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FORM – A

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE. CUM DESIGNATED SPECIAL COURT UNDER POCSO ACT, ISLAMPUR, UTTAR DINAJPUR. PRESENT: SRI PLABAN MUKHERJEE Additional Sessions Judge, Cum Special Court under POCSO Act, Islampur, Uttar Dinajpur Date of delivery of judgment - <u>24th day of June, 2026</u> <u>Case No: POCSO Case No. 26 of 2022</u> <u>[Arising out of Karandighi P.S. Case No. 336/ 2022 dtd. 01.07.2022]</u> CNR Number : WBUD-05-001026-2022 [J.O. Code- WB01427]	
Complainant :	State of West Bengal
Represented by :	Ld. Special P.P - Mukhtar Ahmed
Accused person:	1. Md. Taharul 2. Kalam 3. Md. Rahul
Represented by :	Ld. Advocate – Sahid Reza



FORM – B

Date of Offence	24.06.2022
Date of FIR	01.07.2022
Date of Charge-sheet	30/09/2022
Date of Framing of Charges	07/02/2024
Date of commencement of Evidence	19/03/2024
Date on which Judgment is reserved	23.06.2026
Date of the Judgment	24.06.2026
Date of the Sentencing Order, if any	N.A.



ACCUSED DETAILS:-

Rank of the Accused	Name of 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.
1.	Md. Taharul	14.09.2022	15.10.2022	Sec. 363/ 365/ 34 IPC & Sec. 4 of POCSO Act.	Acquitted	N.A.	N.A.
2.	Kalam	Favoured with an order u/s 438 Cr.P.C. & surrendered on 29.09.2022	Obtained regular bail on 29.09.2022	Sec. 363/ 365/ 34 I.P.C.	Acquitted	N.A.	N.A.
3.	Md. Rahul	12.09.2022	15.09.2022	Sec. 363/ 365/ 34 I.P.C.	Acquitted	N.A.	N.A.

FORM – C

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHERS WITNESS)
P.W. 1	The Victim girl	The Victim girl
P.W. 2	The uncle of the Victim girl	The De-facto Complainant
P.W. 3	The Mother of the V.G.	The mother of the V.G.
P.W. 4	The Father of the V.G.	The Father of the V.G.
P.W. 5	Mortuza	Other Witness
P.W. 6	Alam	Other Witness
P.W. 7	Gulfaraz	Other Witness
P.W. 8	Dr. Zeenatun Nisha	Medical Witness
P.W. 9	ASI Biswajit Das	Police witness (1 st Investigating Officer)
P.W. 10	SI Shah Alam Mortuza	Police witness (2 nd Investigating Officer)



B. Defence Witnesses, if any: NIL

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHERS WITNESS
D.W.		

C. Court Witnesses, if any: NIL

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHERS WITNESS
C.W.		

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

A. Prosecution:

Sl. No.	Exhibit Number	Description
1.	Exbt. P - 1	Statement of the V.G. recorded u/s 164 Cr.P.C.
2.	Exbt. P -1/1 & 1/2	Signatures of the V.G. on her statement recorded u/s 164 Cr.P.C.
3.	Exbt. P- 2	The Written Complaint
4.	Exbt. P - 2/1	Endorsement of the R.O. on the Written Complaint.
5.	Exbt. P - 3	Signature of P.W. 2 on the seizure list dated 25.07.2022.
6.	Exbt. P - 4	Signature of P.W. 4 on the Zimmanama dated 25.07.2022.
7.	Exbt. P – 5	Medical Report of the victim girl dated 01.09.2022
8.	Exbt. P – 6	Treatment Sheet dated 01.09.2022.
9.	Exbt. P - 7	Formal FIR
10.	Exbt. P - 8	Rough Sketch Map with Index
11.	Exbt. P – 9	Seizure List dated 25.07.2022
12.	Exbt. P - 10	Medical Report dated 17.09.2022

B. Defence: NIL

Sl. No.	Exhibit Number	Description
1.	Exbt. D - 1	The signature of the victim girl on the Recovery Memo.



C. Court Exhibits: NIL

Sl. No.	Exhibit Number	Description

D. Material Objects:

Sl. No.	Material Object Number	Description

J U D G M E N T

1. The three accused persons, namely, Md. Taharul, Alam and Md. Rahul stood the trial to answer the charge under Sections – 363/ 365/ 34 of the Indian Penal Code, 1860 (hereinafter referred to as I.P.C.) and the only accused persons, namely, Md. Taharul under section 4 of the Protection of Children from Sexual Offences Act, 2012, (hereinafter referred to as POCSO Act).

2. The case of the prosecution may be epitomized as follows : –

That in the instant case the wheels of criminal law started rolling on the strength of the written complaint filed by the uncle of the victim girl at Karandighi Police Station alleging, inter alia, that on 24.06.2022 at about 4.00 a.m. the niece of the de-facto informant aged about 17 years went missing from their home which led to the lodging of a Missing Diary on 27.06.2022. Thereafter on the same day, i.e. 27.06.2022 at about 1.00 p.m. the victim girl called her father over phone and informed him that she was confined by other means. Hearing about the news, the de-facto informant along with two others visited the house of the accused persons at village Bhalka, wherein the father of the accused no. 1 informed that the accused no. 1 shifted somewhere else with the victim girl. Accordingly the de-facto informant had lodged the complaint at Police Station with a request to take legal action against the accused persons.



3. On the basis of the said written complaint, Karandighi Police Station Case No. 336 of 2022 dated 01/07/2022 under sections 363/ 365/ 109 of the I.P.C was started against the three FIR named accused persons, namely, Md. Taharul, Alam and Md. Rahul and the then Inspector-in-charge of Karandighi Police Station entrusted the case to A.S.I. Biswajit Das for investigation.

