

POCSO Case No.80 of 2021
(CIS Regd. No.80/2021)
CNR No. WBML 01-006563-2021

Form A

IN THE COURT OF SPECIAL JUDGE, 2ND COURT, MALDA.

Present: **Shri Rajib Saha**, Special Judge, 2nd Court, Malda.

Date of delivery of Judgment: **The 2nd day of July, 2025.**

POCSO Case No.80 of 2021
(CIS Regd. No.80/2021)

(Details of FIR/Crime and Police Station)

(Arising out of Manikchak P.S Case No.201/2021 dt. 05.06.2021)

COMPLAINANT	STATE OF WEST BENGAL / CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY	SRI AMITAVA MAITRA - Ld. Special Public Prosecutor for CBI
ACCUSED	Rafikul ISLAM @ BHELU
REPRESENTED BY	SRI GOUTAM MUKHERJEE - Ld. Advocate for the Accused

Form B

Date of Offence	04.06.2021
Date of FIR	05.06.2021
Date of Charge sheet	10.07.2021 & 11.04.2022
Date of Framing of Charges	21.04.2022
Date of commencement of Evidence	05.08.2022
Date on which Judgment is reserved	NIL
Date of the Judgment	02.07.2025.
Date of the Sentencing Order, if any	04.07.2025.

Accused details

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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	Rafikul Islam @ Bhelu	13.06.2021	Custody Since Arrest	U/S 6 of POCSO Act, alternatively under Section 376AB of IPC & u/S 3(2)(V) of SC/ST (P.OA) Act, 1989	CONVICTED	Rigorous Imprisonment for Life which means the remainder of his natural life and to pay a fine of Rupees Fifty Thousand (Rs.50,000/-) in default to suffer Simple Imprisonment for further Six (06) months	13.06.2021 to 04.07.2025

Form C

LIST OF PROSECUTION/DEFENCE/COURT

WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYEWITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	VICTIM GIRL	VICTIM GIRL
PW 2	ELDER COUSIN SISTER OF THE VG	ELDER COUSIN SISTER OF THE VG
PW3	MOTHER OF THE VICTIM	MOTHER OF THE VICTIM
PW4	JETHIMA OF THE VG	JETHIMA OF THE VG
PW5	GRANDMOTHER OF THE VG	GRANDMOTHER OF THE VG
PW6	AMAL SHARMA	SCRIBE
PW7	MANOJ MANDAL	INSPECTOR OF BACKWARD CLASS WELFARE DEPARTMENT
PW8	ANSUMAN MANDAL	GRAM PANCHAYET SAHAYAK
PW9	POLTU GHOSH	CO-VILLAGER
PW10	FATHER OF THE VG	FATHER OF THE VG
PW11	AUNT (KAKIMA) OF THE VG	AUNT (KAKIMA) OF THE VG
PW12	MD AFTABUDDIN	CO-VILLAGER
PW13	DR. ARINDAM CHAKROBORTY	EXAMINING DOCTOR OF ACCUSED
PW14	DR. ARPITA SINGH	EXAMINING DOCTOR OF VICTIM GIRL
PW15	UDAY KR. MANDAL	SENIOR ADMINISTRATIVE OFFICER
PW16	PHANI MANDAL	PHOTOGRAPHER
PW17	SANJIB BISWAS	RECORDING OFFICER OF FIR
PW18	SI TAPAS RAJAK	1 ST INVESTIGATING OFFICER OF WEST BENGAL POLICE

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PW19	SI SHITAL PRASAD JHA	2 ND INVESTIGATING OFFICER OF WEST BENGAL POLICE
PW20	DR. KAMAL CHOUHAN	SR. SCIENTIFIC OFFICER, CFSL, DELHI
PW21	SMT. NISHU KUSHWAHA	1 ST INVESTIGATING OFFICER OF CBI
PW22	SI NARESH TALWAR	2 ND INVESTIGATING OFFICER OF CBI

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYEWITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS
DW 1	NIL	NIL

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYEWITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS
CW 1	NIL	NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit -1	SIGNATURE OF PW-1 ON THE MEDICAL PAPER
2	Exhibit-1/1	MEDICAL REPORT OF VICTIM GIRL
3	Exhibit-2	RECORDED STATEMENT UNDER SECTION 164 OF CR.P.C OF VICTIM GIRL
4	Exhibit-2/1 to 2/4	SIGNATURE OF PW-1 ON THE RECORDING STATEMENT UNDER SECTION 164 OF CR.PC.
5	Exhibit -3	RECORDED STATEMENT UNDER SECTION 164 OF CR.P.C OF ELDER COUSIN SISTER OF VICTIM CHILD
6	Exhibit-3/1 to 3/4	SIGNATURE OF PW.2 ON THE RECORDED STATEMENT U/S164 Cr.P.C
7	Exhibit-4	SIGNATURE OF PW 3 ON THE WRITTEN COMPLAINT
8	Exhibit-4/1	WRITTEN COMPLAINT
9	Exhibit-4/2	ENDORSEMENT ON THE WRITTEN COMPLAINT OF R.O.
10	Exhibit-5	SIGNATURE OF PW.3 ON THE SEIZURE LIST DATED 05.06.2021
11	Exhibit-6	ATTESTED PHOTOCOPY OF CASTE CERTIFICATE OF VICTIM GIRL
12	Exhibit-7	CERTIFICATE UNDER SECTION 65B OF EVIDENCE ACT
13	Exhibit-8	SEIZURE MEMO DATED 22.12.2021
	Exhibit-8/1	SIGNATURE OF PW.22 ON THE SEIZURE MEMO DATED 22.12.2021
14	Exhibit-9	REPORT ISSUED BY SUB-REGISTRAR BIRTH AND DEATH OF MANIKCHAK GRAM PANCHAYET
15	Exhibit-10	PHOTOCOPY OF REGISTER DATED 09.05.2012

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16	Exhibit-11	DUPLICATE BIRTH CERTIFICATE OF V.G
17	Exhibit-12	CERTIFICATE UNDER SECTION 65B OF INDIAN EVIDENCE ACT
18	Exhibit-13 (collectively)	ORIGINAL AND ATTESTED COPY OF G.D.E
19	Exhibit-14	SEIZURE MEMO BEARING THE SIGNATURE OF P.W.-8
20	Exhibit-15	ORIGINAL S/C CERTIFICATE OF P.W.-10
21	Exhibit-16	ORIGINAL LAMINATED COPY OF S/C CERTIFICATE OF V.G
22	Exhibit-17	ORIGINAL LAMINATED COPY OF BIRTH CERTIFICATE OF V.G
23	Exhibit-18	MEDICAL EXAMINATION REPORT OF THE ACCUSED.
24	Exhibit-19 (collectively)	MEMORANDUM CONTAINING EIGHT PAGES.
25	Exhibit-19/1	SIGNATURE OF PW-15 OVER THE MEMORANDUM
26	Exhibit-19/2	SIGNATURE OF UDC KAMESWAR RUNDA
27	Exhibit-19/3	THE MEMORANDUM OF SCENE OF CRIME
28	Exhibit-20	SIGNATURE OF PW.17 OVER THE FORMAL FIR
29	Exhibit-20/1	SIGNATURE OF SI SITAL PRASAD JHA OVER THE FORMAL FIR
30	Exhibit-20/2	SIGNATURE OF THE COMPLAINANT OVER THE FORMAL FIR
31	Exhibit-21	PHOTOCOPY OF REQUISITION FOR MEDICAL EXAMINATION
32	Exhibit-22 (collectively two pages)	ROUGH SKETCH MAP WITH INDEX
33	Exhibit-23	ZIMMANAMA
34	Exhibit-24	PHOTOCOPY OF REQUISITION DATED 06.06.2021
35	Exhibit-25 (collectively five pages)	MEMO OF ARREST, ACCUSED CHALLAN, INSPECTION MEMO, FORWARDING REPORT, MEDICAL SLIP OF ACCUSED
36	Exhibit-26	CHALLAN DATED 28.06.2021
37	Exhibit-27 (six pages)	CRIME SCENE EXAMINATION REPORT
38	Exhibit-27/1	SIGNATURE OF PW.20 ON THE REPORT
39	Exhibit-27/2	SIGNATURE OF ONE SUNIL KUMAR ON THE REPORT
40	Exhibit-28	ONE YELLOW COLOUR ENVELOPE
41	Exhibit-29	THE FIR INCLUDING FORWARDING REPORT OF CBI, SCB, KOLKATA
42	Exhibit-30	TAKING OVER MEMO DATED 19.12.2021
43	Exhibit-31	R.F.S.L REPORT
44	Exhibit-32 (collectively)	CAF AND CDR

B. Defence

Sr. No.	Exhibit Number	Description
1	Exhibit - A	Photocopy of application to the National Human Rights Commission
2	Exhibit- B (collectively)	RTI application along with information supplied by BMOH.

