

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Rai Chattopadhyay**

**C.R.A. 466 of 2015
Sandipan Roy
Versus
The State of West Bengal.**

For the Appellant : Mr. S.M. Obaidullah,
Mr. Prasanta Kr. Banerjee,
Mr. Roni Chowdhury,
Mr. T. Khan,
Mr. Tamal Mukhopadhyay.

For the State : Mr. Debasish Roy, Id. P.P.,
Mr. Partha Pratim Das,
Mr. Abhisek Verma.

For the De facto Complainant: Mr. Shankar Maity.

Hearing concluded on : 28.10.2025, 04.11.2025, 20.11.2025 and
09.04.2026.

Judgment on : 9th April, 2026.

Rajasekhar Mantha, J.:

1. This Court has heard the learned counsel for the appellant in details. The victim girl and her mother, de facto complainant have also been heard. Counsel for the State has also made submissions.

2. The subject appeal is directed against judgment and order of conviction dated **31st March, 2015 and 1st April, 2015** passed by the learned **Additional District & Sessions Judge, 2nd Court, Darjeeling** in **Sessions Trial No. 45 of 2014** arising out of **Sessions Case No. 50 of**

2014. The appellant was convicted under Section 376(2)(f)(n) of the IPC read with Section 4 of the POCSO Act, 2012.

THE PROSECUTION CASE, THE EVIDENCE ON RECORD AND ANALYSIS OF THIS COURT

3. The prosecution case in brief is that the appellant is the husband of oldest sister of the victim. The appellant is a cook by profession. The parents of the victim girl are daily labourers engaged in collecting stones from a riverbed nearby their house.

4. It is the prosecution case as established from the evidence on record that sometimes in November, 2013 after the “Dewali Festival”, the appellant came to the house where the victim lived with her parents. The parents were away on work. The appellant thereafter committed sexual intercourse on the victim against her wishes. The said offence continued on repeated occasions, thereafter whenever the appellant found the victim alone at home.

5. When the victim discovered that she is pregnant, and upon aggressive questioning by her mother, she disclosed the conduct and offence committed by the appellant on her. The appellant upon being called by the father of the victim, did not turn up.

6. A complaint was lodged with the Matigara Police Station on 24th February, 2014 whereupon formal FIR was registered being No. 87 of 2014 dated 24th February, 2014 under Section 376(2)(f) of the IPC and Section 4/6 of the POCSO Act, 2012.

7. After investigation, charge sheet was submitted by the police. The evidence included the statement of the victim under Section 164 of the Cr. P.C. that was brought on record. Charges were framed against the appellant on 7th August, 2014 by the Trial Court under Section 376(2)(f) (n) of the IPC and Section 4 of the POCSO Act, 2012.

8. **PW-1, Smt. Sumati Mondal**, was the mother of the de facto complainant on whose instruction one Dinabandu Adhikari wrote the complaint. She, however, could not recall the date of birth of the victim. She only stated that the victim was only 17 years old at the time of the first offence by the appellant. She deposed entirely on the lines of the entire prosecution case as described hereinabove.

9. **PW-2** was the victim herself. Her deposition and evidence was clearly on the lines of the prosecution case. However, in the statement under Section 164 of the Cr. P.C. which is proved and exhibited, the victim stated that she was sexually assaulted by the appellant since October, 2013. She identified the signature on the consent for medical examination and the medical report.

10. **PW-3, Sankar Mondal**, was the father of the victim.

11. **PW-5, Dr. Anurup Saha**, who examined the appellant and found him capable of physical relations.

12. **PW-6, Dr. Rumi Maitra** examined the victim at the North Bengal Medical College and Hospital. She found that the victim was carrying the foetus that was 17-weeks old. The other detailed description of condition

of the private parts of the victim indicated that the victim was habituated to physical relation.

13. **PW-7, S.I. J.K. Roy**, was the Investigating Officer who narrated the entire process of the investigation leading to the charge sheet. The appellant examined one witness **DW-1** who was a retired Medical Doctor from North Bengal Medical College and Hospital. He, however, confirmed the medical report of PW-6 on his examination and in answer to the questions put by the Trial Court.

14. The learned Trial judge based on the evidence on record found that the appellant was guilty of offence under Section 376(2)(f)(n) being a relative and brother-in-law of the victim and in whom the victim saw the trustworthy relationship. The reason for the victim not disclosing the first offence by the appellant to her parents is, therefore, established. In addition thereto, it has come on record from the evidence of the victim that she was threatened if she discloses the incident to her parents, latter would be killed by the appellant.

15. It is true that the birth certificate of the victim was not produced in evidence, however, the evidence of the victim, her mother and father and the medical report as also the statement under Section 164 of the Cr. P.C. clearly established that the victim was 17 years old and hence a minor attracting the provisions of Section 4/6 of the POCSO Act, 2012.

16. In the facts and circumstances aforesaid and the fact that the defence did not even suggest to the victim that she had physical relations

with any other person, the case against the appellant is clearly established and the conviction of the appellant under Section 376(2)(f)(n) of the IPC read with Section 4 of the POCSO Act, 2012 calls for no interference.

17. Learned counsel for the de facto complainant victim and her mother has submitted that the victim is now married and well-settled in life. They do not, therefore, wish to press the complaint any further. This is not possible since the trial has occurred and the appellant has been convicted and sentenced to life imprisonment.

18. It is further submitted that the absence of the appellant has seriously prejudiced his wife and children. The de facto complainant through her counsel has pleaded that the victim has suffered enough.

19. Having regard to the submissions made on specific instructions by the de facto complainant/victim and the mother of the victim through their counsel, this Court is of the view that the quantum of punishment imposed on the appellant by the Trial Court may be reconsidered.

20. This is opposed by the learned counsel for the State.

21. However, having regard to the submissions advanced by the de facto complainant victim, this Court is inclined to confirm the order of conviction of the appellant. The sentence shall stand reduced from life imprisonment to the extent of incarceration already suffered by the appellant.

22. The order of conviction passed by the Trial Court is upheld. The sentence of the appellant, who has suffered incarceration for about 12½ years now, is reduced to the extent of incarceration already suffered. The appellant shall be set at liberty forthwith.

23. CRA 466 of 2015 along with CRAN 3 of 2026 shall stand disposed of.

24. Let the TCR along with a copy of this judgment be returned back to the trial Court for necessary action.

25. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

I agree.

(Rai Chattopadhyay, J.)