4. The investigation ultimately culminated into filing of charge sheet against all the three accused persons under Sections 363/ 365/ 109/ 212 of the I.P.C. and section 4 of the POCSO Act on the strength of Karandighi P.S. Charge Sheet No. 487/ 2022 dated 30/09/2022. Though it has not been mentioned in so many words that cognizance of offence was taken by this Court under section 190(1)(b) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.,'.) read with the provision of section 33(1) of the POCSO Act on the basis of the police report, but copy of the charge sheet and other relevant papers referred to in Section 173 of Cr.P.C. were supplied to the accused persons in compliance with the mandate under section - 207 of Cr.P.C.

5. This Court on 07/02/2024 framed charge against the accused persons, namely, Md. Taharul, Alam and Md. Rahul under sections – 363/ 365/ 34 of the I.P.C. and against the accused person, namely, Md. Taharul under section 4 of the POCSO Act. Charges were read over and explained to the accused persons, to which they pleaded 'not guilty' and claimed to be tried. Accordingly, the trial of the accused persons has begun as per provisions of chapter XVIII of the Cr.P.C. read with the relevant provisions of the POCSO Act.

6. During trial, the prosecution produced and examined as many as ten witnesses out of twelve cited witnesses in the Charge Sheet. Apart from that the prosecution also relied upon some documentary evidences.

7. After closure of the prosecution evidence, the accused person was examined under section 313 of Cr.P.C. read with Section 281 of Cr.P.C on 22-06-2026. The examination of accused persons were recorded in prescribed forms. The accused persons pleaded their innocence.



8. No witness was produced on behalf of the defence. The defence did not file any written statement in this case. From the trend of cross examination by the defence to the prosecution witnesses and answers given by the accused persons during their examination under section 313 of Cr.P.C., it is clear that the defence case is nothing but denial of the prosecution case in entirety.

9. **POINTS FOR DETERMINATION**

- a) Whether the accused persons kidnapped the victim girl with intent to wrongfully confine her?
- b) Whether the accused person, Md. Taharul, committed penetrative sexual assault upon the victim girl?
- c) Whether the prosecution has been able to prove the charges against the accused persons beyond all shades of reasonable doubt?

DECISION WITH REASONS

10. All the points are taken up together for the sake of convenience and to avoid unnecessary repetitions. After going through the case record, evidence of witnesses, exhibited documents and hearing argument of both sides, it becomes essential to assess and scan the evidence on record at first to separate the chaff from the grain.

Evidence adduced by the prosecution witnesses :—

11.1. In the instant case, the victim girl has been examined as P.W. 1 and the substance of her examination-in-chief is that on 26.07.2022 at about 11.00 p.m. to 12.00 p.m. she came out from their home for the purpose of urinating and at that time Taharul and two other pressed her mouth with a cloth and kidnapped her. Those persons took the victim girl to the house of their relative and Taharul committed penetrative sexual assault upon the victim girl on that night. The victim girl had been there for two days and thereafter she called her father over phone.



Thereafter the father of the victim girl went there with the police and recovered her. The uncle of the victim girl lodged a complaint over this incident at police station. The statement of the victim girl was recorded under section 164 Cr.P.C. and she was also examined medically.

11.2. The uncle of the victim girl being de-facto informant of this case was examined as P.W. 2 who deposed that on the night of incident at about 10.00 p.m his niece went to outside their home for the purpose of attending her nature's call but she did not return. On that night they made thorough search but could not trace his niece. On the next morning they went to Karandighi Police Station and submitted a missing diary. Thereafter Police ascertained the location of his niece at Murshidabad on the strength of the tower location of the number of his niece which he supplied. P.W. 2 came to know from his co-villagers that Taherul kidnapped his niece. P.W. 2 also claimed to visit the house of Taherul and requested his father to return the victim girl but they did not pay any heed on his request. Accordingly, P.W. 2 lodged his complaint. After 4 to 5 days police recovered his niece and they brought her back from police station. On being asked, the victim girl disclosed before P.W. 2 that Taherul committed rape upon her. P.W. 2 further deposed that at the time of incident the victim girl has not attained her majority.

11.3. The mother of the victim girl being P.W. 3 has deposed that she has four daughters and the victim girl of this case is her eldest daughter. The brother-in-law of P.W. 3 lodged a complaint at Karandighi Police Station at about more than 02 years ago against the accused person but she cannot recollect their names. P.W. 3 further deposed that on the day of incident at about 10.00 p.m her daughter went to urinate outside home and thereafter she did not return. They made thorough search of the surrounding areas but could not trace her daughter on that night. Thereafter, one complaint was lodged at Karandighi Police Station. P.W. 3 further deposed that her daughter was recovered after 04 to 05 days and they brought back her daughter.

11.4. The father of the victim was examined as P.W. 4 who brought on record that his younger brother lodged a complaint at Karandighi Police Station at about



more than 02 years ago against the accused persons namely, Rahul, Kalam and Taherul. P.W. 4 further deposed that one day in the year 2022 at about 2.00 a.m my eldest daughter went outside their house for the purpose of attending her nature's call but she did not return. At that time P.W. 4 was outstation for the purpose of his job and hearing the news of missing of his daughter, he returned home after five days. It is further alleged that thereafter, police recovered his daughter and they brought her back home. On being asked, his daughter divulged that she was kidnapped on the day of incident. P.W. 4 handed over the birth certificate of his daughter to the police who had seized the same. P.W. 4 also claimed that at the time of incident his daughter was aged about 17 years.

The substantive evidence of other prosecution witnesses including the doctor and the two investigating officers will be discussed in appropriate places of this judgment.

