

CNR No. WBMD08-001307-2021

District :Murshidabad.

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
1st COURT, LALBAGH, MURSHIDABAD**

State of West Bengal

.....Prosecutor.

-Vs-

1. Basudeb @ Basu @ Biswa Dev @ Biswadeba Mondal

2. Mithun Das

3. Akash Mandal &

4. Arun Mandal

....Accused persons.

Under Section 6 /14/15 POCSO Act

&

Section 376 D/ 506 of IPC & 67B of IT Act.

Form – A

Present –

DEEPTO GHOSH (WB 00841)
Additional District & Sessions Judge,
1st Court, Lalbagh, Murshidabad.

Date of the Judgement: 17.10.2023

POCSO 56 of 2021
PT No. 09(06)2022 & 10(08)2023
(CNR- WBMD08-001307-2021)

Arising out of

Murshidabad Police Station Case No. 513 of 2021 dated 23.11.2021

CNR No. WBMD08-001307-2021

(Details of FIR/Crime and Police Station)	
Complainant	State of West Bengal OR <u>Name of the Complainant-</u> (Defacto Complainant- identity not disclosed)
Represented By	<u>Name of the Advocate-</u> Bivas Chatterjee (Special PP appointed by Govt. Of West Bengal Notification no. 4891- C/PE-04/2023 (Part) Dated 14.08.23)
Accused	<u>Name with all Particulars (A1)-</u> 1] Basudeb @ Basu @ Biswa Dev @ Biswadeba Mondal ; 2] Mithun Das ; 3] Akash Mandal &4] Arun Mandal
Represented By	<u>Name of the Advocates-</u> 1] Golam Rasul ; 2] Koushik Dey ; 3] Shyamal Dey ; 4] Sanjay Haldar (Legal Aid Counsel)

Form – B

Date of Offence	09-10-2021
Date of FIR	23-11-2021
Date of Charge-sheet	19-01-2022 11-08-2023 17-09-2023
Date of Framing of Charges	10-06-2022 29-08-2023
Date of commencement of Evidence	04-08-2022
Date on which Judgment is reserved	13-10-2023
Date of the Judgment	17.10.2023
Date of the Sentencing Order, if any	18.10.2023

CNR No. WBMD08-001307-2021

Accused Details:

Rank of the Accused	Name of the Accused	Date of arrest	Date of release on Bail	Offenses charged with	Whether acquitted or convicted	Sentence imposed (Substantive)	Period of Detention Undergone during Trial for purpose of Section 428 CrPC
1	Basudeb @ Basu @ Biswa Dev @ Biswadeba Mondal ;	23.11.21	Custody trial	6/14/15 POCSO ACT & 376 DA/506 IPC & 67B IT ACT	CONVICTED	Rigorous Imprisonment for life, which shall mean imprisonment for the remainder of their natural life and to pay fine of Rs.50,000/- ,(Rupees fifty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for one (01) year, more for commission of the offence punishable under Section 6 of the POCSO Act; Rigorous Imprisonment for life, which shall mean imprisonment for the remainder of their natural life and to pay fine of Rs.50,000/- ,(Rupees fifty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for one (01) year, more for commission of the offence punishable under Section 376DA of the Indian Penal Code ; Rigorous Imprisonment for 2 (two) years and to pay fine of Rs.20,000/-	1 Years 11 month 27 days.

CNR No. WBMD08-001307-2021

						,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months more, for commission of the offence punishable under Section 506/34 of the Indian Penal Code; Rigorous Imprisonment for 5 (five) years and to pay fine of Rs.20,000/- ,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 14 of the POCSO Act ; Rigorous Imprisonment for 3 (three) years and to pay fine of Rs.20,000/- ,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 15 of the POCSO Act ;&Rigorous Imprisonment for 2 (two) years and to pay fine of Rs.60,000/- ,(Rupees Sixty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence
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CNR No. WBMD08-001307-2021

						punishable under Section 67B of the Information Technology Act, 2000.	
2	Mithun Das ;	23.11.21	Custody trial	6/14/15 POCSO ACT & 376 DA/506 IPC & 67B IT ACT		Rigorous Imprisonment for life, which shall mean imprisonment for the remainder of their natural life and to pay fine of Rs.50,000/- ,(Rupees fifty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for one (01) year, more for commission of the offence punishable under Section 6 of the POCSO Act; Rigorous Imprisonment for life, which shall mean imprisonment for the remainder of their natural life and to pay fine of Rs.50,000/- ,(Rupees fifty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for one (01) year, more for commission of the offence punishable under Section 376DA of the Indian Penal Code ; Rigorous Imprisonment for 2 (two) years and to pay fine of Rs.20,000/- ,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two)	1 Years 11 month 27 days

