

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. \_\_\_\_\_ OF 2026  
(@ SLP(CrL.) No. 16838 of 2025)**

**DEBRAJ DUTTA**

**APPELLANT(S)**

**VERSUS**

**THE STATE OF WEST BENGAL & ANR.**

**RESPONDENT(S)**

**O R D E R**

1. Leave granted.
2. The appellant, Debraj Dutta, is aggrieved by the judgment dated 09.09.2025 of the Calcutta High Court in Criminal Appeal No. 376/2019, reversing his acquittal by the Additional District & Sessions Judge-cum-Special Judge under POCSO Act, 2012, First Court, Sealdah, South 24 Parganas, West Bengal, *vide* judgment dated 13.03.2019, in Special Case No. 32 of 2017. Thereby, the High Court convicted the appellant under Section 8 of the Protection of Children from Sexual Offences Act, 2012<sup>1</sup>, and sentenced him to simple imprisonment for three years and payment of fine of ₹10,000/- coupled with default imprisonment of three months.
3. By order dated 15.10.2025, this Court granted exemption to the appellant, Debraj Dutta, from surrendering pursuant to the impugned judgment passed by the High Court.

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<sup>1</sup> For short 'POCSO Act'

4. The appellant was charged under Section 10 of the POCSO Act. The allegation against the appellant, a tuition teacher, was that he had sexually assaulted his student, a minor girl aged about 14 years, on 17.07.2017 by touching her inappropriately. The appellant pleaded innocence. Ten witnesses were examined by the prosecution to establish the case against him.
5. The victim child was examined as PW-1 and her mother was examined as PW-2. The mother of another child was examined as PW-6. For the purposes of this appeal, consideration of their evidence would be sufficient.
6. Depositing as PW-1, the victim child stated that the incident took place on 17.07.2017 at about 09.25 p.m. at the house of the appellant. According to her, the appellant discharged the other students, who had come for tuition on that day and asked her to stay back for some homework. She alleged that he touched her chest and pressed her breast. She stated that she did not tell her parents about the incident after going home and informed her mother only later at night. According to her, on the next day evening, along with her parents, she went to the Police Station and lodged a complaint. She also stated that she was taken to R.G. Kar Medical College & Hospital, Kolkata, for examination.
7. In her cross-examination, PW-1 stated that her mother did not consent to her medical examination. She further stated that the mothers of the other students were waiting in the verandah while the fathers of some of the students were waiting on the

landing portion on 17.07.2017. She described in detail the house of the appellant, stating that there was only one room for their coaching and that, after entering the room, there is a dining place and the students sit on the floor and the chairs there. She further stated that near the dining place, there was a kitchen and from the dining table, the door of the kitchen was visible. According to her, the kitchen door was open but there was a curtain. Further, she admitted that at the time of the incident, the appellant's wife was cooking in the kitchen. She denied that, on the date of the incident, the appellant had rebuked her as she did not perform her study properly. She also denied that she had been tutored by her parents to make the complaint.

8. The mother of the victim child deposed as PW-2. She stated that, on the fateful day, she had taken her daughter to the house of the appellant for tuition. On that night, her daughter disclosed to her that the appellant had brushed against her leg with his leg. She further stated that her daughter told her that the appellant had touched her chest and pressed her breast. She stated that the appellant had told her that as the child's home task was due, he would discharge her later on and owing to that, she waited outside on the staircase.

9. It is clear from PW-2's deposition that the incident was narrated to her by her daughter on the night of 17.07.2017 itself. However, she then stated in her deposition that it was

only on the evening of 18.07.2017 that she, along with her husband and daughter, went to the Police Station and lodged a complaint. She admitted in her cross-examination that she did not give consent for the medical examination of her daughter but gave no reason therefor. She also denied that, on the date of the incident, the appellant had rebuked her daughter as she was not studying properly. She denied that no incident, as alleged, had taken place and for that reason, she did not give her consent for the medical examination of her daughter.

10. We will advert to the evidence of PW-6 and the crucial relevance thereof a little later.
11. Considering the evidence adduced, the trial court opined that the delay in the lodging of the First Information Report<sup>2</sup>, without any explanation therefor, would weigh against the prosecution. Further, the lack of medical examination of the victim was held against the prosecution. As the prosecution had failed to prove the case beyond the shadow of doubt, the trial court opined that the benefit of doubt would have to be given to the appellant and acquitted him accordingly.
12. In appeal, the High Court applied the presumption arising under Section 29 of the POCSO Act and held that the appellant had failed to discharge the onus that shifted onto him. In that regard, the High Court noted the legal position correctly to the effect that the foundational facts would have to be established by the prosecution to make out a case under Sections 3, 5, 7 or 9 of the POCSO Act, whereupon the onus

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<sup>2</sup> For short 'FIR'

would shift upon the accused to rebut the said statutory presumption. Having summed up the legal position correctly, the High Court failed to note that the foundational facts were not established in the case on hand, whereby the statutory presumption could have been invoked.