12. Argument placed by the Ld. P.P. in-charge:-

- a) Ld. P.P. in Charge submitted that the prosecution has been able to prove the present case beyond all shades of reasonable doubt against the present accused persons;
- b) It is further submitted that the victim girl has clearly alleged about the incident and the specific role played by the accused person by mentioning specific time which triggered the presumption under section 29 of the POCSO Act.
- c) It is also submitted that the prosecution has been able to corroborate the evidence of the victim girl with the support of the substantive evidence of other prosecution witnesses including the parents of the victim girl which connect the accused persons with the offence.
- d) It is further placed that all the prosecution witnesses consistently divulged against the accused persons by disclosing the fact that the accused persons kidnapped the victim girl and took her to the house of their relative wherein one of the accused person committed penetrative sexual assault, which left no space to dispute the involvement of the accused persons and



the accused persons also has materially failed to discharge their burden of proof to rebut the presumption as engrafted in section 29 of the POCSO Act.

13. Argument advanced by the Ld. Defence Counsel :-

- a) Learned Defence Counsel submitted that none of the witnesses has been able to bring any consistent allegation against the present accused person.
- b) It is further submitted that the de-facto informant did not corroborate the fact as alleged in the written complaint. It is vociferously argued that the written complaint is not a substantive piece of evidence and it has no evidentiary value unless corroborated by the maker of the same at the time of his/ her evidence before the Court.
- c) It is further submitted that none of the independent witnesses of the prosecution corroborated the series of facts as disclosed either by the victim girl or the de-facto informant which would go against the accused persons;
- d) It is further submitted that the prosecution witnesses did not corroborate the versions of each other;
- e) So considering these all aspects Ld. Defence Counsel submitted that the prosecution has been miserably failed to bring home the charges levelled against the accused persons beyond all shadow of reasonable doubts.

14. Charges were framed against all the three accused persons, namely, Md. Taharul, Kalam and Md. Rahul under sections – 363/ 365/ 34 of the I.P.C. and under section 4 of the POCSO Act against the sole accused person, Md. Taharul. Before entering into the hair splitting analysis of the entire evidence on record, we need to discuss about the essential ingredients of the offences the accused persons charged with.

15. Section 363 of the I.P.C. provides punishment for Kidnapping and section 365 of the IPC provides punishment for kidnapping for secretly confining a minor wrongfully. Section - 4 of POCSO Act provides punishment for an offence of



Penetrative Sexual Assault. The essential ingredients of section 363 of the IPC are as follows:-

- a. there must be a child under sixteen years of age if a male or under eighteen years of age if a female, or any person of unsound mind;
- b. some one takes or entices that minor or the person of unsound mind out of the custody of their lawful guardian without the consent of such guardian;

The sine qua non of section 365 of the I.P.C. is kidnapping or abduction of any person with intent to wrongfully confining him or her secretly.

Section 3 of the POCSO Act defines the circumstances under which an offence of Penetrative Sexual Assault is said to have committed.

Issue relating to the age of the victim girl to ascertain her minority :-

16.1. In the instant case the age of the victim girl is projected to be seventeen years plus on the date of commission of the offence. It has been specifically mentioned in the written complaint that on the date of alleged offence the victim girl was aged about 17+ years. The father of the victim girl being P.W. 4 has claimed that his daughter was aged about 17 years at the time of incident. P.W. 4 has handed over the Birth Certificate of the victim girl to the investigating officer as it reveals from the column no. 3 of the seizure list dated 25.07.2022. P.W. 4 has proved his signature on the Zimmanama which was executed at the time of receiving back the said Birth Certificate of the victim girl. The de-facto informant being one of the witnesses of the seizure process of the Birth Certificate proved his signature on the seizure list dated 25.07.2022 which was marked as Exbt. P-3. The Investigating Officer being P.W.10 has proved the the seizure list dated 25.07.2022 which reveals the date of Birth of the victim girl as '02.10.2004', but in course of substantive evidence the father of the victim girl has failed to bring on record the Birth Certificate as a piece of evidence. It is also pertinent to mention here that the second investigating officer being P.W. 10 has admitted during his cross-examination that he did not verify the authenticity of the Birth Certificate of the victim girl from the concerned authority. The seizure list dated 25.07.2022 shows that the date of birth of the victim girl is 02.10.2004 and the date of offence was 24.06.2022 as it reveals from the written complaint which indicates that on the



date of offence the victim girl falls short of almost four months to attain her majority. But the prosecution has failed to bring on record the Birth Certificate of the victim girl as an evidence. In course of substantive evidence, neither the victim girl nor her mother projected the minority of the victim girl on the date of offence. The father of the victim girl being P.W. 4 has affirmed that his daughter was minor on the date of the offence, but he could not say the date of birth of his daughter during his cross-examination.

16.2. Sub Section (2) of Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides the process of age determination with the help of following documents –

- (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available, and in absence thereof;
- (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
- (iii) and only in the absence of of (i) and (ii) above, age shall be determined by an ossification test or any other latest medial age determination test.

The wordings of section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 signifies that Clause (i) excludes the application of Clause (ii) and (iii), and Clause (ii) excludes the application of Clause (iii). Finally in absence of any document as engrafted in Clause (i) and Clause (ii), the process provided in Clause (iii) will be applicable. The victim girl at the inception of her cross-examination divulged that she read up to class XII and she can read and write in English. Such disclosure by the victim girl incites the plausibility of presence of the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, but the investigation fails to collect any such document in course of his examination. Though the investigating officer was not cross examined on this aspect in course of his cross-examination, no such document was ever projected to be seized or collected by the investigating officer in course of his investigating officer. The column no. 5 of the seizure list dated 25.07.2026 (Exbt. P – 9) reveals that the original Birth Certificate of the victim girl was issued by the Birth & Death Registrar of Domohona Gram



Panchayat, but the learned Spl. P.P. has failed to bring on record the said document as evidence in course of evidence. Besides, the investigating officer (P.W. 10) admitted that he did not verify the authenticity of the Birth Certificate of the victim girl from the concerned authority. Accordingly, it would not be safe to draw any inference conclusively in support of minority of the victim girl relying on the date of birth of the victim girl as reflected only in the seizure list dated 25.07.2022.