CNR No. WBMD08-001307-2021

						<p>months more, for commission of the offence punishable under Section 506/34 of the Indian Penal Code; Rigorous Imprisonment for 5 (five) years and to pay fine of Rs.20,000/- ,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 14 of the POCSO Act ; Rigorous Imprisonment for 3 (three) years and to pay fine of Rs.20,000/- ,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 15 of the POCSO Act ;&Rigorous Imprisonment for 2 (two) years and to pay fine of Rs.60,000/- ,(Rupees Sixty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 67B of the Information Technology Act, 2000.</p>	
3	Akash Mandal	23.11.21	Custody	6/14/15 POCSO		Rigorous	1 Years 11

CNR No. WBMD08-001307-2021

			trial	ACT & 376 DA/506 IPC & 67B IT ACT	<p>Imprisonment for life, which shall mean imprisonment for the remainder of their natural life and to pay fine of Rs.50,000/- ,(Rupees fifty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for one (01) year, more for commission of the offence punishable under Section 6 of the POCSO Act;</p> <p>Rigorous Imprisonment for life, which shall mean imprisonment for the remainder of their natural life and to pay fine of Rs.50,000/- ,(Rupees fifty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for one (01) year, more for commission of the offence punishable under Section 376DA of the Indian Penal Code ;</p> <p>Rigorous Imprisonment for 2 (two) years and to pay fine of Rs.20,000/- ,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months more, for commission of the offence punishable under Section 506/34 of the Indian Penal Code;</p> <p>Rigorous</p>	month 27 days
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CNR No. WBMD08-001307-2021

						<p>Imprisonment for 5 (five) years and to pay fine of Rs.20,000/- ,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 14 of the POCSO Act ;</p> <p>Rigorous Imprisonment for 3 (three) years and to pay fine of Rs.20,000/- ,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 15 of the POCSO Act ;</p> <p>&Rigorous Imprisonment for 2 (two) years and to pay fine of Rs.60,000/- ,(Rupees Sixty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 67B of the Information Technology Act, 2000.</p>	
4	Arun Mandal ;	07.05.23	Custody trial	6/14/15 POCSO ACT & 376 DA/506 IPC & 67B IT ACT		Rigorous Imprisonment for life, which shall mean imprisonment for the remainder of their natural life and to pay	5 months 12 days

CNR No. WBMD08-001307-2021

					<p>fine of Rs.50,000/- ,(Rupees fifty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for one (01) year, more for commission of the offence punishable under Section 6 of the POCSO Act; Rigorous Imprisonment for life, which shall mean imprisonment for the remainder of their natural life and to pay fine of Rs.50,000/- ,(Rupees fifty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for one (01) year, more for commission of the offence punishable under Section 376DA of the Indian Penal Code ; Rigorous Imprisonment for 2 (two) years and to pay fine of Rs.20,000/- ,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months more, for commission of the offence punishable under Section 506/34 of the Indian Penal Code; Rigorous Imprisonment for 5 (five) years and to pay fine of Rs.20,000/- ,(Rupees Twenty Thousand) each, in default of</p>	
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CNR No. WBMD08-001307-2021

						payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 14 of the POCSO Act ; Rigorous Imprisonment for 3 (three) years and to pay fine of Rs.20,000/- ,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 15 of the POCSO Act ;&Rigorous Imprisonment for 2 (two) years and to pay fine of Rs.60,000/- ,(Rupees Sixty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 67B of the Information Technology Act, 2000.	
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CNR No. WBMD08-001307-2021

Form – C**LIST OF PROSECUTION / DEFENCE/ COURT WITNESSES****A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
P.W. 1	SUSANTA DAS	Scribe
P.W. 2	MOTHER OF V.G.	Defacto complainant
P.W. 3	VICTIM GIRL (V.G.)	Victim Girl
P.W. 4	DR. NIRMAL KUMAR SAHU	First Doctor who examined the VG.
P.W. 5	DR. DEBASIS BISWAS	Second Doctor of the VG.
P.W. 6	SANDIP DAS	Civic Volunteer/ Seizure witness
P.W. 7	IMDADUL SK.	Civic Volunteer/ IT Expert
P.W. 8	DR.CHITRAKSHYA SARKAR	Assistant Director, SFSL, Kolkata.
P.W. 9	SUBRATO SARKAR	Scientist, CFSL, Pune
P.W. 10	PRONOY DAS	Photographer
P.W. 11	S.I. JHATULAL MONDAL	First IO
P.W.12	Inspector Goutam Mitra	Final IO.