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	NIL	NIL

D. Material Objects:

Sr. No.	Material Object Number	Description
1	Mat Exhibit I [1(a) to 1(g)]	SEVEN PHOTOGRAPHS OF SCENE OF CRIME
2.	Mat Exhibit I (a/1) to 1(g/1)	SIGNATURE OF PW 15 ON THE BACKSIDE OF THE PHOTOGRAPHS
3.	Mat Exhibit I (a/2) to 1(g/2)	SIGNATURE OF UDC KAMESWAR RUNDA ON THE BACKSIDE OF THE PHOTOGRAPH
4.	Mat Exhibit I (a/3) to 1(g/3)	SIGNATURE OF PW 16, PHANI MANDAL ON THE BACKSIDE OF THE PHOTOGRAPHS
5.	Mat Exhibit II	SD CARD

JUDGMENT

FACT OF COMPLAINT

The prosecution case as unfolded at the time of trial is that the mother of the victim girl has lodged a written complaint with Manikchak P.S on 05.06.2021 to the effect that on 04.06.2021 in the evening at about 5 p.m her minor daughter aged about 9 years went on the mango orchard of accused Rafikul Islam @ Bhelu, adjacent to his house for playing and accused Rafikul Islam by founding her alone there, brought her in his house by alluring to give money and then locked the door of room

from inside and committed rape upon her by putting her on the cot, applying Vaseline. The mother of the victim girl has also stated in her written complaint that as her minor daughter tried to raise alarm by shouting, she has been threatened and subsequently sent back her home. The complainant has also stated in her written complaint that the complainant returned back from the field after work and her niece (daughter of her elder brother-in-law) informed the complainant that she has seen the incident in her eyes and then the complainant inquired the matter from her daughter but initially her daughter did not disclose the same and ultimately divulged everything to the complainant.

THE F.I.R

On the basis of aforesaid written complaint Manikchak P.S GDE No.176 dated 05.06.2021 has been initiated and started Manikchak P.S Case No.201/2021 dated 05.06.2021 under Section 6 POCSO Act against sole accused Rafikul Islam @ Bhelu.

CHARGE SHEET

The I.O S.I Shital Prasad Jha after completion of investigation has submitted Manikchak P.S Charge-sheet being No.209/2021 dated 10.07.2021 under Section 6 of the POCSO Act against the sole accused person namely Rafikul Islam @ Bhelu Master.

FURTHER INVESTIGATION BY CBI

In view of the order of Hon'ble High Court, Calcutta passed on 19.08.2021, in connection with WPA (P) 142, 143, 144, 145, 146,147, 148, 149 and 167 of 2021, FIR of CBI, SCB, Kolkata vide RC 0562021S0038 dated 17.09.2021 has been registered on the basis of FIR No.201 of 2021 dated 05.06.2021 of Manikchak P.S, West Bengal for investigation. After investigation, CBI, SCB, Kolkata with reference to FIR No. RC 056 2021 S0038 of the year 2021 dated 17.09.2021 has submitted Final Report/Charge Sheet No.10 of 2022 vide despatch No.0753 dated 11.04.2022 under Sections 376AB IPC, under Section 6 POCSO Act and under Section 3(2)(v) of SC & ST Act in supplementary form by I.O Naresh Talwar, Dy S.P, CBI, SIU-D, Kolkata against accused Rafikul Islam @ Bhelu.

CHARGE

On perusal of materials on record and having heard both sides Charge under Section 6 of the POCSO Act alternatively under Section 376AB of I.P.C & under Section 3(2)(v) of SC & ST (POA) Act has been framed against accused Rafikul Islam @ Bhelu, on 21.04.2022 in which the accused pleaded not guilty and claimed to be tried.

It is the case of the defence that no such incident has taken place as claimed by the prosecution and he has been falsely implicated in this case.

POINTS FOR CONSIDERATION

1. Has the accused person namely Rafikul Islam @ Bhelu committed the offence punishable under Sections 6 of the POCSO Act alternatively under Section 376AB of IPC & under Section 3(2)(v) of SC & ST (POA) Act?

2. Is the accused person liable to be punished accordingly?

DECISION WITH REASONS

The defence case as it appears from the trend of cross examination of the prosecution witnesses and also examination of the accused person under Section 313 of the Cr.P.C, is the plea of innocence and false implication of the accused person.

ARGUMENT ADVANCED

1. The Ld. Special Public Prosecutor for CBI has conducted the trial on behalf of the prosecution and in the argument, he has submitted that the victim girl (the victim girl herein after referred as V.G) has clearly narrated the incident in her evidence on dock before the Ld. Court and the said version of the victim girl has been corroborated by her statement recorded by the Ld. Magistrate under Section 164 Cr.P.C. It has also been submitted that her elder cousin sister who was also playing with her in the backyard garden of the accused with the V.G has also stated the fact as eye witness of the

incident. The Ld. Special P.P has emphatically argued that there is nothing to disbelieve the victim girl and her elder cousin sister who have been produced before this Court as PW.1 and 2, furthermore the prosecution fact has been brought before this Court more clearly by the mother of the victim girl, *jethima* (elder-aunt) of the victim girl and grandmother of the victim girl who have been examined as P.W.3, P.W.4 and P.W. 5 respectively. It is the contention of the Ld. Special P.P that evidence of P.W.11 i.e aunt (kakima of the victim girl) and evidence of the examining doctor of the victim girl at Malda Medical College & Hospital namely, Dr. Arpita Singh are equally relevant to consider the guilt of the accused in committing the alleged crime of rape upon the victim girl. Another contention of the Ld. Special P.P is that the victim girl was taken to Manikchak Rural Hospital but in absence of any female doctor her examination was not done and the V.G has been referred to Malda Medical College & Hospital in accordance with the provision of Section 27 of the POCSO Act wherein it has been mandated that if the victim be female she must be examined by a female doctor and accordingly medical examination of the V.G was conducted on the very next date at Malda Medical College & Hospital. It has further been argued that the accused has applied Vaseline which has been specifically mentioned in the FIR and also stated in the evidence for commission of rape upon a girl of 9/10 years by the accused and it has been argued that

penetration in full is not required to constitute the offence of rape as it has been well settled that mere touching of labia majora/labia minora is sufficient to constitute the offence of rape. The Ld. Special P.P has argued that the prosecution by producing the V.G one eye-witness of the incident and medical evidence has able to prove the guilt of the accused and as such accused must be convicted.

2. The Ld. Advocate representing the accused has argued that initially the case has been investigated by the West Bengal Police and subsequently further investigation was done by the CBI but in spite of the same, anomalies and contradictions cannot be concealed in this case in a prolong investigation. The Ld. Advocate for the accused has further argued that there is no element of Post Poll violence or atrocities upon Schedule Caste and Schedule Tribe community but actually the instant case has been hatched up out of political grievances particularly when the accused was a supporter of Trinamul Congress Party and the family members of the victim girl were the strong contenders in the area under the support of Bharatiyo Janata Party. It has been argued that victim girl was aged about 9/10 years at the time of alleged incident and the accused was a man of 60 years but if any type of sexual intercourse or rape be committed there must have huge bleeding caused to the victim girl with urgent necessity to take medical assistance, whereas in this case no such injury or bleeding detected nor proved by any cogent and reliable evidence to consider

any type of rape committed upon the victim girl. The Ld. Advocate for the accused has argued that the accused is a retired School-Teacher and a man of reputation in the locality who used to impart private tuition to the local village boys and girls in his house, and he has his wife, son, daughter-in-law who used to stay with him in the said house. The Ld. Advocate for the accused has submitted that it is quite absurd and impossible to consider that the accused committed rape in the back side room of his house when his family members are already staying there and exaggeration of the evidence produced in this case regarding attitude and behaviour of wife of the accused should be considered as unrealistic. Another contention of the Ld. Advocate for the accused was about date of alleged incident and reporting of the matter to the family members of the victim girl, when in the FIR it has been stated that mother of the V.G came to know about the incident on the date itself but in evidence it has been brought that victim girl and her cousin sister went on sleep after returning home on the date of alleged incident, who narrated the incident to their grandmother on the next day and thereafter mother and aunt of the V.G came to know about the incident. The Ld. Advocate for the accused has argued that the entire prosecution fact is totally fishy as in the evidence it has been brought that accused has given Rs.5/- each to the victim and her cousin sister with a threat not to disclose the fact and they purchased chocolate and ate the same prior to reaching

their house on their way, and furthermore in a normal conduct two little girls went on sleep in the evening without taking any food and their parents were in the house but not called them to take food at night. The Ld. Advocate for the accused has also raised question by pointing out the medical examination report of the V.G marked as Exhibit 1/1 that no sign of any physical assault or abuse detected and on genitalia examination hymen was found intact and such medical examination was done on 06.06.2021 when the alleged incident took place on 04.06.2021 for which any sexual assault if any done upon the V.G must have been noted by the doctor within that period. The Ld. Advocate for the accused has raised the question that the examining doctor of Malda Medical College & Hospital (P.W14) in her statement before the CBI has stated that Posterior Fourchette as detected may be due to some chronic infection or ulcer which has healed, it may also be due to deposition of vaginal secretion which are acidic in nature and if the hygiene is not maintain properly, it may lead to scarring later on which cannot be result of sexual offence committed upon the V.G on 04.06.2021 because the tear was old one and healing of the same may not be possible within 44 hours. The Ld. Advocate for the accused has argued that Vaseline has not detected from the wearing pant of the V.G and it has not been stated to the examining doctor for which application of Vaseline cannot be believed. It has been argued that the time of alleged incident as per the

FIR is 5 p.m and it will appear from the evidence of the P.W.12 that students were entering into the house of the accused for private tuition at about 4:45 P.M, furthermore it has been brought into the evidence that there were eight members in the house of the accused for which the story hatched up by the prosecution is quite unbelievable for committing rape upon the victim girl in the house of the accused at that time.