Issue relating to the kidnapping of the victim girl and her sexual exploitation :-

17. A written complaint is the document on the strength of which the wheel of criminal start rolling. It contains the primary allegations with regard to the commission of an offence which are expected to be within the knowledge of the maker till that time. In this case it has been alleged in the written complaint that on 24.06.2022 at about 4.00 a.m. the victim girl went missing from her home and one missing diary was lodged at 27.06.2022 since till that time the victim girl could not be traced. On 29.06.2022 the victim girl informed her father over telephone that she was wrongfully confined by the accused persons and thereafter a process of recovery of victim girl was initiated. The signature of the victim girl on her Recovery Memo was admitted into evidence from the side of the accused person and the same was marked as Exbt. D1. The recovery memo reveals that the victim girl was recovered on 01.07.2022 at 5.30 a.m. from Domohona Bus Stand which indicates that the victim girl was recovered after eight days. The de-facto informant (P.W.2) deposed that on the night of incident at about 10.00 p.m. his niece went outside their home for the purpose of attending her nature's call, but she did not return. On their failure to trace out the victim girl through out the night, one the next day they went to Karandighi police station and submitted a missing diary. But the written complaint reveals that the missing diary was lodged after three days from the date of missing of the victim girl. The second investigating officer being P.W. 10 at the inception of his cross-examination admitted that in course of his investigation he had not seized the relevant General Diary Entry regarding missing of the victim girl and he also did not collect the said General Diary Entry number. Accordingly, the investigating officer has failed to substantiate the fact of lodging missing diary after the alleged missing of the



victim girl. The de-facto informant also did not mention any General Diary Entry number of the missing diary in his written complaint.

18. It is apposite to mention here that P.W. 2 during his examination-in-chief has deposed that on the next morning they went to Karandighi Police Station and submitted a missing diary. P.W. 2 further claimed that Police ascertained the location of his niece at Murshidabad on the strength of the tower location of the number of his niece which he supplied to police. The written complaint of P.W. 2 is devoid of all these facts. P.W. 2 admitted that he did not mention the phone number of his niece in his written complaint. Surprising to note that none of any other prosecution witness including the investigating officers did not throw any light upon such facts that the location of the victim girl was traced from the tower location of the mobile phone of the victim girl. P.W. 10, the second investigating officer, divulged during his cross-examination that in course of his investigation he did not take any initiative to seize the mobile phone of either the victim girl or any of the accused persons. P.W. 10 further divulged that he did not conduct any independent investigation for ascertaining the place where the victim girl was kept after her alleged kidnapping. Thus all these claims of the de-facto informant regarding identifying the location of the victim girl at Murshidabad on the strength of the tower location of the number of his niece falls short to inspire the confidence of this Court to draw any adverse inference against the accused persons.

19. P.W. 9, the first investigating officer, projected the recovery of the victim girl from Domohona Bus Stand on 01.07.2022 at about 5.30 a.m. In course of his cross-examination P.W. 9 divulged that he went to Domohona Bus stand on 01.07.2022 on the strength of Karandighi PS GD Entry No. 03 dated 01.07.2022 but in column No. 4 of the recovery memo of the victim girl, the GD Entry number is initially strike out which is devoid of my signature. P.W. 9 further admitted that the column no. 10 of the victim recovery memo indicating signature of the witness (either a member of family or a respectable person of the locality) remained blank. He further admitted that in column no. 07 of the victim recovery memo he did not mention the registration number of their vehicle and there is no mentioning of any



lady constable showing her presence therein. P.W. 9 further admitted that after receiving the source information about the whereabouts of the victim girl, he did not intimate the same to the family members of the victim girl. Recovery of the victim girl on 01.07.2022 shows that she was recovered after eight days of her missing, i.e. 24.06.2022. But P.W. 2 claimed in his examination-in-chief that after 4 to 5 days, police recovered his niece and they brought back his niece from police station. The mother of the victim girl, P.W. 3, also corroborated the version of P.W. 2 that her daughter was recovered after 4 to 5 days and they brought back her daughter. To the utter surprise of this Court the victim girl being P.W. 1 in course of her examination-in-chief has informed that she was kidnapped on 26.07.2022 at about 11.00 p.m. to 12.00 p.m. and she was taken by the accused persons at the house of their relative where she was kept for two day. Thereafter the victim girl called her father who went there with the police and recovered the victim girl. On the other hand the victim girl in her statement recorded under section 164 Cr.P.C. (Exbt. P -1) disclosed that on the next day at about 5.00 a.m. police brought her back at Karandighi Police Station and she was brought back to her home by her father from police station. Thus it could be seen that there are discrepancy in the substantive evidence of different witnesses regarding the date of recovery of the victim girl. Moreover P.W. 9, the first investigating officer, projected that he recovered the victim girl from Domohona Bus Stand which also finds support from the victim recovery memo, but even at the cost of repetition I am constrained to point out again that the victim girl disclosed in course of her examination-in-chief that she was taken by the accused persons at the house of their relative where she was kept for two day and thereafter she called her father who went there with the police and recovered the victim girl. The substantive evidence of the victim girl leaves no space for the prosecution to deny this fact in any way her father accompanied with police personnel went at the place of her confinement and recovered her. All these lapses of the investigating officers as well as failure of the prosecution to adduce any corroborative evidence, lead this Court to pause for a moment to rely on the claim of the investigating officer with regard to the date, time and place of the recovery of the victim girl which also weaken the claim of the prosecution in support of the charge under section 363/ 365/ 34 of the I.P.C.



