the written complaint and then filled up the formal FIR being Hemtabad PS case no. 246/20 dt. 15.12.20 u/s 365 of IPC against accused Ganesh Das. Thereafter charge of investigation was handed over to him. After taking up investigation, he examined the complainant and found his statement corroborated with the FIR. Then, he examined the available witnesses and recorded their statement u/s 161 of CrPC. Thereafter, he visited P.O and prepared rough sketch map with separate index. He seized the birth certificate and Adhar Card of VG produced by her father under seizure list and took the signature of producer and witnesses. Then, he returned the birth certificate and Adhar Card of VG produced by her father to him under zimmanama. He tried to arrest the accused person but could not find him. He recovered the victim from the house of accused Ganesh Das and he arrested FIR named accused Ganesh Das from his house situated at Garughutu village, under P.S Tamulpur, District – Boksá, Assam and brought them to Raiganj. Then, he sent the VG to RGMCH for her medical examination but she refused for her medical examination. He made a prayer before Ld Court for recording statement of VG and her mother u/s 164 CrPC and thereafter collected copies of the said statement. He made prayer for adding Sec. 6 of POCSO Act and conducted raid to apprehend

FIR named accused person. Then he arrested accused Ganesh Das from the house of his maternal uncle. Thereafter, he forwarded him before the court. Then, he sent the accused Ganesh Das to RGMCH for his medical examination report and collected his medical examination report. After completion of investigation and consultation with the Superior Authority He submitted charge-sheet vide CS no. 11/2021 dt. 22.01.21 u/s 365/342 of IPC and Sec. 6 of POCSO Act against the FIR named accused person. He proved the endorsement with signature of RO in the written complaint as Exbt.P6/2/PW-7, the formal FIR Exbt.P7/PW-7, the signature of RO on Formal FIR Exbt.P7/1/PW-7, the rough sketch map with separate index Exbt.P8/PW-7, his signature on the rough sketch map with separate index Exbt.P8/1/PW-7, Seizure list dt. 18.12.2020 Exbt.P2/PW-7, signature in the seizure list Exbt.P2/2/PW-7 and the medical examination report of accused which is marked as Exbt.P9/PW-7.

In his cross-examination, he denied that he did not investigate the case properly and the investigation is perfunctory.

P.W.8 Ataur Rahaman has stated in his examination in chief that he does not know the complainant. On 07.07.2024 he wrote complaint as per the instruction of complainant. Thereafter, he read over the contents of complaint to him who after understanding the same, put his signature on the written complaint. He also put his signature in the written complaint. He proved the written complaint as Exhibit:P6/PW8 and his signature in the written complaint as Exhibit:P6/3/PW8. Police interrogated him.

In his cross-examination, he stated that he has no personal knowledge about the fact of the incident.

8. Examination of Accused :-

After completion of the testimonies of prosecution witnesses, on 30.06.2026, the accused person was examined u/s 313 of Cr.PC wherein he stated that he is innocent and he declined to adduce any defence witness.

9. Argument :-

Ld. Spl P.P. has submitted that PW2 defacto complainant has adduced his testimony by corroborating the FIR Exbt.1 to some extent apart from their other family members. As such, necessary order be passed.

Per contra- Ld. Defence counsel has submitted that neither VG nor her father PW-2 defacto complainant have supported the prosecution case apart from the other witnesses. In the circumstances, the accused person should be acquitted from the instant case.

10. Analysis of the evidences on record :-

In order to appreciate the contentions of both sides, I have made close scrutiny of the oral as well as documentary evidences in the light of arguments advanced at length by Ld. Special P.P. and Ld. Defence Counsel and has also taken into consideration the relevant provisions of law.

In order to prove the charge for offence under POCSO Act, prosecution has to prove that the victim was a “child”

below 18 years of age on the relevant date of incident. In the case in hand, as per FIR, the victim was aged about 15 years on the alleged date of incident. In course of trial, prosecution did not produce the birth certificate of VG nor any other documents. though defence also did not raise any question in this regard but considering the age of the VG, it can be inferred that age of the VG is not proved from the side of the prosecution.