3. The Ld. Special P.P in reply on the law point has cited several decisions in support of his contention, as reported in:

- i) *Md. Israil versus State of West Bengal passed by the Hon'ble High Court Calcutta in CRA 37/2017 (CRAN 2 of 2021).*
- ii) *Miriyala Vajram versus State of AP reported in 2023 CRLJ 2952 :2023(2) ALT (CRL) 364,*
- iii) *Decision of the Hon'ble High Court, Kerala at Enakulam in connection with CRL. A No.649 of 2021,*
- iv) *State of Himachal Pradesh versus Raghubir Singh reported in 1993(2) SCC 622,*
- v) *State of Punjab versus Gurmit Sing reported in 1996 SCC (2) 384; 1996 AIR 1393,*
- vi) *Ranjit Hazarika versus State of Assam reported in 1998 (8) SCC 635,*
- vii) *State of Himachal Pradesh versus Manga Singh reported in AIRONLINE 2018 SC 1019,*

viii) *Ishwer Soni versus State (Government of NCT of Delhi) reported in CRL. A 1231/2018 of Hon'ble High Court, Delhi.*

The Ld. Special P.P has contended that delay in lodging FIR should not be considered in an offence like rape upon a minor victim girl and has produced the relevant portion of Medical Jurisprudence by **Modi** in support of his submission that partial penetration is sufficient for rape and rape is possible without any injury or seminal discharge.

DECISION & FINDING

(1) The victim girl has been examined before this court as **P.W1**, and she has stated in her evidence that on one day at afternoon she herself and her cousin sister went to play in the mango orchard of *Bhelu Master* and there was a swing in that orchard, and they were playing 'Ata Pata'. She has stated that in that play one would remain standing and ask other to bring leaves and the other person would bring leaves and accordingly she was standing there, and her cousin sister went to bring leaves and at that time, *Bhelu Master* caught her hand and gagged her mouth by his hand and took her to his house. The victim girl has stated in her evidence that *Bhelu Master* asked her to remove her pant to which she refused and then he removed her pant and put Vaseline at the place of her urination and he also applied Vaseline over his organ of urination and then inserted his organ of

urination into her place of urination and she was suffering pain and so cried out loudly. The victim girl has stated that on hearing her hue and cry, her cousin sister rushed there and asked *Bhelu Master* as to whether victim girl is there or not, but *Bhelu Master* denied that she was there and at this her cousin sister told him that she has heard her voice and threatened him to gather public and then *Bhelu Master* brought the V.G out and sought apology before them, requesting the V.G not to disclose the incident to anyone and also gave Rs.5/- each to both of them. The victim girl has stated that **after returning home, out of pain at the place of her urination and upper thighs she went to sleep.** In the cross-examination the victim girl has stated that on the day of the incident, neither she herself nor her cousin sister has revealed the incident to anyone of the family members, of four brothers of her father or to her grandparents, nor the victim girl stated about her pain at her thighs or place of urination.

The victim girl has given her statement before the Ld. Magistrate recorded under Section 164 Cr.P.C and she has stated that one day she was playing with her cousin elder sister and then accused Rafikul Islam came there and called her, and thereafter Rafikul has brought her in his house. The V.G has also stated before the Ld. Magistrate that **accused lie down her on the cot and removed her wearing pant and he also put off his lungi and gave Vaseline in his place of urination and inserted**

his place of urination in the place of her urination for which she sustained pain and as she cried, he gagged her mouth. She has also stated before the Ld. Magistrate that then her elder sister came and has seen the incident and thereafter accused Rafikul has left her and has prayed for mercy. The said statement of the victim girl recorded under Section 164 Cr.P.C has been marked as **Exhibit 2**.

(2) The cousin sister of the victim girl is one year elder than the victim girl who has stated before the court as **P.W2** that on 04.06.2021 at around 04:00 p.m. she herself and her sister (victim girl) went to play at the mango orchard behind the house of *Bhelu Master* and were playing 'Ata Pata'. She has stated that she went to bring leaves and after returning could not find her sister and she searched for her everywhere and when she was returning home, she heard voice of her sister. The elder cousin sister of the victim girl has stated that she then went near the house of *Bhelu Master* and opened a window and found *Bhelu Master* lying upon the victim girl with his lungee taken up to the level of his waist and she then asked *Bhelu Master* addressing him as Sir as to the whereabouts of victim girl and he told her that victim girl is not there and then she told him that she has heard voice of victim girl and he must bring her out, otherwise she will assemble people by raising hue and cry. She has stated that then he brought out victim girl and sought apology before both of them by requesting them not to disclose the incident to anyone and gave

Rs.5/- each to them and they ate chocolate by that money and went to sleep after returning home and on next morning she narrated the incident to her grandmother and her grandmother called her mother and wives of her uncles.

The elder cousin sister of the V.G has stated before the Ld. Magistrate that she along with the V.G were playing beside the house of Rafikul Islam and then Rafikul Islam called her sister and thereafter she could not trace out her sister there and she found the window of Rafikul's house was in semi-closed condition and she by opening the window found that Rafikul was committing rape upon the V.G and the V.G was screaming. She has stated before the Ld. Magistrate that on seeing her, Rafikul left the V.G and prayed for mercy so that she may not disclose the incident to anybody else. The statement of cousin elder sister of the victim girl recorded under Section 164 Cr.P.C has been marked as **Exhibit 3**.

(3) In this case evidence of grandmother of the victim girl is very much important to consider the entire incident and she has stated before the court as **P.W5** that during their playing cousin elder sister of the victim girl told that she was going to collect leaves by leaving her younger sister (victim girl) there, then *Bhelu Master* called her sister and took her inside the room and then *Bhelu Master* opened wearing apparel of the victim girl and he himself opened his 'lungi' and got ridden over her. The grand-mother of the victim girl has

stated that cousin elder sister of the V.G on returning back from the passage beside the house of *Bhelu Master* tried to search out her sister and on her return through the passage, heard screaming sound of her sister and then she pushed opened the window and seen that *Bhelu Master* rode over her sister, and *Bhelu Master* then put her sister under the cot to hide her and told she was not there as she went to collect grass and elder sister of the V.G asked *Bhelu Master* to get her sister back from the room and threatened to raise alarm and *Bhelu Master* prayed for mercy and allured for Rs. 40/- not to disclose the fact to others and he gave Rs. 5/- each and brought her out from his room. The P.W5 has stated that two sisters after returning home at about 5:00PM went on sleep without disclosing to other anything and the incident took place in a Saturday, and she came to know all those facts from the elder sister of the V.G on the next day (Sunday) at about 9:00 AM. She has stated that she returned home and found that the V.G remain seated in their room and crying and when she enquired the reason she has started crying more, and some other persons namely Fulan Mandal, Rita Mandal, Mina Mandal, Uttara Mandal, Menoka Mandal and her two daughter-in-laws also gathered there as her two daughter in laws i.e the mother of the V.G and mother of cousin sister of V.G were working in the field who were also called and came there. The grand-mother of the V.G has stated in her evidence that womenfolk on knowing the incident opened wearing

apparel of the V.G and found her portion of urination with red colour and swelling and she was suffering pain for which she was crying and then V.G disclosed that Bhelu Master has raped her by closing her mouth and grand-mother of the V.G along with her four daughter in laws then visited the house of *Bhelu Master* and narrated the incident to the wife of *Bhelu Master* who told them not to disclose such facts as the future of their child will be spoiled and thereafter *Bhelu Master* came outside and threatened to kill them by saying ‘kete felbo’.

(4) The P.W.4 is the *Jethima* (wife of elder uncle) of the victim girl who has stated that the incident occurred with the victim girl when she along with mother of the victim girl were at field, and her mother-in-law (P.W5) sent her daughter (P.W2) to call them. She has stated that when she asked her daughter why her mother-in-law called and then she (P.W 2) told that Rafikul Islam committed rape with the V.G at the house of Rafikul Islam and then she came back home and found Uttara Mandal, Mina Mandal, Fulen Mandal, Rita Mandal, Menoka Mandal and on being asked the victim girl stated that she out of fear did not say anything. She has stated that when mother of the V.G asked about the incident she told all the incident that Rafikul Islam committed rape with her at his house. P.W.4 has stated that her daughter and victim girl were playing at the back side of house of Rafikul Islam as they were playing ‘Ata Pata’ and her daughter went to collect leaves but on

return, she did not find the victim girl there. She has also stated that her daughter tried to search out her but did not find and then her daughter was coming to the road beside the house of accused and she heard sound of the victim girl when window was closed but her daughter pushed the window and as it was opened, she found Rafikul in committing rape. The *jethima* of the V.G has stated that her daughter asked the accused where her sister is and she also asked him to bring back her sister otherwise she will make hue and cry. She has also stated in her evidence that the accused called her daughter and gave Rs.10/- to her daughter and the victim girl, asked them not to disclose the fact to others and then both the sisters went to shop for purchasing something and have taken something, and both of them after returning home had taken sleep. The *jethima* of the victim girl has stated that mother of the V.G washed the wearing apparel of her daughter.