20. At this juncture it would be apt to add here that the victim girl in course of her substantive evidence identified accused no. 2, i.e. Kalam and further went on deposing that he could have identified the other two accused person if they remained present on that day. Such assertion of the victim girl, P.W. 2, signifies that all the three accused persons are known to her before hand. But with the progress of her deposition she disclosed that at the time when he came out from her house for attending her nature's call, Taharul and two others pressed her mouth with a cloth and kidnapped her. This version of P.W. 2 indicates that the other two accused persons were not known to her. The victim girl in her statement recorded under section 164 Cr.P.C. without disclosing the name of any particular person disclosed the presence of a single person who was alleged to kidnap her by pressing her mouth. No other prosecution witnesses could bring on record any substantial evidence which would help the prosecution to entangle the accused no. 2 and 3 with the charges under section 363/ 365/ 34 I.P.C. levelled against them.

21. The principal allegation against the accused no. 1 is that he along with other two accused persons kidnapped the victim girl, took her to the house of his relative and committed penetrative sexual assault upon her. In an offence of rape it is the victim girl who is the prime witness of the case. The victim girl being P.W. 1 has alleged that she was kidnapped by the accused no. 1 and two others who took her to the house of their relative and accused no. 1 committed penetrative sexual assault upon the victim girl therein. Ld. Spl. P.P. also submitted that in order to base an order of conviction in an allegation of rape or sexual exploitation the sole testimony of the prosecutrix is sufficient to warrant a conviction. It is also vociferously argued that the substantive evidence of a prosecutrix shall prevail even in absence of corroborating medical evidence.

22. Now, we need to ascertain the veracity and credibility of the allegations of penetrative sexual assault against the accused no. 1. Upon hairsplitting analysis of the substantive evidence of P.W. 1, i.e. the victim girl, it appears that she did not disclose before the learned Magistrate at the time of her recording statement that at what time she came out from her home for attending her nature's call, or that who pressed her mouth and kidnapped her, or that Taharul and two others



kidnapped her, or that she called her father over the phone. All these facts were surfaced in course of examination-in-chief of the victim girl which she has failed to disclose before the learned Magistrate at the time of recording her statement at the earliest possible opportunity. The statement of the victim girl recorded under section 164 Cr.P.C. (Exbt. P - 1) reveals that she did not disclose the name of any of the accused persons therein and she had disclosed the presence of only one person at the time of her kidnapping. The victim girl in her examination-in-chief has unequivocally pointing towards the accused no. 1 who was projected to commit rape upon her, but in her statement under section 164 Cr.P.C. the victim girl without specifying the name of any person has disclosed that two persons committed rape upon her. In support of the substantive evidence of the victim girl, P.W. 2, i.e. de-facto complainant, disclosed that on being asked, his niece disclosed before him that that Taharul committed rape upon her, but surprising to note here that the parents of the victim girl did not disclose anything corroborating this facts in any way. The mother of the victim girl being P.W. 3 at the inception of her brief cross-examination has divulged that after returning home her daughter did not disclose anything before her. The father of the victim girl being P.W. 4 has deposed that after recovery on being asked his daughter divulged that she was kidnapped on the day of incident. Hence, apart from P.W. 2, i.e. the uncle of the victim girl, none of the prosecution witnesses corroborated the claim of the victim girl with regard to her allegation of rape. Needless to mention here that P.W. 2 is a hearsay witness with regard the allegation of rape which he claimed to hear from the victim girl, but the victim girl did not disclose anything corroborating the claim of P.W. 2 that she disclosed about the incident before her uncle. Thus in this case apart from the sole testimony of the victim girl, there is no other witness corroborating the involvement of the accused no. 1 in the offence of penetrative sexual offence.

23. Learned Special P.P. draws attention of this Court towards the medical report of the victim girl and the substantive of evidence of Dr. Zeenatun Nisha and submitted that the cumulative effect of such evidence unequivocally established the offence of penetrative sexual assault upon the victim girl by the accused person. It is further pointed out that the hymen of the victim girl was found to be



raptured at the time of her medical examination which without any ambiguity establishes the offence of penetrative sexual assault. Dr. Zeenatun Nisha examined the victim girl in course of investigation and she was examined as P.W. 8 by the learned Spl. Public Prosecutor. The medical report and treatment sheet of the victim girl prepared by P.W. 8 are admitted into evidence and the same are marked as Exbt. P – 5 and Exbt. P – 6 respectively. P.W. 8 in course of her chief deposed that on 01.09.2022 she was posted at Islampur Super Speciality Hospital as Medical Officer and on that day, she examined the victim girl of this case. After examining the victim girl P.W. 8 found that the hymen of the victim was ruptured. P.W. 8 also prescribed some tests upon the treatment sheet of the victim girl. During cross-examination P.W. 8 admitted that the victim was produced before her after two months of the alleged incident and there is no mentioning in her report explaining the reasons of delay for producing the victim girl for her medical examination. P.W. 8 further admitted that in course of his examination neither the victim girl nor her mother disclosed the name of the person who allegedly exploited her and they also did not disclose about the place of alleged occurrence. In a significant move P.W. 8 admitted that the hymen of a girl may be ruptured for several reasons other than coitus and the Investigating officer of this case did not produce any test result before her as P.W. 8 prescribed. P.W. 8 further admitted that she did not find any sign of recent sexual intercourse upon the victim girl. The substantive evidence of P.W. 8 could not help the prosecution to strengthen the claim of the victim girl regard to her sexual exploitation. Here also the victim girl has failed to disclose the name of the perpetrator before the doctor and divulged before her that she was sexually assaulted two months back. P.W. 8 admitted that the victim was produced before her after two months of the alleged incident. P.W. 10, the second investigating officer, in course of his cross-examination divulged that while explaining the reasons of his delay in conducting medical examination of the victim girl by saying that initially the victim girl refused to go through any medical examination, but subsequently she was medically examined after two months of the lodging of written complaint. This fact was also remained unexplained by the prosecution justifying the reasons of such inordinate delay which might have the effect of destroying or contamination of important evidence.