B. Defence Witnesses, if any: (NIL)

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW 1		
DW 2		
DW 3		

C. Court Witnesses, if any: (NIL)

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW 1		
CW 2		
CW 3		

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS**A. Prosecution:**

Sr. No.	Exhibit Number	Description
1	Ext. P1/PW1 as a whole	Written Complaint
2	Ext. P1/1/PW2	Signature of PW2 on the Written Complaint
3	Ext. P1/2/PW2	Signature of PW2 on formal F.I.R
4	Ext. P1/3/PW11	Endorsement on the written complaint
5	Ext. P1/4/PW11	Formal FIR
6	Ext. P2/PW2	First Medical Document of V.G. at Lalbagh Hospital dated 24.11.2021.
7	Ext. P2/1/PW3	Signature of the VG on Medical Report dated 24.11.2021.
8	Ext. P2/2/PW4 as a whole	First Time Medical Report of V.G.
9	Ext. P2/3/PW11	Signature of Trishna Das, LC on medical document
10	Ext. P3/PW2	Seizure List of wearing apparels of V.G. dated 24.11.2021
11	Ext.P3/1/PW3	Signature on Seizure List and identification of P3/PW2
12	Ext. P4/PW2 as a whole	Medical Examination report of the VG dated 27.11.2021.
13	Ext. P4/1/PW3	Signature on Medical document after medical examination by VG on 27.11.2021.
14	Ext. P4/2/PW11	Signature of LHG, Ruby Dutta on medical document
15	Ext. P5/PW2 as a whole	DVD containing videos of V.G.
16	Ext. P6/PW2	Signature of PW2 on seizure list
17	Ext. P6/1/PW3	Signature on the seizure list of birth certificate of the V.G.
18	Ext. P6/2/PW11	Seizure list dated 27.11.2021.
19	Ext. P7/PW2	Zimmanama bond
20	Ext. P8/PW2	GD Complaint done on loss of Birth

CNR No. WBMD08-001307-2021

		Certificate dated 02.09.2023
21	Ext. P9/PW2 as a whole	Certified Copy of Birth Certificate
22	Ext. P10/PW3	Statement of VG u/s 164 Cr.P.C.
23	Ext. P11/PW3 as a whole	SEAGATE made HDD of 1TB capacity marked as "CFSL-P/426/DFD/55/2022/Data-I" (Hard Disc A)
24	Ext. P11/1/PW9	Label on the Envelope containing SEAGATE made HDD of 1TB capacity marked as "CFSL-P/426/DFD/55/2022/Data-I (Hard Disc A)
25	Ext. P12/PW4	Requisition slip in respect of seeking the medical examination and opinion of the VG sent on 23.11.2021 by Murshidabad PS duly received by Medical Officer of Lalbagh SD Hospital.
26	P13 as a whole (formal proof dispensed with)	Original report of CFSL Assam marked Exhibit U/s 294 of Cr.P.C. vide Order no. 51 dated 18.09.2023.
27	Ext. P14/PW6 as a whole	Seizure list dated 28.11.2021.
28	Ext. P15/PW7	Seizure list dated 24.11.2021 on seizure of : OPPO mobile phone along with one DVD containing two videos
29	Ext. P16/PW7	Certificate U/s 65B Indian Evidence Act dated 24.11.2021.
30	Ext. P17/PW8	Certificate U/s 65B Indian Evidence Act dated 03.03.2023
31	Ext. P18/PW8	Voice transcription prepared by PW8.
32	Ext. P19/PW8 as a whole	Requisition from Court and receipts from SFSL
33	Ext. P20/PW8 as a whole	Report of SFSL, Kolkata dated 10.05.2023
34	Ext. P21/PW8	Signature of PW8 on label of HDD
35	Ext. P22/PW8	Signature of PW8 on another HDD
36	Ext. P22/1/PW9	Signature of PW9 on another envelope containing SEA GATE HDD marked Exh-B (P22/PW8).