(5) One aunt of the victim girl as **P.W 11** has stated that the incident with the V.G took place 2½ years back on 04-06-2021 as she came to know about the incident on 05-06-2021. The witness has stated that cousin sister of the V.G - Duxxxx @ Moxx (P.W-2) has informed the incident to her grandmother and thereafter they return back and came to know about the incident that Duxxx disclosed that the accused brought the V.G inside the room and attempted to commit rape upon her by riding over her body by insertion of some cream in the

male organ of the accused and to the place of urination of the V.G, as cousin sister of the V.G told that she along with the V.G were playing on the back side of the house of the accused and cousin sister of the V.G went at some distance but on her return she did not found the V.G and started searching the V.G and found the V.G inside the room as the accused has forcibly close the face of the V.G for which she could not shout and then cousin sister of the V.G told to release the V.G then and there otherwise she will call others upon which the accused proposed to give Rs. 5/- each and requested not to disclose the same to others and thereafter accused promised to pay Rs. 40/- to cousin sister of V.G for not to disclose the fact. She has stated in her evidence that cousin sister of the V.G has not disclosed such fact on that date but on the next day she disclosed the fact to her grandmother and the V.G was called by her grandmother to know the real fact and the grandmother came to know the incident from the V.G and found the place of urination of the V.G in swollen red condition and thereafter the mother of the V.G was called. The P.W11 has stated that at that time mother of the V.G and elder aunt were working in the field who return back home and came to know about the incident and seen the red swollen condition of the place of the urination of the V.G and at that time grandmother of the V.G, mother, two aunts of the V.G, she herself and Fulon Mandal, Uttara Mandal, Rita Mandal, Menoka Mandal, V.G and cousin elder sister were present. It appears from

her evidence that all of them enquired about the incident from the V.G and her elder cousin sister and **they have seen the place of urination of the V.G as red swollen condition** on 05-06-2021 at about 11:00 AM and then mother of the V.G, grandmother, *Jethima*, aunt and P.W 11 herself went the house of the accused and then the wife of the accused threatened not to disclose the fact to others and thereafter the complaint was lodged.

(6) P.W3 is the mother of the victim girl who has stated before the court that the incident occurred with her second daughter, the victim girl, 02 years ago in the house of Rafikul Islam at about 04:00 p.m. as *Bhelu Master* committed rape upon her second daughter. The mother of the V.G has reported the matter to Manikchak Police Station on next date of happening of incident, as one person usually stay beside the police station wrote her complaint and she put her signature on the written complaint. She has stated that from police station they took her daughter to Manikchak Hospital but on that date no check-up was done as doctor was not present at that hospital and on that night her daughter was in police station and on next morning her daughter was taken to Malda Medical College & Hospital for medical examination where examination was done and she has handed over wearing apparels of her daughter to police.

(7) The scribe who has written the written complaint has been produced as P.W 6 and he has stated that on 05-06-2021 he has written one written

complaint bearing his signature with endorsement as writer of the complaint. He has stated that the written complaint was prepared as per saying of the complainant, and he read over and explained the same to the complainant. The scribe has stated that the complainant was unable to write the complaint and as such he has been requested to write the same and the complainant has signed the complaint in his presence. The written complaint has been marked as **Exhibit No.-4/1** in this case.

(8) Doctor Arpita Singh is the doctor who has examined the victim girl at Malda Medical College & Hospital and herein this case as **P.W14** she has stated in her evidence that on 06-06-2021 she was posted at Malda Medical College and Hospital as General Duty Medical Officer at Sick New Born Care Unit and at the time of examination she was on duty as per the roster. The doctor has stated that she has examined child victim as a general case for examination under the POCSO Act and she has acquaintance with the Guidelines under POCSO Act but she was not aware about the printed prescribed form. It appears from the evidence of the examining doctor that on 06-06-2021 she has examined one victim girl aged about 9 years old (female) at 1:45 PM at Antenatal Ward of MMCH as the victim girl was brought before her by LHG 907 Hasina Bewa. Consent and history of examination was taken by the doctor from the mother of the victim girl and as per the version of the

victim girl she was playing in a mango garden on 04-06-2021 around 5:00 PM when she was taken by a person namely Bhelu Master aged about 50 years, to a room nearby and occluded her mouths and lips followed by taking off her lower under garments and then tried to penetrate his penis into the victim's private parts and then, her friend came and they ran away from there. The doctor has opined that on examination no sign of any physical assault or abuse detected and on genitalia examination hymen was found intact, per vagina examination was not done, vaginal swab was not taken and **old healed tear at posterior fourchette i.e. junction of the labia majora and labia minora posteriorly.** We will find from her evidence that the incident took place around 44 hours to 46 hours prior to her examination and **old healed tear at posterior fourchette is generally due to sexual assault**, and **on perusal of the history and medical examination she was of the opinion that sexual assault was committed.** The medical examination report of V.G has been marked as **Exhibit No.1/1**. In the cross-examination it was taken from the side of defence that in her report there is no mention that the hymen red, congested along with inflammation nor she has found any bruise in the labia or any labia mucosal tear.

(9) P.W 17, the then I/C Manikchak P.S, Sanjib Biswas is the Recording Officer and P.W 18, S.I Tapas Rajak is the First I.O. of the case. The 1st I.O of

this case has stated that on 05-06-2021 he being S.I of Police at Manikchak P.S, has been entrusted to investigate Manikchak P.S Case No. 201/2021 dt. 05-06-2021 u/s 6 of POCSO Act as endorsed by I/C Sanjib Biswas of Manikchak P.S. On being so endorsed he has perused the FIR and written complaint. He has examined the complainant and recorded her statement u/s 161 of Cr. P.C. and the V.G has been sent for medical examination at Manikchak Rural Hospital with lady constable L/C 931 Bhumika Bhejel as escort accompanying his requisition. He has stated that medical examination was not done at Manikchak Hospital on 05-06-2021 and the V.G has been referred to Malda Medical College and Hospital and since it was evening, he returned back to Manikchak P.S along with the V.G, her guardians and lady constable. He has visited the P.O as shown by the V.G herself accompanying her guardians and lady force and the I.O prepared Rough Sketch Map along with Index. The Rough Sketch Map with Index have been marked as **Exhibit No.-22 collectively (two pages)**. The 1st I.O has stated that he has examined available witnesses on 05-06-2021 and recorded their statement u/s 161 of Cr. P.C. and he held raid on that day and found accused absent in his house and the area. He has seized wearing apparel, birth certificate of the V.G as per seizure list dt 05-06-2021. The original birth certificate has been given *zimma* to the mother of the V.G as per zimmanama. The I.O has stated that since the V.G was unwell on that

date, she was kept in the 'Child Corner' accompanying guardian of the V.G and lady constable Bhumika Bhujel and on the next day i.e. 06-06-2021 the V.G has been sent to Malda Medical College and Hospital, HOD, FMT for medical examination with lady Home Guard LHG/907 Hasina Bewa and the guardian of the V.G, accompanying his requisition addressed to the MSVP/HOD FMT of MMCH. The I.O has collected medical report on 06-06-2021 of the V.G from MMCH. and he has collected Mobile Phone Number of the accused, and the said Mobile number has been given to SOG of Malda Police Office for collection of CDR, SDR and PTL. The I.O has stated that he held raid on 06-06-2021 in the house of the accused but he could not be traced out there and on the same day he sent the V.G to CWC for counselling and as it has been informed orally to bring the V.G on 16-06-2021 for counselling, the V.G has been handed over to the guardian. On 07-06-2021 the V.G has been sent before the Ld. ADJ 2nd Court, Malda for recording her statement u/s 164 of Cr.P.C accompanying lady LHG Hasina Bewa and her statement was not recorded on that day and 18-06-2021 had been fixed by the Ld. Magistrate for recording of statement u/s 164 of Cr. P.C. The I.O has stated that he held further raid on 07-06-2021 and 09-06-2021 in the house of the accused and adjacent area at night but without result and he engaged source and on 12-06-2021 the accused has surrendered before the P.S in the evening and then he arrested him, interrogated and

detained and thereafter the accused has been forwarded to the Ld. Court on the next day accompanying Memo of Arrest, Accused Challan, Inspection Memo, Forwarding report, accused Medical. He has stated that on 16-06-2021 the V.G has been sent to CWC accompanying guardian and lady Home Guard 988 Shankari Mandal for counselling of the V.G. and Counselling was done. The I.O has received the order of capability test of the accused in view of his prayer dt. 14-06-2021, and on 18-06-2021 the V.G and one child eye witness have been sent for recording their statement u/s 164 of Cr.P.C before the Ld. Magistrate accompanying lady escort LHG Hasina Bewa and their guardians and statement of both the V.G and witness have been recorded by the Ld. Magistrate and I.O has collected copy of such statement and perused the same. **The I.O has stated that before the Ld. Magistrate, V.G has stated in her statement that Vaseline has been applied in the place of her urination and also the place of the urination of the accused by him. The 1st I.O has made over the case to I/C Manikchak P.S on 19-06-2021 on account of his transfer.**

The Second I.O S.I Shital Prasad Jha as **P.W 19** has stated that on being endorsed to investigate the case further, he has sent accused Rafikul Islam to Malda Medical College & Hospital for his capability test examination from District Correctional Home, Malda and after examination, the accused has been returned back to the correctional home and he has collected the

copy of potency test report of the accused Rafikul Islam and he then sent the wearing apparel of the victim girl i.e. panty and frock for RFSL examination. The 2nd I.O has examined Amal Sharma, the scribe on 29.06.2021 and recorded his statement under section 161 CrPC and has stated that as the case was a **Special Report Case**, he has submitted Memo of Evidence to the Superintendent of Police, Malda and after receiving the instruction from Superintendent of Police, Malda, he has submitted Charge Sheet in this case vide Manikchak P.S C.S. No.209/2021 dated 10.07.2021 under section 6 of POCSO Act against accused **Rafikul Islam @ Bhelu Master** and the charge sheet has been duly forwarded by the then IC, Manikchak Police Station Inspector Akhsay Pal.