24. It is no more *res integra* that it is not always necessary to seek corroboration with regard to the evidence of the victim girl in an offence of rape or sexual exploitation, but it is also settled principle of law that in order to base a conviction of the accused in an offence of penetrative sexual assault relying only on the sole testimony of the victim girl, it must inspire the confidence of the Court beyond all shades of reasonable doubt. This view of mine gains support from the solemn decision of the **Hon'ble Supreme Court in Rai Sandeep @ Deepu Vs. State (NCT of Delhi)** reported in (2012)8 S.C.C. 21, wherein the Hon'ble Apex Court has been of the view –

“In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by



the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

25. The Hon’ble Apex Court has further been pleased to reiterate the same principle as noted above in a recent decision in Criminal Appeal No. 264 of 2020 (Arising out of SLP(Criminal) No. 3780/ 2018) between Santosh Prasad @ Santosh Kumar Vs. The State of Bihar, decided on 14th February, 2020.

26. Thus it is axiomatic from the substantive evidence of P.W. 1 that she divulged different version at different times. P.W. 1 immediately after the incident did not disclose all those facts with minute details which she has disclosed in course of her examination-in-chief. She materially developed her version in course of her substantive evidence before this Court. The prosecution also has not explained the reasons of delay or refusal of the victim girl to go through her medical examination at the earliest possible opportunity which would be effective in securing the best evidence. All these contradictions and discrepancies in the testimony of the victim girl pulls this Court back to rank the victim girl within the category of a ‘sterling witness’ and hence, it would not be safe to draw any adverse inference against the accused no. 1 relying on the sole testimony of the victim girl.

27. At this juncture it would be pertinent to point out some more aspects which affect the prosecution to prove the foundational facts of their contentions. Ld. Spl P.P. has examined three co-villagers of the de-facto informant being independent witnesses, namely, Mortuza, Alam and Gulfaraz who are examined as P.W. 5, P.W. 6 and P.W. 7 respectively. P.W. 5 deposed that one day in the morning he heard that the niece of the defacto complainant was either taken by someone or she eloped on the last night. P.W. 6 deposed that one day in the morning he heard that the niece



of the defacto complainant was eloped with someone last night and P.W. 7 asserted that one day in the morning he heard that the niece of the defacto complainant was taken by someone on the last night. Surprising to note that all the three independent witnesses were not sure about the exact incident. Though the consent of a minor carries hardly any value in the eye of law even if the victim girl eloped with the accused no. 1, there seems to be no consistency in the substantive evidence of the independent witnesses corroborating the principal allegations of the prosecution versions.

28.1. Ld. Spl. P.P. placed his another forceful submission relying on the statutory provision of section 29 of the POCSO Act and submitted that the victim girl stood tall even after lengthy cross-examination and the credit of her testimony could not be impeached by way of her cross-examination. It is further placed on record that the prosecution successfully establishes the foundational facts of the entire set of events which activated the presumption as engrafted in section 29 of the POCSO Act, but the accused persons have failed to discharge their burden of proof to rebut the effect of presumption. Ld. Spl. P.P. draws attention of this Court to the statutory presumption as engrafted in Section 29 of the POCSO Act, 2012, and submitted that in a prosecution under Section 3, 5, 7 and Section 9 of this act, the defence has to prove that they have not committed the offence as alleged by the prosecution. Ld. Spl. P.P. further submitted that Section 29 of the POCSO Act, 2012 incorporates the principle of the doctrine of *reverse burden* wherein the defence side has to prove by adducing positive evidence that they have not committed the offence as alleged. At this juncture it would be apt to quote section 29 of the Act which reads as follows -

“29. Presumption as to certain offence.– Where a person is prosecuted for committing or abetting or attempting to commit any offence under section 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.”

The presumption as engrafted in Section 29 of the POCSO Act, 2012 is a rebuttable presumption of law and the Court shall presume the fact of commission of the offence by the accused person unless the contrary is proved either by



leading defence evidence or, by discrediting or impeaching the credit of the prosecution witnesses. This does not mean that the statutory presumption under Section 29 of this Act absolves the prosecution from its duty to prove its own case first. The statutory presumption under this Act would thus get activated only when the prosecution prima facie discharges its burden to shift the onus on the shoulder of the defence.

