



Scan this QR code with mobile app
“eCourts Services” to get more details

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 -27th day of April, 2026

Case No: POCSO Case No. 11 of 2025

TR. No. 26 of 2025

[Arising out of Dalkhola P.S. Case No. 25/2025 dated. 04.02.2025]

CNR Number : WBUD05-000193-2025

[J.O. Code- WB01427]

Complainant :	State of West Bengal
Represented by :	Ld. P.P. in-Charge - Mukhtar Ahmed
Accused person:	1. Ajahar Ali 2. Salauddin 3. Firoj
Represented by :	Ld. Advocate – Samser Alam

FORM – B

Date of Offence	03/02/2025
Date of FIR	04/02/2025
Date of Charge-sheet	31/03/2025
Date of Framing of Charges	14/07/2025
Date of commencement of Evidence	25/09/2025
Date on which Judgment is reserved	22/04/2026
Date of the Judgment	27/04/2026
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.	Ajaha Ali	09.02.2025	04.03.2025	Section 8 of POCSO Act.	Acquitted	N.A.	N.A.
2.	Salauddin	22.02.2025	04.03.2025	Section 8 of POCSO Act.	Acquitted	N.A.	N.A.
3.	Firoj	Surrendered on 17.03.2025	19.03.2025	Section 8 of POCSO Act.	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	Mother of the Victim girl	De-facto Complainant
P.W. 2	The Victim girl	The Victim girl
P.W. 3	SI Md. Nasim Hezzaz	Police Witness (Investigating Officer)
P.W. 4	Md. Taimul	Other Witness
P.W. 5	Nayera Bibi	Other Witness
P.W. 6	Father of the Victim Girl	Father of the Victim Girl

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:**

Sr. No.	Exhibit Number	Description
1.	Exbt. P - 1	The Written Complaint
2.	Exbt. P-1/1	Endorsement of the Recording Officer on the written complaint
3.	Exbt. P-2	Signature of P.W. 1 on the Seizure list dated 04.02.2025
4.	Exbt. P-2/1	The Seizure list dated 04.02.2025
5.	Exbt. P-2/2	Signature of P.W. 5 on the Seizure list dated 04.02.2025
6.	Exbt. P-3	Signatures of P.W. 1 on the medical document.
7.	Exbt. P-4	Signature of P.W. 1 on the seizure list dated 07.02.2025
8.	Exbt. P-4/1	The seizure list dated 07.02.2025
9.	Exbt. P-5	The statement of the V.G. recorded u/s 164 of the Cr.P.C.
10.	Exbt. P-6	Formal FIR
11.	Exbt. P-7	Rough Sketch Map with Index
12.	Exbt. P-8	Carbon copy of seizure list dated 16.02.2025

B. Defence: NIL

Sr. No.	Exhibit Number	Description

C. Court Exhibits: NIL

Sr. No.	Exhibit Number	Description

D. Material Objects:

Sr. No.	Material Object Number	Description

J U D G M E N T

1. All the three accused persons, namely, Ajahar Ali, Salauddin and Firoz stood the trial to answer the charge under Section 8 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 wheel of criminal law was set in motion on the written complaint filed by the mother of the victim girl at Dalkhola Police Station alleging, inter alia, that his daughter aged about 16 years is a student of class IX and on the way of returning home from her school she boarded on the Toto of Firoz. After some time other two accused persons also boarded on the same Toto of Firoz and started proceeding towards the opposite direction from the house of the victim girl. Being apprehensive the victim girl raised hue and cry and then the accused persons assaulted the victim girl by the side of the road and also outraged her modesty. It is further alleged that the accused persons snatched her bag, mobile phone and Rs. 1000/- from the victim girl which she had for the purpose of buying books. It is further alleged that as soon as some persons arrived there from opposite direction, the accused person having no other alternative fled away and those persons took the victim girl to her home. Accordingly, the mother of the victim girl had lodged the complaint at Dalkhola P.S. with a request to take legal action against the accused persons.

3. On the basis of the said written complaint, Dalkhola Police Station Case No. 25 of 2025 dated 04/02/2025 under sections 303(2)/ 3(5) of the I.P.C and section 8 of the POCSO Act was started against the three accused persons, namely, Firoz, Ajahar and Salauddin and the then Officer-in-charge of Dalkhola Police Station entrusted the case to S.I. Md. Naseem Hezzaz for investigation.