(10) P.W 20, Dr. Kamal Chauhan was posted as Sr. Scientific Officer Gr.-II(Bio) at CFSL, Delhi and on 02.11.2021 in connection with Manikchak PS Case No.201/2021 dated 05.06.2021 under section 6 of POCSO Act he has visited the scene of crime on 07.10.2021 at 2:50 p.m. to till 4:45 p.m. accompanied by three other CFSL Officials namely Sri A.D. Tiwari, Principal Scientific Officer Photo, Sri A.H. Ganvir, Senior Scientific Assistant Photo, and Sri Sunil Kumar, Lab Assistant Physics as the place was village Jalalpur PO Dallutola, under Manikchak Police Station, District Malda West Bengal. The Crime Scene Examination Report dated 02.11.2021 vide office letter No. CFSL-

2021/B-0578 has been marked as **Exhibit No.-27 (with objection)**. He has stated that the report contains pictures taken by the photo expert namely Sri A.H. Ganbir, Senior Scientific Assistant Photo and all the proceedings were recorded under videography by Sri A.D. Tiwari, Principal Scientific Officer Photo.

(11) P.W21, Smt. Nishu Kushwaha, Inspector, CBI, SIU-D being a CBI officer has stated that FIR was registered by Akhilesh Kumar Singh, DIG, HOB, CBI, SCB, Kolkata being No. RC0562021S0038 dated 17th September 2021. The FIR of CBI including forwarding report has been marked as **Exhibit No. -29**. She has been authorized by SCB, Kolkata to investigate the case on and from 19th September 2021 and during her investigation she visited the crime scene, examined the relevant witnesses viz. father of victim girl, mother of victim girl, three aunts of victim girl, cousin sister of the victim girl who was the eye-witness of incident, grandmother of the victim girl, Doctor who medically examined the victim girl, Doctor who examined the accused. She has examined Angsuman Mandal, Assistant of Manikchak Gram Panchayet who has provided Birth Record Information and she has also examined the victim girl. She has requested the CFSL to examine the crime scene and on her request, crime scene was inspected and recorded by the CFSL as the team member of CFSL was headed by Dr. Kamal Chauhan and during the course of investigation she has also examined some witnesses and

recorded their statement and seized some documents. She has stated that during her investigation it has been revealed that the victim girl belonged to SC/ST Community and accordingly provision of SC&ST (Prevention of Atrocities) Act has been inserted, and the case was made over to DSP, Naresh Talwar who has investigated the case further and submitted the charge sheet.

(12) P.W-22, Sri Naresh Talwar was posted at Raipur CBI ACB on 19.12.2021 and has stated that his head quarter has sent him to West Bengal on attachment basis to investigate cases arising out of Order dated 19th August, 2021 passed by Hon'ble High Court at Calcutta and so, he has stationed at Farakka and Malda during that period and during his aforesaid attachment he was entrusted with the investigation of CBI Case RC 38 of 2021 registered on 17th September, 2021, and actually this case was investigated by Nishu Khuswaha, Lady Inspector of CBI, but during investigation by her, it emerged that caste of the victim was Schedule Caste and caste of the accused was other than Schedule Caste, thus the provisions of SC & ST (Prevention of Atrocities) Act, 1995 was attracted, whereas, as per Section 7(1) of this Act, the investigation should not be done below the rank of DSP. He has stated that at that time he was the DSP of CBI and so, this case was transferred to him for pending investigation on 19th December, 2021 as Inspector Nishu Khuswaha has made initial investigation from date of

registration i.e. 17th September 2021 to 18th December 2021. During the course of investigation, the 2nd I.O. of CBI has investigated the case. in two parts. He has stated that first was to bring on record evidence pertaining caste of the victim girl and for this he visited the office of BDO and SDO, Malda and after due verification procured a Caste Certificate issued by SDO, Malda, Sri Suresh Chandra Ranu and the certificate dated 21st December, 2021 was taken over as evidence by seizure memo from Sri Manoj Mandal, Inspector Office of SDO, Malda. The 2nd I.O of CBI has stated that as per verification and caste certificate, the victim girl belonged to 'Chain' community with surname Mandal comes under Schedule Caste and similarly in order to know and bring on record the caste of accused Rafikul Islam @ Bhelu, he has examined and recorded statements of neighbours, Gram Panchayet Members and other residence of village Jalalpur and as per those examinations, the accused belonged to other backward class and was well aware of the caste of minor victim girl and her family. The I.O of CBI has stated that the second portion of his investigation was to verify the earlier investigation conducted by Inspector Nishu Khuswaha and for this he met and discussed with parents of minor victim girl including the victim girl, eye witness of the crime, family members and all other important witnesses whose statements were recorded and he found that all those statements were correctly recorded. The P.W 22 has also studied case file

of local police FIR No. 201 of 2021 Police Station Manikchak where this case was earlier registered including all 164 statement of victim girl and eye witness and he also studied the preparation of scene of crime, photography and videography conducted by CFSL Team, New Delhi, as this videography also included recording of statements given by minor victim girl and crime eye witness which was recorded by Team of CFSL. The I.O of CBI after conclusion of his investigation, has filed a charge sheet before this Court on 12th April,2022 under Section 376AB IPC, Section 6 of POCSO Act and Section 3 (ii) (v) of SC & ST (Prevention of Atrocities) Act,1995 against single accused Rafikul Islam @ Bhelu. He has stated that during his investigation, he has examined mother of the victim girl and recorded her further statement and he has examined 8 persons namely Paltu Ghosh, neighbour of the victim; Hriday Mandal, neighbour of the victim; Md. Aftabuddin, neighbour of the accused; Nasima Khatun, member Manichak Gram Panchayet; Md. Rabiul Islam, husband of Nasima Khatun; Beauty Mandal, Pradhan Manikchak Gram Panchayet; Sanwar Ali, Chairperson TMC Party, Manikchak and Smt. Sakila Bibi, Member of Manikchak Gram Panchayet, and all these statements were to bring on record castes of victim girl and accused. The I.O of CBI during his investigation also visited the house of the accused person and, also saw the room in which the crime was committed and adjoining area. The **Regional FSL**

Report collected by Manikchak Police Station and further been collected by the I.O, of which has been made part of his investigation. The said report dated 30.09.2021 has been marked as **Exhibit No.-31**. The I.O has referred (D/10) as CAF and CDR of mobile phone of the accused and information provided by Subir Kumar Deb, Nodal Officer of Jio Digital Life. The CAF and CDR have been collectively marked as **Exhibit-32(containing 7 pages) (With objection)**. The I.O has stated that PW-2 is also known as Mona and the same has been reflected in the charge sheet submitted by him. The 2nd I.O of CBI has stated that his conclusion was that accused Rafikul Islam @ Bhelu, retired school teacher has committed rape of a minor victim girl aged 9 years belong to Schedule Caste category at his house on 4th June,2021 and thus committed offence of IPC punishable under Section 376AB, Section 6 of POCSO Act and Section 3(ii)(v) of SC & ST Act.

(13) In the case of *State V/s Pankaj* reported in **(2019) 11 SCC 575** it is held that the sole testimony of the prosecutrix, if credible, can be made the basis of the conviction without corroboration. It is held that the Court can insist for corroboration from the medical officer where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. It is observed that the sole testimony of the prosecutrix should not be doubted by the Court merely on the basis of assumptions and surmises.

The Hon'ble Apex Court in the case of *Yerumalla Latchaiah versus State of Andhra Pradesh* reported in **(2006) 9 SCC 713** has held that if the medical evidence is inconsistent with the evidence of the prosecutrix, then the Court has to take great care while appreciating the evidence. It is observed that the evidence of the prosecutrix can be belied by medical evidence, if the examination of the prosecutrix by the doctor immediately after the incident does not show any sign of rape.

In the case of *Wahid Khan versus State of MP [(2010) 2 SCC 9]*, the Hon'ble Apex Court has observed that judicial notice has to be taken of social repercussions backward looking Indian society, dangers of being ostracised and survival difficulties and the resultant psychology of an Indian girl or woman (specially an unmarried girl) not to admit rape unless rape had actually been committed. It is held that corroboration through medical evidence depends upon the facts of each and every case.

(14) The doctor of Malda Medical College & Hospital who has examined the V.G on 06.06.2021 has adduced her evidence as P.W.14 and as per her report **Exhibit 1/1** no sign of physical assault or abuse detected and on genitalia examination hymen was found intact. In this regard, the Ld. Advocate for the accused has raised the question in view of her evidence under cross-examination that in the medical examination report there is no mention that the hymen found red,

congested along with inflammation and even the doctor has not found any bruise, nor she found any Labia Muscular Tear. In the cross-examination suggestion has been put whether doctor agrees the version of Doctor Bernerd Knight, page 61 'in case of incomplete penetration the only sign which may be seen are reddening and inflammation of the vestibule within the Lebia or a small tear of the posterior fourchette : there may also be contusion of the hymen' in which the doctor agreed the suggestion and has stated that VG came to her after 44 hours and on that event the same may be subsided. The doctor has also agreed about the suggestion over the version of Doctor Taylor, 13th Edition, page 84 'both the nerve and blood supply to the area of genital is very good, and it follows that injury to that area will almost invariably produce a mark response by the infant victim'. It is pertinent to note that the grandmother of the victim girl (P.W-5) has stated in her evidence that woman folk on knowing the incident opened wearing apparels of the victim girl and found her portion of urination of red colour and swelling, and she was suffering pain for which the V.G was crying. The aunt of the V.G (P.W.-11) in her evidence has stated that after knowing the incident grandmother of the V.G, mother, two aunts of the V.G, she herself, one Fulen Mandal, Uttara Mandal, Rita Mandal, Menoka Mandal, V.G herself and cousin elder sister of the V.G all were present there and all of them enquired about the incident

from the V.G (P.W-1) and the cousin sister of the V.G (P.W-2), and then they have seen the place of urination of the V.G as red swollen condition. The V.G herself in her evidence has stated that after returning home out of pain at the place of her urination and above thigh, she went on sleep.