On minutes scrutiny of the record, I find that the allegations made by defacto complainant in FIR are serious in nature which is causing sexual assault on complainant and VG.

PW2 / defacto complainant who is the father of VG, though lodged complaint against the accused person for kidnapping and later police added for sexual assault on VG but in his oral evidence he did not make such allegation. Not only that he specifically stated in his oral evidence that his daughter was not studying properly. He rebuked her and she left the house without informing him. Finding her missing, he lodged diary. Subsequently, his daughter and accused was found from the house of Pratima Das. In his cross-examination, he admitted that he has heard from his elder brother who went to Asam during recovery of victim that accused was also present there. He cannot say the purpose of visiting the house of Pratima Das by victim and the accused. From his testimony, it is evident that there is no allegation of kidnapping of victim by the accused Ganesh Das as stated in the written complaint and the further allegation of sexual assault on VG. This witness failed to corroborate his testimony with FIR. As such, his deposition can not be considered as reliable.

PW-5 grand-uncle of VG has categorically stated that about 6 years ago, accused Ganesh Das took the daughter of the complainant from his house which is stated to him by the complainant and he admitted that he has no personal knowledge about the said incident. Therefore, this Court found that the testimony of this witness is not corroborated with the testimony of the complainant.

PW6, uncle of victim stated in his examination in chief that a boy took away victim about 6 years ago but he cannot say the name of that boy. Therefore, no incriminating evidence found in the testimony of this witness against the accused Ganesh Das.

This is a case under POCSO Act. It is settled position of law that conviction can be based upon sole evidence of prosecutrix if her evidence is found to be reliable and trustworthy.

Victim has appeared as PW-1 and has stated that at that time she was not willing to continue her study and she went away to her maternal aunt's house namely Pratima Das at Asam on her own without informing her parents where the accused also went at the same time. As both the victim and the accused were missing, as such, for such reason, her father lodged complaint. There is no whispering of accused taken away the minor victim to Asam by inducing her. As such, after careful scrutiny, this Court finds that there is no single incriminating evidence found against the accused in the testimony of victim. Consequently, it is evident that this witness also failed to corroborate her testimony with FIR. Not

only that in her cross-examination, there is no allegation of any physical assault took place during her time of missing. Her such statement is neither transpired in the FIR nor in her statement u/s 164 CrPC which is proved before this court.

PW-1 appear to have made a statement before Ld Magistrate u/s 164 CrPC but statement u/s 164 CrPC is not the substantive piece of evidence. The statement on oath of the victim before the court does not corroborate her statement u/s 164 CrPC. She admitted that she made her tutored statement before the Ld Judicial Magistrate.

Therefore, it reveals that the oral evidence of P.W1, PW5 and PW-6 do not corroborate with the occurrence as well as the place of occurrence as alleged by PW-2 in the complaint and their oral evidence on oath before the Court. They failed to support the prosecution case with respect to the kidnapping of VG and the sexual assault on her. On the contrary, these witnesses have stated that they have no personal knowledge regarding kidnapping of victim by the accused.

PW-3 and PW-4 are the neighbours of the complainant who only identified the accused person but did not state about any incident alleged to have taken place on 13.12.2020. Therefore, these witnesses have also failed to support the prosecution case.

PW8 is scribe who proved the written complaint but failed to put any light on the facts of the case.

PW-7 SI Prabhash Saha, the IO of this case has been

testified with regard to the investigation and proved certain documents but in absence of proving of the allegations in the ocular evidence of VG, complainant and his relative, the testimony of this witness is of no help to the prosecution to secure the conviction of the accused person.

Therefore, on careful scrutiny of the evidences, this court finds that there are glaring inconsistencies and contradictions in the statement of victim as well as complainant. Medical evidence has not come to the aid of the prosecution. The victim as well as her father and other witnesses have been cross-examined by defence with regard to contradiction vis-a-vis their statement u/s 164 Cr.P.C. The victim as well as informant and other witnesses are found to have made vital statements before the I.O which they have not made in their evidences before the court. Thus, having made close scrutiny of the prosecution evidence on record, this court finds that prosecution has failed to prove the case against the accused by proper and convincing evidence.