4. The investigation culminated into filing of charge sheet against all the three accused persons under Sections 126(2)/ 115(2)/ 3(5) of the I.P.C. and section 4/ 10 of the POCSO Act on the strength of Dalkhola P.S Charge Sheet No. 63/ 2025 dated 31/03/2025. Accordingly, cognizance of offence was taken under section 190(1)(b) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C. ') read with section 33 of the POCSO Act on the basis of the police report on 07.04.2025. Copies of the papers referred to in Section 193 of B.N.S.S. were supplied to the accused persons in compliance with the mandate under section - 207 of Cr.P.C.

5. This Court on 14/07/2025 framed charge against all the three accused persons, namely, Firoz, Ajahar Ali and Salauddin under section 8 of the POCSO Act. Charge was 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 six witnesses out of thirteen 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 persons were examined under section 313 of Cr.P.C. read with Section 281 of Cr.P.C on 24-02-2026. 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 his 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 person committed sexual assault of the victim girl?

b) Whether the prosecution has been able to prove the charges against the accused person 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.

11. 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 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 other prosecution witnesses which connect the accused persons with the offence.
- d) It is further put forward that all the prosecution witnesses consistently divulged against the accused persons by disclosing about the incident, which left no space to dispute the involvement of the accused persons and the accused persons also have materially failed to discharge their burden of proof to rebut the presumption as engrafted in section 29 of the POCSO Act.

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

- a) Learned Defence Counsel submitted that none of the witnesses has been able to bring any specific allegation against the present accused persons.
- b) It is further submitted that none of the witnesses corroborates 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 witness deposed anything which would go against the accused persons;
- d) 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.

13. Charges were framed against the accused persons under section 8 of the POCSO Act. 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.

14. Section 8 of PocsO Act provides punishment for an offence of Sexual Assault. Section 7 of PocsO Act defines the term 'Sexual Assault' in the following words :-

“7. Sexual assault.- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

The definition of sexual assault makes it clear that mere physical contact with the victim child with sexual intent attracts the requirement of the offence of sexual assault. Now we are to see how far the prosecution has been able to prove the requirements of Section- 8 of POCSO Act.

15. In the present case the wheels of criminal law started rolling on the written complaint filed by the mother of the victim girl resulting in initiation of Dalkhola P.S. Case no. 25 of 2025. The de-facto informant identified her signature on the written complaint in course of her examination-in-chief and further went on deposing that one Swapan Adhikary had lent his pen to write her written complaint as per her instruction and she put her signature on the written complaint. Learned Spl. P.P. did not take any initiative to prove the written complaint as per the procedure known to the law by examining the said scribe of the complaint. Now, it has been specifically described in the written complaint that the daughter of the de-facto informant aged about 16 years is a student of class IX and on the way of returning home from her school she boarded on the Toto of Firoz. After some time other two accused persons also boarded on the same Toto of Firoz and started proceeding towards the opposite direction from the house of the victim girl. Being apprehensive the victim girl raised hue and cry and then the accused persons assaulted the victim girl by the side of the road and also outraged her modesty. It is further alleged that the accused persons snatched her bag, mobile phone and Rs. 1000/- from the victim girl which she had for the purpose of buying books. It is further alleged that as soon as some persons arrived there from opposite direction, the accused person having no other alternative fled away and those persons took the victim girl to her home. Upon careful scrutiny of the substantive evidence of the de-facto informant it appears that the de-facto informant being P.W. 1 has deposed that at about one year one month and eight days ago her

daughter was going to attend her tuition in the Toto of Firoz and at that time it seemed to her daughter that Firoz might take her to other place beyond her knowledge. P.W. 1 further went on deposing that for that reason being apprehensive her daughter alight from the Toto and returned home and after returning home, she disclosed about the incident before P.W. 1. Such disclosure by the de-facto informant during her examination-in-chief reveals that it does not support of the content of the written complaint in any substantial manner. 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 contradiction and corroboration of its maker. Accordingly, failure of P.W. 1 to corroborate the content of her written complaint substantially during her substantive evidence caused a dent in the case of the prosecution which tilt the balance in favour to the accused persons in the present case. It is also pertinent to note here that during cross-examination P.W. 1 divulged that she cannot say the content of the written complaint at present.