28.2. In Sahid Hossain Biswas Vs State Of West Bengal, reported in (2017) 2 C.Cr.L.R. (Cal) 467, The Hon'ble High Court, at Calcutta has been pleased to opine –

“Once the foundation of the prosecution case is laid by leading legally admissible evidence, it becomes incumbent on the accused to establish from the evidence on record that he has not committed the offence or to show from the circumstances of a particular case that a man of ordinary prudence would most probably draw an inference of innocence in his favour. The accused may achieve such an end by leading defence evidence or by discrediting prosecution witnesses through effective cross-examination or by exposing the patent absurdities or inherent infirmities in their version by analysis of the special features of the case. However, the aforesaid statutory presumption cannot be read to mean that the prosecution version is to be treated as gospel truth in every case. The presumption does not take away the essential duty of the Court to analyse the evidence on record in the light of the special features of a particular case, e.g. patent absurdities or inherent infirmities in the prosecution version or existence of entrenched enmity between the accused and the victim giving rise to an irresistible inference of falsehood in the prosecution case while determining whether the accused has discharged his onus and established his innocence in the given facts of a case. To hold otherwise, would compel the Court to mechanically accept the mere *ipse dixit* of the prosecution and give a stamp of judicial approval to every prosecution, howsoever, patently absurd or inherently improbable it may be.”

28.3. In another case between Subrata Biswas and another Vs State of West Bengal, reported in (2019)3 C.Cr. L.R. (Cal) 331, The Hon'ble High Court, at



Calcutta has further been pleased to observe –

“21. The statutory presumption applies when a person is prosecuted for committing offence under Section 5 and 9 of the Act and a reverse burden is imposed on the accused to prove the contrary. The word “is prosecuted” in the aforesaid provision does not mean that the prosecution has no role to play in establishing and/or probablising primary facts constituting the offence. If that were so then the prosecution would be absolved of the responsibility of leading any evidence whatsoever and the Court would be required to call upon the accused to disprove a case without the prosecution laying the firm contours thereof by leading reliable and admissible evidence. Such an interpretation not only leads to absurdity but renders the aforesaid provision constitutionally suspect. A proper interpretation of the said provision is that in a case where the person is prosecuted under Section 5 and 9 of the Act (as in the present case) the prosecution is absolved of the responsibility of proving its case beyond reasonable doubt. On the contrary, it is only required to lead evidence to establish the ingredients of the offence on a preponderance of probability. Upon laying the foundation of its case by leading cogent and reliable evidence (which does not fall foul of patent absurdities or inherent probabilities) the onus shifts upon the accused to prove the contrary.”

Thus from the above noted solemn decisions of the Hon’ble High Court, at Calcutta it is crystal clear that the prosecution has to prove it’s own case by preponderance of probability and thereafter the burden shifts upon the shoulder of the accused person to disprove the allegations levelled against him.

28.4. Upon careful scrutiny of the substantive evidence of the victim girl it appears that she has principally alleged that the accused persons kidnapped her while she was attending her nature’s call and thereafter she was raped by the accused no. 1 at the house of his relative. The victim girl materially developed her version at the time of her substantive evidence before this Court. She has omitted to disclose many essential facts before the learned Magistrate at the earliest possible opportunity. Initially the victim girl refused to go through any medical examination and after two months she agreed to get her examined medically. The parents of the victim girl did not corroborate the version of the victim girl and the



de-facto informant being uncle of the victim girl fails to inspire the confidence of this Court with the help of his substantive evidence since it is full of exaggeration and embellishment. It is no more *res integra* that in an allegation of sexual offence the sole testimony of the prosecutrix is sufficient to base a conviction even there was no corroboration by the independent witness, but in that case the testimony of the prosecutrix must be unflinching and unassailable which is lacking in the present case. The substantive evidence of the victim girl is full of contradiction. Thus, in light of such material discrepancies and inconsistencies emerging in the substantive evidence of the victim girl, this Court is constrained to pause for a moment and carefully evaluate whether her testimony can be placed on the pedestal of a witness of sterling quality. The presence of such infirmities renders it unsafe to implicitly rely upon her sole testimony. Consequently, this Court is of the considered view that it would not be prudent to draw any adverse inference against the accused person solely on the basis of the uncorroborated testimony of the victim girl.

29.1. Ld. Defence Counsel emphatically submitted that the date of incident was claimed to be on 24.06.2022 and the F.I.R. was lodged after eight days on 01.07.2022. Ld. Defence Counsel submitted that there was no explanation justifying the delay in setting the criminal law in motion. Ld. Spl. P.P. has submitted that initially a Missing Diary was lodged immediately after the incident and thereafter as soon as the de-facto informant came to know about the involvement of the accused persons, he lodged complaint on 01.07.2022. Accordingly it is projected that such delay should not be a ground to disbelieve the prosecution version.

29.2. Ld. Special P.P. referred one solemn decision in support of his contention reported in **AIR 2001 S.C. 2075, (State of H.P. Vs Gian Chand)**, wherein the **Hon'ble Apex Court** has been pleased to opine –

“Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the First Information Report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay,



and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”

29.3. In **Silak Ram Vs State of Haryana**, reported in **AIR 2007 S.C. 2739**, the Hon’ble Apex Court has reiterated the same principle by holding that –

“Delay in lodging FIR by itself would not be sufficient to discard the prosecution version unless it is unexplained and such delay coupled with the likelihood of concoction of evidence. There is no hard and fast rule that delay in filing FIR in each and every case is fatal and on account of such delay prosecution version should be discarded. The factum of delay requires the court to scrutinize the evidence adduced with greater degree of care and caution.”

29.4. The Hon’ble Supreme Court of India has further been pleased to reiterate the same view in **Gowrishankara Swamigalu Vs State of Karnataka and another**, reported in **AIR 2008 S.C. 2349**.

29.5. Considering the principle laid down by the Hon’ble Apex Court in the above noted solemn decisions it is crystal clear that mere delay in lodging the FIR is not ipso facto a ground to doubt the prosecution version, rather it cast a duty upon the Court to see that whether such delay is properly explained or not and is there any possibility of embellishment or exaggeration in the prosecution version on account of such delay. Now it is to be considered in the light of the evidence on record that whether the prosecution satisfactorily explained the delay in setting the law in motion.

