Form No. J(1)

IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

Present :

The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Anuj Singh

C.R.A. 669 of 2018

Palash Das & Anr.
Versus
The State of West Bengal

For the Appellants : Mr. Dipanjan Chatterjee,
Mrs. Sonali Das.

For the State : Dr. Pradip Banerjee, A.P.P.
Mr. Sankalpa Bhattacharjee,
Ms. Srestha Ghosh.

Heard on : November 13, 2026.

Judgment on : November 13, 2026.

Rajasekhar Mantha, J.:

1. Dr. Pradip Banerjee, Learned Additional Public Prosecutor, Mr. Sankalpa Bhattacharjee and Ms. Srestha Ghosh are requested to represent the State in the instant case. Let their appointments be regularized by the office of the Public Prosecutor, High Court at Calcutta.

2. The subject appeal is directed against the judgment of conviction dated 10th October, 2018 and order of sentence dated 11th October, 2018 passed by the learned Additional Sessions Judge, Fast Track Court, Kalna, Burdwan in Sessions Trial No. 16 of 2013 arising out of the

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Sessions Case No. 3 of 2012. The appellants were convicted for rigorous imprisonment for life and fine of Rs.5,000/- for the offences committed under Sections 376 of the Indian Penal Code. In default whereof, suffer simple imprisonment for three months. The aforesaid sentence shall run concurrently.

THE PROSECUTION CASE:

3. The prosecution case in brief is that the victim girl is a resident of Jalahati village went to a neighbouring village on 19th August, 2006 called "Bagadanga" to witness a music programme held after a local Monasha Puja. She claimed that she went along with her sister-in-law and other persons including PW-5, Smt. Anita Das. Feeling sleepy around about 9:30 P.M., she left the said venue to return to her house. The village Bagadhanga is about half an hour distance from her village. On the way back there was a bamboo grove.

4. The victim claimed that she was wearing a salwar-kamij along with an orna (chunri). She was way laid by the two appellants and one Ashok Sarkar (absconding). Her mouth was tied with the orna. She was taken to the Verandah of the house of the said Ashok Sarkar. She was disrobed and ravaged by the three persons.

5. Feeble attempts appear to have been made by the mother and father of the victim, namely, PW-3 and PW-4 to locate her. The father of the victim was informed the next morning that the victim was found lying in the Verandah of his neighbour, Joydeb Das. The first person to attend

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to the victim was Smt. Anita Das (PW-5). She claimed that the victim was found groaning in pain but agreed that her father must be informed. The father of the victim brought her home. He filed a formal complaint with Purbasthali Police Station only on 22nd August, 2006 two days after the incident.

6. The victim was in the meantime treated by a local quack called Joti Doctor. After she regained consciousness and at the instance of the police, the victim was taken initially to Chandpur Hospital. She was later referred to Kalna Hospital where she was treated by one Doctor, S.K. Mondal. The mother, in the meantime, had seen the victim including her private parts which were found to be swollen. There were no marks of injury whatsoever on the victim's body.

7. Purbasthali Police Station registered a FIR being No. 172 of 2006 dated 22nd August, 2006 under Section 376(2)(g) of the Indian Penal Code against the complainant of the father. The statement of the victim under Section 164 of the Code of Criminal Procedure, 1973 was recorded before PW-10, the jurisdictional Additional Chief Judicial Magistrate. The appellants were arrested by the Investigating Officer of the case (PW-7). Investigation was completed and charge-sheet filed. Charges were framed by this Trial Court against the two appellants under Section 376(2)(g) of the Indian Penal Code on 17th July, 2013.

THE EVIDENCE IN THE TRIAL COURT

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8. **PW-1** was the victim girl herself. She proved her statement before PW-10 and her signature thereon. She narrated the prosecution case. She deposed that she was examined by a Doctor at Kalna Hospital in presence of a Nurse. She did not mention any treatment by the quack. Her medical examination report has, however, not been produced or referred to by PW-1. No medical examination report of the victim has been brought on record by the prosecution. She further deposed in cross-examination that there was no enmity between her family and the appellants. She did not name the boudi (sister-in-law) with whom she went to the music programme. She recalled in evidence that she was taken to the Verandah of the house of one Amal Sarkar. There is no evidence to indicate how she reached the Verandah of Joydeb Das.

9. **PW-2** was a local resident, who turned hostile and deposed that he knew nothing about the prosecution case.

10. **PW-3**, was the father of the victim, who narrated the contents of his complaint only in part. He deposed that the complaint was scribed by PW-11, Debasis Sarkar. He deposed that he was informed by PW-5 that victim was lying in her Verandah. He spoke to his daughter for five minutes at Chandpore Hospital and before that in his house. There was no one else present when he spoke to his daughter. PW-6, Smt. Minati Das accompanied his daughter to the music programme. He could not recollect the colour of the wearing apparels of the victim and did not find any injury marks on the face of his daughter. There is no explanation as

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to why PW-3 did not go to the Police on 19th or 20th of August, 2006, particularly after he heard about the incident from his daughter.

11. **PW-4** was the mother of the victim. She claims that the victim informed her of the incident when she was alone. She also deposed that the victim often left her house without informing anyone. She deposed that she was informed by one Jiten Das of the presence of her daughter in the Verandah of Joydeb Das. She confirmed that even after examining her daughter's private parts, there was no injury found except a swelling. Curiously, the report of the Doctor, who treated the victim contained an endorsement that PW-4 had stated before him that her daughter was menstruating on the relevant date. The accused persons tied her to a tree and behaved inappropriately with her. It is curious to note as to why PW-4 did not clearly state that the appellants committed rape upon the victim. She also deposed that police came many days after the incident to her house and spoke with the victim and her husband Jadav and Joydeb.