(15) In this regard question has been raised from the side of the defence that the V.G or her mother has not stated before the doctor about application of Vaseline or Vaseline like substance in the place of urination of the victim girl and the accused, and it has also not been proved from the Forensic Science Laboratory Test Report (Exhibit 31) about any trace of Vaseline or Vaseline like substance in the wearing pant of the victim girl. It will appear from the statement of the victim girl recorded under Section 164 Cr.P.C before the Ld, Magistrate that the V.G has stated application of Vaseline like substance in the place of his urination before inserting his penis in the vagina of the victim girl. The said fact of application of Vaseline before inserting male organ of the accused in the place of urination of the V.G has been reiterated in the evidence of the V.G herself and apart from that specifically mentioned in the FIR itself. The *Jethima* of the V.G (P.W-4) has stated in her evidence that the wearing apparel of the V.G was washed by her mother. It has also been argued from the side of the defence that the victim girl has been taken to Manikchak Rural Hospital and inspite of having doctors

there no medical treatment was done since nothing has happened to the VG. The copy of **RTI application** has been filed from the side of the defence marked as **Exhibit B** and it has been submitted by the Ld. Advocate for the accused that it appears from the information obtained that two doctors were available there at Manikchak Hospital. In this regard, it has been argued from the side of the prosecution that no lady doctor was present at Manikchak Rural Hospital and as per provision of the POCSO Act the victim girl should be examined by the lady doctor and accordingly on the next day the VG was examined at Malda Medical College & Hospital.

(16) It has been pointed from the side of the defence that allegedly the victim has sustained injury due to rape, and victim girl and her elder sister have been given Rs.5/- each, they have purchased chocolate from the nearby shop and ate the same and returned back home and thereafter they went on sleep, are quite abnormal and not possible in any probability. The Ld. Advocate for the accused has argued in this regard that on the event of such incident, the victim either should not accept the money or inform the incident to her house immediately, and it is beyond normal human conduct that the two sisters went on purchasing chocolate and ate the same and returned back home. The Ld. Advocate for the accused has also raised question when the victim girl has informed the incident to her family members, since it will not appear from the FIR clearly that elder cousin sister of

the V.G has informed the incident on that date itself or on the next day and the complainant herself in her evidence has not stated on which date she came to know about the incident. The time line of the incident suggests that the victim girl and her cousin elder sister went for a play on the back side of house of the accused at about 4/5 P.M in the evening and on the next day at about 9:00/11:00 a.m, the family members of the V.G came to know the incident from cousin elder sister of the V.G as she narrated the incident at first to her grandmother (P.W.5) and from her in turn, aunts of the victim girl and mother of the victim girl came to know the incident, who thereafter went to the house of the accused to raise protest and complaint was lodged with the P.S on 05.06.2021 subsequently. The victim girl was taken to Manikchak Rural Hospital, but her medical examination was not done in absence of any female doctor and the victim girl with her mother has been kept in the 'Child Corner' with Lady Constable at the Police Station and on the next day i.e. on 06.06.2021 the V.G has been sent to Malda Medical College & Hospital for her medical examination.

(17) It has been argued from the side of the defence that when in the house of the accused, there are 8/9 member including his mother, wife, four sons, wife of eldest son who used to reside in one family, and accused Rafikul Islam being a retired school teacher and his wife a teacher used to impart private tuition in the morning and evening each day for which several little

boys and girls used to visit their house, an incident like the present one is hardly believable. The Ld. Advocate for the accused has raised the question that as per the medical document and evidence that alleged incident took place at 5 p.m and P.W.12 in his cross-examination has stated that students were going for private tuition in the house of the accused at about 4:45 p.m on 04.06.2021, so, how the incident can take place then. The Ld. Advocate for the accused has pointed out that the prosecution has tried to establish the incident as post pole violence but there is no cogent evidence to consider the alleged incident at all out of political or caste related vendetta but on the contrary it is the specific case of the defence that the accused has been falsely implicated out of political rivalry at the instance of some politically influenced person like Gour Mandal, Biswajit Mandal belong to BJP party who brought the complainant family to BJP party office prior to lodging of the complaint and subsequent thereto to get them acquainted with other political figures of Delhi. The Ld. Advocate for the accused has further pointed out the document marked as **Exhibit A** which is an application address to the National Human Rights Commission, Malda Camp, Circuit House Malda with the averment therein that the accused is a local Muslim and influential TMC leader who has committed rape upon the daughter of the complainant and he used to threat her and her family members, and on 02.05.2021 after the result of election accused Rafikul

Islam came to their house and threatened her family members and also threatened to commit rape upon her minor daughter as she is a BJP supporter. The Ld. Special P.P by pointing out the evidence of the complainant, P.W-3, has submitted that since the complainant family were the supporters of BJP, and BJP leader Gour Mandal and his wife had visiting terms in the house of the complainant, they have been threatened since declaration of election and even after announcement of result in which accused has taken active part to diminish the opposition voice. The Ld. Special P.P has also submitted that the house of the accused is quite big and spread over land and mango garden as the offence was committed on the back side room of his house which will appear from the sketch-map [**Exhibit No.22 collectively (2 pages)**] and Crime-Scene-Examination-Report marked as **Exhibit No. 27.**

(18) The examining doctor of the victim girl has found old, healed tear at posterior fourchette i.e. junction of the labia majora and labia minora posteriorly, on 06.06.2021. According to the doctor old, healed tear and posterior fourchette is generally due to sexual assault, and on perusal of the history and medical examination she was of the clear opinion that sexual assault has committed. The grandmother of the victim girl on 05.06.2021 has found her portion of urinations with red colour and swelling and she was suffering pain for which she was crying. One aunt of

the victim girl in her evidence has stated that her mother-in-law i.e. the grandmother of the victim girl came to know the incident from the V.G and found the place of urination of the V.G in swollen red condition. The incident of sexual assault upon the victim girl took place on 04.06.2021 at about 4:00/ 5:00 pm. I have carefully considered Medical Jurisprudence in this regard. It is well settled proposition that mere touching of labia majora / labia minora amounts to rape. Accordingly, only putting or pushing of male organ of the accused in the vagina of the victim girl would clearly be said as rape upon her. It is important to note that while the victim girl was aged 9 years, the accused was a man of 60 years and potent.

(19) The phrase 'inserts or penetrates to any extent' mentioned in Section 3 (a) and 3 (b) of the POCSO, which describes penetrative sexual assault, to include touching of the reproductive organs. Moreover, as per Sections 3(a) and (b) of the POCSO Act, even slight penetration or touching of the penis with sexual intent to the private parts of a minor amounts to "penetrative sexual assault". “...even in case of penetrative sexual assault, it is not essential that there must be some injury to the hymen, labia majora, labia minora of the victim. Mere touching of the penis to the private part of the victim constitutes an offence under the POCSO Act...”

In the case of *Krishan Vs. State of Haryana* [2014 (13) SCC 574] it has been held that it is not necessary in every case of rape, the victim should have injuries on her body to establish her case.

The case reported in *Manick Sardar v. State of West Bengal*, Case Citation: **2022 LiveLaw (Cal) 46**, can be referred in this context: "It has also been strenuously argued that the allegation of rape on a seven-year-old minor is improbable as no injuries were found on the body of the victim including her private parts. Her hymen was intact. It is trite law mere penetration is sufficient to prove the offence of rape. It is not necessary that penetration must be of such nature that it would cause injuries or rupture the hymen. In the aforesaid factual matrix, it is clear that there was a slight penetration into the private parts of the victim, which though sufficient to constitute rape, did not result in rupture of hymen."

(20) After careful scrutiny of the oral and documentary evidences on record I find that the prosecution has banked upon the evidence of P.W.-1, P.W.-2, P.W.-5, P.W.-4, P.W.-3, P.W.-11 and P.W.-14 as most vital and very much relevant to determine the case along with the documents like Ext.-2, Ext.3, Ext.1/1, Ext.-4/1, Ext.-10, Ext.-11, Ext.-18, Ext.-19 (collectively), Ext.-22, Ext.-27, Ext.-29, and material marked Mat Ext.-II. In this case not a single witness has been declared hostile, nor stated anything contrary to the prosecution

case. There is no specific defence from the side of accused persons, save and except denial of the prosecution case. The content of the written complaint has been well established by the oral evidence of P.W.-3 and such evidence of P.W.-3 is in clear conformity with the evidence of P.W.-4 and P.W.-5.