16. Learned Spl. P.P. drew attention of this Court towards the substantive evidence of the victim girl who was examined as P.W. 2. It was also pointed out that P.W. 2 specifically deposed that on the day of the incident at about one year ago she was returning home from her tuition in the Toto of Firoz and at that time it seemed to her that Firoz might not take her to her home and for that reason being apprehensive P.W. 2 alight from the Toto and returned home. P.W. 2 further disclosed that after returning home she disclosed about the incident before her mother. It is apposite to note here that it is the victim girl who is the best witness to depose about the incident which she had to face due to immoral act of the accused persons. In this case the victim girl has been examined as P.W. 2 and her statement was also recorded under section 164 of the Cr.P.C. which was also admitted into evidence and marked as Exbt. P – 5. Upon careful scrutiny of the statement of the victim girl recorded under section 164 Cr.P.C. it appears that she has narrated about the incident at that point of time with all minute details, but she has failed to corroborate the same at the time of her substantive evidence before this Court. The victim girl though disclosed about the incident in course of her examination in chief, that stood far from her disclosure before the learned Magistrate. It is no more res integra that a statement under section 164 of the Cr.P.C. is also not a substantive evidence and it can be used only for the purpose of corroboration and contradiction of it maker. Hence, the disclosure of the victim girl in her statement under section 164 of the Cr.P.C. proved to be futile in absence of sufficient corroboration. Learned Spl. P.P. examined two independent witnesses in support of the case of the prosecution being P.W. 4 and P.W. 5. Both of those witnesses deposed in the same line more or less. P.W. 4, Md. Taimul, deposed that at

about one year ago he heard that oen dispute took place in between Salauddin and the victim girl. On the other hand P.W. 5, Nayera Bibi has deposed that one dispute took place while the victim girl was returning from her tuition by the Toto of the accused persons. Both these witnesses have disclosed about the existence of the dispute in between the victim girl and the accused persons, but they could improve the stand of the prosecution in any substantial manner. Upon careful scrutiny of the substantive evidence of P.W. 4 and P.W. 5, it appears that both of them are hearsay witness and they did not personally witness the incident. It is also apt to mention here that the learned Spl. P.P. did not take any initiative to show that substantive evidence of P.W. 4 and P.W. 5 fall within the exceptional circumstances under which a hearsay evidence becomes admissible. Thus substantive evidence of P.W. 4 and P.W. 5 makes it limp that none of the independent witnesses deposed anything which would help to establish the guilt of the accused persons as alleged.

17. Learned Spl. P.P. submits that the de-facto informant clearly divulged that on the day of the incident at about one year ago she was returning home from her tuition in the Toto of Firoz and at that time it seemed to her that Firoz might not take her to her home and for that reason being apprehensive P.W. 2 alight from the Toto and returned home and such allegation is sufficient to trigger the presumption against the accused persons under section 29 of the POCSO Act, which the accused persons fails to rebut in any way. 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. Section 29 of the Act 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.

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.”

18. 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 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 persons to disprove the allegations levelled against them. 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.

19. Thus, giving due consideration to the whole materials on record and cumulative effect of the above discussion including borrowing wisdom from the above referred solemn decisions of the Hon’ble Court, I am of the considered view that the prosecution has not been able to prove the charges levelled against the accused persons beyond all shades of reasonable doubt. 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 failed to bring home the charges of hurt and sexual assault, levelled against the accused persons.

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

21. At this juncture, it would be apt to mention here that neither the victim girl nor any other witness for the prosecution could either substantiate the contention of the written complaint or justify the charges levelled against the accused persons in course of trial, 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.

22. Hence, it is -

ORDERED

that the accused persons, namely, Firoz, Salauddin and Ajahar Ali are found not guilty of the charge under Section - 8 of the Protection of Children from Sexual Offences Act, 2012 and accordingly the accused persons are hereby acquitted from their respective charge under Section 8 of the POCSO Act in terms of Section- 235 (1) of the Code of Criminal Procedure.

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.

Seized articles, if any, be destroyed after expiry of the statutory period of appeal, if required.

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.

Let a copy of this judgment be sent to the District Magistrate, Uttar Dinajpur and the Ld. Secretary of District Legal Services Authority, Uttar Dinajpur at Raiganj for their information and also for information to the de-facto informant.

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. 27.04.2026