29.6. Be it noted here that the de-facto informant did not offer any explanation with an effort justifying the inordinate delay of lodging complaint at police station. It is trite law that a written complaint is not a substantive piece of evidence and it



can be used only for the purpose of corroboration or contradiction of its maker. First of all here it is note worthy that the date of incident was 24.06.2022, but P.W. 2 claimed to lodge his Missing Diary on 27.06.2022 after three days. None of the prosecution witnesses has ever tried to give any explanation to justify such delay. Thereafter it has been specifically mentioned in the written complaint that on 29.06.2022 at about 1.00 p.m. the victim girl called her father over phone informing him about her kidnapping and wrongful confinement and immediately thereafter the de-facto complainant claimed to visit the house of the accused persons wherein accused no. 2 admitted the fact of kidnapping. The accused no. 2 also informed that the accused no. 1 has already shifted somewhere else with the victim girl which signifies that the de-facto informant came to about the involvement of the accused person in the afternoon of 29.06.2022, but he chose to wait till 01.07.2022. The informant lodged his complaint at 12.05 a.m. on 01.07.2022. Here it is already discussed above relying on the principle laid down by the Hon'ble Apex Court that delay in lodging F.I.R. is not a ground ipso-facto to disbelieve the prosecution version in its entirety, but here in the instant case the possibility of embellishment or exaggeration in the prosecution version due to delay without cogent explanation can not be ruled out as no reasonable explanation has surfaced from the mouth of the prosecution witnesses. Accordingly, such inordinate delay in lodging complaint even after knowing the names of the perpetrators cause a dent in the case of the prosecution which tilts the balance in the present case in favour of the accused persons.

30. Thus borrowing wisdom from of the above noted solemn decisions, I am of the considered view that here in the instant case in hand the prosecution has failed to prove the allegations levelled against the accused persons by preponderance of probability for the reasons which have already been discussed in detail above. It is also pertinent to adhere that the investigating officers of this case were examined by the Ld Special P.P. as P.W. 9 and P.W. - 10 and in course of his examination-in-chief they categorically disclosed the development of their investigation step by step. They also proved the formal FIR, rough sketch map and seizure list showing seizure of Birth Certificate, but all these steps taken by them does not improve the stand of the prosecution in any way.



31. Having considered the entire set of facts of the present case, the principles of law and borrowing wisdom from the principles as laid down by the Hon'ble Courts in all the above noted solemn decisions, I am of the view that evidences relied on by prosecution in establishing guilt of accused person fall short to draw an inevitable inference of guilt of the accused persons for the charges levelled against them. In other words, prosecution has not been able to prove by preponderance of probabilities that the accused persons, namely, Md. Taharul, Kalam and Md. Rahul, had first committed kidnapping and thereafter accused no. 1 committed penetrative sexual assault upon the victim girl. There are sufficient contradictions as well as major improvements and/or embellishment in the prosecution case which restricts this Court to draw an adverse inference against the accused persons. Resultantly the prosecution has failed to bring home the charges levelled against the accused persons.

32. In short, the case of the prosecution fails.

33. At this juncture, it would be apt to mention here that as the prosecution has failed to establish the charge of kidnapping and penetrative sexual assault and the prosecution also did not bring on record in support of any kind of mental trauma or rehabilitation of the victim girl in consequence of such alleged exploitation in the instant case, which would impel this Court to consider the aspect of granting compensation to the victim girl on account of her physical and mental trauma in view of the provisions as engrafted in sub section (8) of section 33 of the POCSO Act read with rule 9 of the Protection of Children from Sexual Offences Rules, 2020. Accordingly, this Court is of the considered view that the victim girl is not entitled to get any compensation in this case.

34. Hence, it is -

ORDERED

that all the three accused persons, namely, Md. Taharul, Kalam and Md. Rahul are found not guilty of the charge under Section 363/ 365/ 34 of the Indian Penal Code, 1860 and the accused person Md. Taharul is not found guilty of the charge under section 4 of the Protection of Children from Sexual Offences Act,



2012 and accordingly the accused persons are hereby acquitted from their respective charge under Section – 363/ 365/ 34 of the I.P.C. and under section 4 of the POCSO Act in terms of Section- 235 (1) of the Code of Criminal Procedure, 1973.

All the three accused persons be set at liberty at once.

All the three accused persons will remain on the existing bail bond for six months from this day in compliance of the provisions of Section – 437A of the Code of Criminal Procedure, 1973.

The Seized articles, i.e. the Birth Certificate of the victim girl be handed over to the victim girl as per existing rules after expiry of the statutory period of appeal, if not already done.

The victim girl is not entitled to get any compensation in view of the discussions made in the body of this judgment.

Note in the relevant register.

Upload in the C.I.S.

In compliance to the Order of the Hon'ble High Court at Calcutta dated 29.03.2022 in C.R.A being No. 266 of 2020 with C.R.A.N 01 of 2020, let a copy of this Judgment be sent to the District Magistrate, Uttar Dinajpur and Ld. Secretary, D.L.S.A., Uttar Dinajpur at Raiganj to their official e-mails for their information and due compliance in terms of aforementioned Order of the Hon'ble High Court.

The de-facto Complainant, although is not present today, has right to prefer an appeal under Section 372 of the Cr.P.C. and, if necessary, he can avail free legal assistance through the legal services authorities concerned to prefer and prosecute such appeal.

Dictated & Corrected by me.

(PLABAN MUKHERJEE)
Additional Sessions Judge,
cum Special court (POCSO Act)
Islampur, Uttar Dinajpur,

(PLABAN MUKHERJEE)
Additional Sessions Judge
cum Special court (POCSO Act)
Islampur dt 24.06.2026