11. Conclusion :-

Thus, having considered entire evidences, materials and circumstances on record and in view of above discussion, I am to hold that prosecution has failed to prove the charge against the accused person. There is no evidence on record to saddle the accused person Ganesh Das with the charge for offence u/s 365 of IPC and Sec. 6 of P.O.C.S.O. Act, 2012. As such, the accused person is entitled to get an order of acquittal on the benefit of doubt in this case.

The points for determination are answered accordingly.

Hence, it is

O R D E R E D

that the accused person namely Ganesh Das is found not guilty of the offence u/S 365 of IPC and Section 6 of POCSO Act 2012.

Accordingly, the accused person above named is acquitted from the case u/s 235(1) of the Cr.P.C.

The accused person shall be released if not wanted in any other case by executing a bond amounting of Rs.100/- with one surety of like amount to the satisfaction of Ld. C.J.M, Uttar Dinajpur u/s 437A of CrPC with direction to appear before the Higher Court as and when such court issues notice in respect of any appeal or petition. The bail bond shall remain in force six months in terms of Sec. 437A of CrPC.

In terms of the directions of the Hon'ble Calcutta High Court in Judgement dated 29.03.2022 passed in CRA No. 266 of 2020, wherein it is held that victim has right to appeal against this Judgement, let a copy of this order be forwarded to the Ld. District Magistrate through Ld. Secretary DLSA, Uttar Dinajpur for due intimation to the victim as defined u/s. 2(wa) of Cr.P.C. to inform the right of victim to prefer an appeal in terms of proviso to Section 372 of Cr.P.C. and if necessary, to avail free legal assistance from Legal Service Authority concerned to prefer and prosecute such appeal.

Let the seized alamats/documents/materials, if any, be disposed of/ return to the authorized person of the owner/concerned authority in accordance with law after expiry of the statutory period of appeal.

Let a copy of this order be sent to Ld. C.J.M, Uttar

Dinajpur for information and necessary action.

Let a copy of this order along with copy of judgement be sent to Ld. Secretary DLSA, Uttar Dinajpur for information and necessary action.

(Dictated & Corrected)

Sd/-

A.S.J.

Sd/-

Additional Sessions Judge,
2nd Court -cum- Judge, Spl. Court
under P.O.C.S.O. Act, Raiganj,
Purba Bardhaman

POCSO 04 of 2021
CNR No.WBUD01-000035-2021
J.O. Code No.WB01307

Order No. 18, dt. 01.07.2026.

The accused person namely Ganesh Das on CB is present by filing hazira.

Today is fixed for argument and delivery of judgment.

Ld. Spl P.P. and Ld. Advocate for the accused are present.

Argument heard in full.

The Judgment is ready by now and pronounced in open Court in presence of both the sides and the same is also sealed and signed.

The computer typed Judgment contained in separate sheets be kept with the record.

The operative part of the Judgment is as follows:-

Hence,

ORDERED

that the accused person namely Ganesh Das is found not guilty of the offence u/S 365 of IPC and Section 6 of POCSO Act 2012.

Accordingly, the accused person above named is acquitted from the case u/s 235(1) of the Cr.P.C.

The accused person shall be released if not wanted in any other case by executing a bond amounting of Rs.100/- with one surety of like amount to the satisfaction of Ld. C.J.M, Uttar Dinajpur u/s 437A of CrPC with direction to appear before the Higher Court as and when such court issues notice in respect of any appeal or petition. The bail bond shall remain in force six months in terms of Sec. 437A of CrPC.

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Let a copy of this order be sent to Ld. C.J.M, Uttar Dinajpur for information and necessary action.

Let a copy of this order along with copy of judgement be sent to Ld. Secretary DLSA, Uttar Dinajpur for information and necessary action.

(Dictated & Corrected)

Sd/-
A.S.J.

Sd/-
Additional Sessions Judge,
2nd Court -cum- Judge, Spl. Court
under P.O.C.S.O. Act, Raiganj,
Uttar Dinajpur