“The offence of rape in its simplest term is “the ravishment of a woman, without her consent, by force, fear or fraud”, or as “the carnal knowledge of a woman by force against her will”. “Rape or raptus” is when a man hath carnal knowledge of a woman by force and against her will (**Co Litt 123 b**); or, as expressed more fully, “rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will”. (**Hale PC 628**) The essential words in an indictment for rape are *rapuit* and *carnaliter cognovit*; but *carnaliter cognovit*, nor any other circumlocution without the word *rapuit*, are not sufficient in a legal sense to express rape. [**1 Hen. 6, 1a, 9 Edw. 4, 26 a (Hale PC 628)**] In the crime of rape, “carnal knowledge” means the penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation. (**Stephen's Criminal Law, 9th Edn., p. 262**) In *Encyclopaedia of Crime and Justice* (Vol. 4, p. **1356**), it is stated “... even slight penetration is sufficient, and emission is unnecessary”. In *Halsbury's Statutes of England and Wales* (4th Edn.), Vol. 12, it is stated that

even the slightest degree of penetration is sufficient to prove sexual intercourse. It is violation, with violence, of the private person of a woman, an outrage by all means. By the very nature of the offence, it is an obnoxious act of the highest order. Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little (see *Joseph Lines*, IC&K 893). It is well known in the medical world that the examination of smegma loses all importance after twenty-four hours of the performance of the sexual intercourse. [See *S.P. Kohli (Dr) v. High Court of Punjab and Haryana* [(1979) 1 SCC 212; 1979 SCC (Cri) 252]. The rupture of hymen is by no means necessary to constitute the offence of rape. Even a slight penetration in the vulva is sufficient to constitute the offence of rape and rupture of the hymen is not necessary. Vulva penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur with the hymen remaining intact. The actus reus is complete with penetration. To constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence

of rape as defined in the law. **The depth of penetration is immaterial in an offence punishable under Section 376 IPC.”**

(21) The victim girl as P.W 1 has stated the incident of rape upon her as the accused removed her pant and put Vaseline at the place of her urination, and he also applied Vaseline over his organ of urination and then inserted his organ of urination into her place of urination and she was suffering pain. It is pertinent to mention here that the victim girl was aged about 9/10 years old and her cousin sister was 1 to 1½ years older than her. The cousin sister of the victim girl is the eye-witness of the incident and she has stated as P.W 2 that she went near the house of *Bhelu Master* and opened a window and found *Bhelu Master* lying upon the victim girl with his lungee taken up to the level of his waist and she then asked *Bhelu Master* addressing him as Sir, as to the whereabouts of her sister and he told her that victim girl is not there and then she told him that she has heard voice of victim girl and he must bring her out, otherwise she will assemble people by raising hue and cry and then he brought out victim girl and sought apology. To my mind, the statements of the witnesses are reliable, trustworthy and deserve credence by the Court and they do not seem to be based on any falsehood.

“*Sterling worth*” is an expression used in the context of criminal jurisprudence would mean a witness worthy of credence, one who is reliable and truthful -

which has to be gathered from the entire statement of the witnesses. The evidence of the prosecutrix and other material witnesses are found to be credible. Even though, the prosecutrix was a child of nine years and her elder cousin sister was aged 10/11 years at the time of occurrence, both of them had shown adequate maturity during the examination to explain the act perpetrated against the victim girl by the accused.

(22) In *State of M.P. v. Dayal Sahu* reported in **2005 Cri LJ 4375: (2005) 8 SCC 122: AIR 2005 SC 3570**), the Hon'ble Apex Court has held as under:

“Once the statement of prosecutrix inspires confidence and accepted by the Courts as such, conviction can be passed only on the solitary evidence of the prosecutrix, and no corroboration would be required unless there are compelling reasons which necessitate the Courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances.”

The Hon'ble Apex Court in *Sudhansu Sekhar Sahoo v. State of Orissa* reported in **(2002) 10 SCC 743: AIR 2003 SC 2136: (2003 Cri LJ 4920)**, has held that if testimony of the prosecutrix inspires the confidence in mind of the Court it can be made sole basis for convicting the accused.

The Hon'ble Apex Court in the decision of *Bhupinder Sharma v. State of Himachal Pradesh* reported in **(2003) 8 SCC 551: AIR 2003 SC 4684: (2004 Cri LJ 1)**, has held as under:

“To insist on corroboration except in the rarest of the rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insulted womanhood. It would be adding insult to injury.....”

(23) In the prosecution evidence, anomalies and contradictions are very nominal and does not raise a question about the genuineness of the evidence. If the version of the witnesses including statement given during investigation before State Police and CBI under Section 161 Cr.P.C, statement by the victim girl and her cousin sister before Ld. Magistrate under section 164 Cr.P.C. at the initial stage and the evidence produced before the court during trial are considered altogether, there is no scope to believe about any concoction of the incident as an afterthought by impleading the accused person falsely. The case of the prosecution has been proved beyond all reasonable doubts based on materials produced before the court. There is no contradiction over the particular fact, and it does not affect the core of the prosecution case. This Court finds that statements of the victim girl and her cousin sister are so clear, stable and coherent, that it may dispense with any corroborating medical or other

evidence and conviction of the accused person can be well founded on the basis of the testimony of the two minor girls alone. Considering the timeline of commission of the alleged offence and that of investigation, the anomalies, may at best be termed as minor discrepancies to have and to hold no bearing to the otherwise coherent and unblemished testimony of the prosecutrix.

(24) It has been held by the Hon'ble Apex Court of India in *State of Rajasthan v. Smt. Kalki and another* [(1981) 2 SCC 752: AIR 1981 SC 1390], in the deposition of witnesses there are always normal discrepancies due to normal errors of observation, loss of memory, mental disposition of the witnesses and the like. Unless, therefore, the discrepancies are “material discrepancies” so as to create a reasonable doubt about the credibility of the witnesses, the Court will not discard the evidence of the witnesses.

In the case of *State of Uttar Pradesh v/s Naresh and Others* reported in (2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216 at page 334 it has been observed that in all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also

make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier.

(25) The incident took place on 04.06.2021 and as such the victim girl was aged about 9 years, a minor girl. While ordinarily there is a ‘presumption of innocence’ in relation to an accused, Section 29 of the POCSO Act reverses this position. Section 29 of the POCSO Act creates a ‘presumption of guilt’ on the part of the accused if he is prosecuted for committing, abetting or attempting certain offences. Section 29 reads as under:

“29. Presumption as to certain offences - Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 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.”

In the context of Section 29, another provision of the POCSO Act, which is also required to be considered is Section 30 of POSCO Act, which is extracted herein below for ease of reference:

“30. Presumption of culpable mental state. –

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.- In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

Section 30 provides that in a prosecution under the POCSO Act, where the offence requires the existence of a culpable mental state, the Court is to presume the existence of such culpable mental state on the part of the accused, while of course giving to the accused the right to rebut it beyond reasonable doubt. Again therefore, there is a presumption of culpability coupled with the right of the accused to rebut such presumption. In so far

as the intention of the accused person behind touching the place of urination of the victim girl by his place of urination, in absence of any rebuttal material, the presumption under Section 30 of the POCSO Act would come into play. The statutory presumption of culpable mental state of the accused person namely Rafikul Islam @ Bhelu would apply in this case. Moreover, there is no explanation, nor there can be any explanation by the accused person about his act of inflicting aggravated penetrative sexual assault upon the victim girl, a child below 12 years which comes under the purview of Section 5(m) of the POCSO Act with the penal provision under Section 6 of the POCSO Act alternatively under Section 376AB of the I.P.C.

(26) Rape is a social problem, and the victim suffer from physical, mental, and emotional consequences as well as several other traumas which ruins her life. Women often suffer health issues and reproductive problems after the rape and the mental instability continues for a very long time. The effects of rape can include both physical as well as psychological trauma. In this regard the Ld. Special Public Prosecutor has contended that the victim girl is from backward tribal society and their immense misery can be apprehended. Rape is not only the crime against the body and mind of the victim girl but also her womanhood. It has been held in the case of *Shivasharanappa & Ors v. State of Karnataka* [2013 CRI.L.J 2658] that it is well settled in

law that the Court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. The corroboration is not a must to record a conviction, but as a rule of prudence, the Court thinks it desirable to see that corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, applies to a child witness who is competent and whose version is reliable.

(27) The Hon'ble Supreme Court has held in the case of ***Gurcharan Singh v. State*** [reported in **(1972) 2 SCC 749: AIR 1972 SC 2661**], that the prosecutrix is no accomplice and hence her testimony cannot be equated with that of an accomplice, requiring corroboration. The Apex Court has held that, however, as a rule of prudence, a Court will look for corroboration normally, so as to satisfy its own conscience.

In another case, it has been held that excepting medical corroboration in a rape case the corroboration of a prosecutrix is not necessary unless her evidence suffers from any basic infirmities and improbability [***Bharwada Bhoginbhai Hirjibhai v. State of Gujrat*** reported in **1983 Cri LJ 1096 (SC)**]. Even in an appropriate case, the Hon'ble Supreme Court has dispensed with medical corroboration for proving sexual offence, on the ground

of the prosecutrix belonging to a backward community as it is in the instant case.

(28) In view of such evidence on record I am of the notion that there is no patent inconsistency between the prosecution evidence and the charge framed in the instant case. The accused person fully understood the prosecution case as it would appear in the tenor of cross-examination and no prejudice appears to have been caused to him on that score.

(29) It is trite law that a prosecution for sexual assault and rape, conviction may be founded on the sole testimony of the victim girl if the same does not suffer from patent absurdity or inherent contradiction. I am unable to accept the version of the victim girl is one which is patently absurd and inherently contradictory. The victim girl was aged 9 years. The evidence so produced in this case has not been contradicted by any specific cross-examination or by the evidence of any other witness.