12. **PW-5** was Smt. Anita Das, who was initially declared hostile since she stated that she stated that police did not interrogate her. Her statement under Section 161 of the Code of Criminal Procedure recorded by the Police was considered by the learned Magistrate and he was declared her hostile. She deposed that she found the victim in her Verandah on a cot in the morning on 20th August, 2006. The victim was partially conscious and agreed to the suggestion of PW-5 that her father

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should be informed. The victim was trying to say something. She denied having told the Police that the appellants committed rape upon the victim.

13. **PW-6**, Smt. Minati Das, who was also declared hostile by the Trial Court. She denied the entire prosecution case.

14. **PW-7** was the Investigating Officer of the case, one Inspector Kalyan Kumar Roy. He claimed to have spoken the victim on 3rd September, 2006 nearly 12 days after the incident at her house and at Kalna Hospital. He claimed to have collected the medical examination report including Ossification Test of the victim and the medical reports of the appellants from the Hospital. Except the discharge certificate of the victim marked as Exhibit-8, there is no complete medical examination report of the victim on record. There is an endorsement on the medical document asking the Examining Doctor to complete the examination report of the victim. No other document of any physical or sexual assault on the victim is available on record.

FINDINGS OF THE TRIAL COURT:

15. Based on the evidence on record, the Trial Court found the appellants guilty of offence under Section 376(2)(g) of the Indian Penal Code. The reasoning supplied by the Trial Court is that in cross-examination of the prosecution witnesses, the incident of rape was not by

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the defense. The Trial Court also held that the defence did not suggest to the prosecution witness that no incident of rape had at all occurred.

ANALYSIS OF THIS COURT:

16. This Court finds the line of reasoning of the Trial Court to be rather surprising and erroneous. It is now well-settled that it is for the prosecution to establish the charge against the accused persons/appellants. No inference of any guilt can at all be drawn merely because the appellants do not suggest or cross-examine the prosecution witnesses including the victim that no such incident had occurred.

17. It is now equally well-settled that a conviction under Section 376 of the Indian Penal Code or under Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 can follow on the sole evidence of a victim. Such evidence of the victim must be flawless and must be in harmony with other proven facts. Such evidence must be of a sterling quality and be supported by at least with some medical evidence.

18. This Court, however, finds that the evidence of the victim is not even remotely supported by any medical evidence whatsoever. The prosecution has miserably failed to as has the investigation in the instant case. A basic and elementary piece of evidence in a prosecution under Section 376 of the Indian Penal Code is the medical examination of the victim. Except for recording an allegation of rape, there is no material medical evidence to show any sexual assault on the victim.

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19. The investigation has been equally perfunctory to the extent that the victim's clothes were not seized and sent for FSL. There is no evidence of any damage to the clothes of the victim. It is difficult for this Court to believe that the victim was disrobed voluntarily by the appellants. There must be some resistance put up by the victim which would have damaged her clothes.

20. Admittedly the victim was menstruating at the relevant point of time as per the deposition of her mother (PW-4). The mother's statement as recorded by the Medical Doctor only indicates that she was tied to a Tree and inappropriately touched. This is completely inconsistent with the evidence of PW-1, the victim herself.

21. What is all the more curious is that though the victim claims that her eyes were tied with her orna, the same must have been after a struggle and there must be some injury or abrasion on the face of the victim. None of the prosecution witnesses have indicated any injuries on the face of the victim.

22. The Trial Judge very curiously held that the victim was 13 years of old despite referring to Ossification Test report that the victim's age was between 15 and 17 years. A 16 years old girl would have definitely put up some resistance to a sexual assault by three persons. Such resistance would have resulted in injuries on the body of the victim.

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23. Both the victim, her mother and the Medical Doctor have clearly indicated that there was no injuries on the body of the victim. The victim was admittedly menstruating at the time of the incident as per the deposition of her mother (PW-4). In the event of a sexual offence on the victim, the bodily fluid of the victim and the appellants would have definitely been found on her clothes. The evidence of PW-5, who found the victim in her Verandah, does not disclose whether she was with or without cloths. If she was found without clothes, PW-5 would have definitely indicated the same. There is no evidence of any body fluids of the appellants on the victim. No attempt has been made by the IO to detect the same.

24. It must therefore be presumed that the victim was able to put on her clothes back after the incident. It is equally possible that she was never disrobed at all by the appellants.

25. In the light of the aforesaid discussions, this Court is of the clear and unequivocal view that the evidence-on-record is not even remotely sufficient for the purpose of convicting the appellants. The investigation and the evidence led by the prosecution leaves much to be desired. The conviction of the appellants by the Trial Court dated 10th October, 2018 and the order of sentence dated 11th October, 2018 is therefore erroneous and shall, therefore, stand set aside.

26. The instant criminal appeal is allowed and disposed of.

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27. The appellants shall be set at liberty forthwith from the custody, if not wanted in any other case, upon execution of bonds to the satisfaction of the Learned Trial Court, which shall remain in force for a period of six months under Section 437A of the Code of Criminal Procedure corresponding to Section 481 of the BNSS, 2023.

28. The trial court records along with a copy of this judgement be sent down at once to the learned trial court for necessary action.

29. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(*Rajasekhar Mantha, J.*)

I agree.

(*Anuj Singh, J.*)

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