13. We may now note what PW-6, the mother of another child who was also taking tuition from the appellant, stated about the events of the fateful day. According to her, on the said day, she had taken her son also to the appellant's house for tuition and that night, the mother of the victim child returned from the appellant's house along with her. There was no cross-examination on this aspect after she was declared hostile and what was said by PW-6 must, therefore, be treated as an admitted fact. This statement implies that the son of PW-6 would have also been with the victim child in the appellant's house at that time. In effect, the very happening of the incident as alleged is rendered doubtful and open to question.

14. Further, the discrepancies in the statements of the crucial witnesses, PW-1 and PW-2, apart from the fact that there is no explanation as to why the police complaint was not lodged for nearly a day after the alleged incident cannot be ignored. In this regard, we may note that the father of the victim child is himself a member of the police force. That being so, the delay in the lodging of the FIR assumes greater importance. Further, the refusal of medical examination of the victim

child also gains significance. This was not a case where invasive medical examination of the victim child was warranted whereupon, the mother could have denied permission for the same. Mere visual examination would have sufficed but the mother, PW-2, did not allow it and offered no explanation for her reticence in that regard. Her refusal in these circumstances, therefore, merits an adverse inference.

15. Unless the testimony of a victim child is found to be fully credible and trustworthy, the question of applying the presumption on the strength of such statement alone would not arise. The foundational fact of a sexual assault that would attract the presumption under Section 29 of the POCSO Act would require more than PW-1's statement which, on the face of it, was not credible as what she had stated to her mother was not borne out by her own statement before the trial court. The victim child narrated the incident to her mother on the night of the incident itself and, according to the mother, PW-2, the child specifically stated that the appellant had brushed his leg against hers but during her deposition before the trial court 8 months later, she failed to mention the same. This failure on the part of the victim child to consistently narrate the details of the incident negates the possibility of applying the statutory presumption.

16. Given the facts and the circumstances of the case on hand, we are of the view that the High Court was not justified in reversing the judgment of acquittal passed by the trial court.

The prosecution had clearly failed to prove the guilt of the appellant beyond reasonable doubt and the trial court was correct in holding to that effect.

17. The appeal is, accordingly, allowed, setting aside the judgment dated 09.09.2025 of the Calcutta High Court in Criminal Appeal No. 376/2019 and restoring the judgment of acquittal dated 13.03.2019 passed by the Additional District & Sessions Judge-cum-Special Judge under the POCSO Act, 2012, First Court, Sealdah, South 24 Parganas, West Bengal, in Special Case No. 32 of 2017.

18. Pending application(s), if any, shall stand disposed of.

.....J.  
(SANJAY KUMAR)

.....J.  
(K. VINOD CHANDRAN)

NEW DELHI;  
APRIL 07, 2026.

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Crl.) No. 16838/2025

[Arising out of impugned final judgment and order dated 09-09-2025 in CRA No. 376/2019 passed by the High Court at Calcutta]

DEBRAJ DUTTA

Petitioner(s)

VERSUS

THE STATE OF WEST BENGAL &amp; ANR.

Respondent(s)

(IA No. 257956/2025 - EXEMPTION FROM FILING O.T. and IA No. 257952/2025 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 07-04-2026 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KUMAR  
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Petitioner(s)

Mr. Saurabh Sharma, Adv.  
Mr. Chand Qureshi, AOR  
Ms. Puja Kumari Shaw, Adv.  
Mr. Vijay Kumar, Adv.  
Mr. Sundeep Pandhi, Adv.  
Mr. Vasu Vibhav Purohit, Adv.  
Mr. Eresh Roshan Swain, Adv.  
Mr. M.venkata Vasudev, Adv.  
Mr. Karan Gupta, Adv.

For Respondent(s)

Mr. Ashok Kumar Panda, Sr. Adv.  
Mr. Chanchal Kumar Ganguli, Adv.  
Ms. Nandini Sen Mukherjee, AOR  
Mr. Basab Sengupta, Adv.  
  
Mr. Dibyadyuti Banerjee, Adv.  
Ms. Sumedha Halder, Adv.  
Mr. Abhijit Sengupta, AOR  
Mr. Navneet Singh, Adv.  
Mr. S.k.mehta, Adv.  
Mr. Sunil Ahya, Adv.  
Mr. Balmiki Prasad, Adv.  
Mr. Birendra Kumar, Adv.

UPON hearing the counsel, the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)  
AR-cum-PS

(PREETI SAXENA)  
COURT MASTER (NSH)  
(Signed order is placed on the file)