(30) It is relevant to refer the decision of the Hon'ble Apex Court in *Dildar Singh v. State of Punjab* reported in **2006 AIR SCW 4247: (2006) 10 SCC 531: AIR 2006 SC 3084: Page: 1882 2006 Cri LJ 3914**), wherein the Hon'ble Apex Court has held hereunder:

“In normal course of human conduct an unmarried girl who is a victim of sexual offence would not like to

give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident. Overpowered, as she may be, by a feeling of shame her natural inclination would be to avoid talking to anyone, lest the family name and honour is brought into controversy. Thus, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the First Information Report.”

(31) It would be quite absurd and unrealistic to think for a moment about any kind of concoction, embellishment, or tutorage upon the victim girl and her cousin sister to make any allegation against the accused person. The defence has also failed to make any specific case in this regard. The *sexual intent* of the accused persons is very much clear from his act and no defence has been taken that he had no such mental state with respect to the act, charged as an offence in the prosecution. Such being the position, this Court is of the considered view that the accused person has committed heinous crime and there is no reason to dealt with the matter leniently.

(32) In this case the accused person has also been charged to face the trial for the offence committed under Section 3(2)(v) of SC & ST (Prevention of Atrocities) Act, 1989 but after careful perusal of the materials on record, I do not find anything to establish

the said charge. It has been brought from the side of prosecution that the victim girl and her family members belong to 'Chain' community with surname Mandal comes under Schedule Caste and the accused Rafikul Islam @ Bhelu belonged to Other Backward Class. In this regard I have considered the landmark decision of the Hon'ble Apex Court reported in ***Swaran Singh & Ors vs State, through Standing Council & Anr. [2008 (8) SCC 435]***. After cogitating the entire evidence and the materials on record, no whisper of derogatory sense to insult or humiliate a member of the victim girl or her family member belonged to be of the Schedule Caste can be traced there. Accordingly, this charge has not been established.

(33) In view of the foregoing observations I am of the opinion that the prosecution has been able to prove the case beyond any shadow of doubt against accused person. In the conclusion after appreciating the entire evidence on record I am constrained to hold that the accused person namely Rafikul Islam @ Bhelu committed rape upon minor Victim Girl for which he is liable to be punished under Sections 6 of the POCSO Act alternatively under Section 376AB of IPC.

Hence, it is,

ORDERED

The accused person namely Rafikul Islam @ Bhelu being found guilty of the offence punishable under

Sections 6 of the POCSO Act alternatively under Section 376AB of the Indian Penal Code is convicted and sentenced thereunder as per provision under section 235 (2) of Cr. P.C.

The accused person/convict namely Rafikul Islam @ Bhelu is already in custody.

Fix 04-07-2025 for production of the accused person/ convict namely Rafikul Islam @ Bhelu for hearing on the point of sentence.

Dictated & Corrected by me

Judge, Special Court,
ADJ 2nd Court, Malda

Judge, Special Court
ADJ 2nd Court, Malda

POCSO 80/2021

Order dated:- 04-07-2025

In view of my earlier order convicted person namely Rafikul Islam @ Bhelu is produced from Judicial Custody.

Now the record is taken up for hearing of the convicted person on the point of sentence.

The convict Rafikul Islam @ Bhelu has submitted that he is a man of 64 years with his family member consist of his mother, wife and four sons and one daughter-in-law. The convict has also submitted that he has no landed property, and he has his own residential house where his family members are residing. The convict has further submitted that he is a retired Government School Teacher, but his pension has not yet been started for which he has no independent source of income. He has submitted that his two sons are employed, and his mother is receiving pension. It has been submitted by the convict that he has no financially dependent person in his family upon him. The convict prays for lesser punishment and has also submitted that he has his aged mother and wife in his house. The convict intends to prefer Appeal before the Hon'ble High Court, Calcutta by appointing his own lawyer.

Heard the Ld. Advocate for the convict and the Ld. Special P.P of this case.

The Ld. Special P.P has submitted that the accused being a retired teacher had the responsibility to the

society to reform but instead of that knowing the consequence well, committed the crime of rape upon the minor victim girl. The Ld. Special P.P has submitted two applications one on behalf of the State/CBI for granting compensation as per provision under Section 33(8) of the POCSO Act and another application has been submitted from the side of the victim, for granting compensation to the minor victim girl towards rehabilitation, education and mental health support. The Ld. Special P.P has referred para 82(vii) of the Order of the Hon'ble High Court, Calcutta dated 19.08.2021 in WPA (P) No.142 to 149 of 2021 and 167 of 2021 to the effect that immediate action shall be taken by the State to pay compensation to the victim of crime as per the policy of the State, after due verification. In the said order, it has also been mentioned that it shall be direct bank transfer in the account and the same will not debar her to claim further compensation under any law or scheme of the Government, for which the victims shall be at liberty to avail of their appropriate remedies...'

The Ld. Advocate for the convict has submitted that he has no previous antecedent and being a retired Government School Teacher has his reputation in the locality. It has also been submitted by the Ld. Advocate for the convict that the convict is in custody for four years and a man of 64 years now, for which lesser punishment should be given to him as far as practicable and applicable as per provision of law.

Considering the nature of the offence and the conduct of the convict, I am of the view that he is not entitled to get release on probation or on admonition under section 3/4 of the Probation of Offenders Act.

In the instant case convicted person namely Rafikul Islam @ Bhelu has been found guilty under Section 6 of POCSO Act alternatively under section 376AB of the Indian Penal Code.

The object of the POCSO Act is to Protect the children from various kinds of sexual abuse and offences. It is very crucial to treat a child with dignity and utmost compassion and the child should be protected from the evils of the society and should be brought up in a secure environment.

Keeping in mind the very object of POCSO Act and the provision of Section 376AB of the Indian Penal Code, submission of Ld. Defence Counsel, the Ld. Special P.P and the submission of convicted person on the point of sentence, this court is of view that the convicted person being a man of 64 years committed the crime punishable under Section 6 of POCSO Act alternatively under section 376AB of the Indian Penal Code. The minor victim child was aged about 9 years at the time of incident. The convicted person namely Rafikul Islam @ Bhelu has found guilty under Section 6 of POCSO Act alternatively under Section 376AB of the Indian Penal Code

Therefore, having considered the nature of the offence and the manner in which such offence has been committed by the convicted person this court is not inclined to give any benefit of section 360 Cr. P.C to the convicted person. Coming to the issue of sentence, although the convicted person is found guilty of the crime, I find that he does not have any criminal antecedent.

Having considered the age of the convicted person and the nature of the crime committed by him, this court is of view that proper justice will be served, if the convicted person namely Rafikul Islam @ Bhelu is sentenced to suffer Rigorous Imprisonment for Life which means the remainder of his natural life and to pay a fine of Rupees Fifty Thousand (Rs.50,000/-) in default to suffer Simple Imprisonment for further Six (06) months for commission of offence under Section 6 of the POCSO Act alternatively under Section 376AB of the Indian Penal Code.

Hence, it is

O R D E R E D

that the convicted person namely Rafikul Islam @ Bhelu is sentenced to suffer Rigorous Imprisonment for Life which means the remainder of his natural life and to pay a fine of Rupees Fifty Thousand (Rs.50,000/-) in default to suffer Simple Imprisonment for further Six (06) months for commission of offence under Section 6 of the

POCSO Act alternatively under Section 376AB of the Indian Penal Code.

If the fine amount be realized, the total realized fine amount, will be given to, the victim girl as compensation in accordance with the Section 357 Cr. P.C.

Let the period of detention already undergone by the convicted person be set off against the term of imprisonment, imposed on him in accordance with Section 428 Cr. P.C.

The victim girl has suffered immense loss and injury for the offence committed upon her by convicted person and for the sake of her medical treatment, education, rehabilitation, over all development and for mental or physical harm caused to the victim girl, this Court recommends further amount of Rupees Three Lakhs (Rs.3,00,000/-) as compensation to the victim girl, out of Victim Compensation Scheme in terms of section 357(A) of Cr. P.C and the said amount of compensation should be credited to the bank account of the Victim Girl directly.

The Ld. Chairman, District Legal Services Authority, Malda is requested to take necessary steps for such payment in this regard to the victim girl.

Let the seized documents and seized articles be returned to the person from whom seized after expiry of the prescribed period of appeal, in accordance with law.

Let a copy of this Judgment and Order be supplied to the convicted person free of cost.

Let a copy of this Judgment and Order be supplied to the District Magistrate, Malda in accordance with the provision of Section 365 Cr. P.C.

Let a copy of this Judgment and Order be supplied to the Ld. Chairman District Legal Services Authority, Malda.

The right to prefer Appeal with Legal Aid has been duly communicated within the understanding of the convicted person in Bengali language and also to the Ld. Advocate for the convicted person, to which the convicted person namely Rafikul Islam @ Bhelu has expressed his willingness to prefer Appeal by appointing his own Advocate.

Let a copy of this Judgment and Order be supplied to the Secretary, District Legal Services Authority, Malda for giving assistance to the convicted person to prefer Appeal before the Hon'ble High Court, Calcutta if so desired by the convict.

Let a copy of this Judgment and Order be supplied to the Secretary, State Legal Services Authority, West Bengal.

Dictated & Corrected by me

Judge, Special Court,
ADJ 2nd Court, Malda

Judge, Special Court
ADJ 2nd Court, Malda