CNR No. WBMD08-001307-2021

37	Ext. P23/PW8 as a whole with SD card	Voice transcript of Basudeb Mondal along with SD card
38	Ext. P24/PW8 as a whole with SD card	Voice transcript of Mithun Das along with SD card
39	Ext. P25/PW8 as a whole with SD card	Voice transcript of Arun Mandal along with SD card
40	Ext. P26/PW8 as a whole with SD card	Voice transcript of Akash Mandal along with SD card
41	Ext. P27/PW8 as a whole	micro SD card containing gait video of accused along with signature with seal of the witness U/s 65B Evidence Act dated 03.03.2023
42	Ext. P28/PW9	received requisition dt. 10.05.2023 for forensic examination Under case File NO. CFSL(PUN)/426/DF/55/22/1893 containing one brown colour sealed parcel.
43	Ext. P29/PW9 as a whole	The entire report along with the receptacle
44	Ext. P30/PW11	Requisition to cause examination of V.G. U/s 161 Cr.P.C.
45	Ext. P31/PW11	Rough sketch map
46	Ext. P31/1/PW11	Index of Rough Sketch
47	Ext. P32/PW11	Second requisition slip which sent to the Superintendent, Lalbagh SD Hospital on 27.11.2021 for medical examination of the VG
48	Ext. P33/PW11	requisition dated 27.11.2021 of the three PC accused persons for their medical examination, including their private parts.
49	Ext. P34/P11 Formal Proof dispensed with	Medical reports of accused Akash Mondal
50	Ext. P35/P11 Formal Proof dispensed with	Medical reports of accused Basudeb Mondal
51	Ext. P36/P11 Formal Proof dispensed with	Medical reports of accused Mithun Das

CNR No. WBMD08-001307-2021

52	Ext. P37/P11	Requisition for medical examination of accused Arun Mondal .
53	Ext. P38/P11	Medical report of accused Arun Mondal.
54	Ext. P39/P12 as a whole	Requisition slip along with the acceptance memo of CFSL, Assam.
55	Ext. X/1	Label containing VIVO Mobile phone sent to CFSL, Pune.

B. Defence:

Sr. No.	Exhibit Number	Description
1	Exhibit D-1/PW11	Custody Memo of Basudeb Mondal.

C. Court Exhibits: (NIL)

Sr. No.	Exhibit Number	Description
1	Exhibit C-1/CW 1	
2	Exhibit C-2/CW 2	

D. Material Objects:

Sr. No.	Exhibit Number	Description
1	Mat Ext. I	Green Coloured Kameez and blue coloured Salwar full pant of V.G.
2	Mat Ext. II as a whole. (Formal proof dispensed with on consent).	One USB Flash drive San Disk-64 GB containing File Name: VID-20211123-WA0001.mp4 and File Name; VID-20211123-WA0002.mp4, having data source Ext.C (Frontech DVD) along with its Hash

CNR No. WBMD08-001307-2021

		Value and receptacles.
3	Mat Ext. III as a whole. (Formal proof dispensed with on consent)	One mobile phone handset (touch screen) with blue coloured cover, Make OPPO is, with receptacles.
4	Mat Ext. IV as a whole. (Formal proof dispensed with on consent)	One Frontech make DVD with storage capacity 4.7GB /120 minute is found and the same is with receptacles.
5	Mat Ext. V as a whole. (Formal proof dispensed with on consent)	The CD marked asECD/1 in black coloured hand written, containing File Name: VID-20211123-WA0001.mp4 and File Name; VID-20211123-WA0002.mp4, having data source Ext.C (Frontech DVD) along with its Hash Value and receptacle.
6	Mat Ext. VI as a whole with envelope	LAVA black coloured mobile phone seized from the accused Mithun Das.
7	Mat Ext. VII as a whole along with cover.	VIVO mobile phone seized from the custody of Basudeb Mondal.
8	Mat Ext. VII/1	Sticker on the VIVO Mobile Phone given by PW9.
9	Mat Ext. VII/2	Envelope containing VIVO Mobile Phone.
10	Mat Ext. VIII	SIM card of JIO bearing No.89918400500009853211
11	Mat Ext. IX as a whole.	San Disk Micro SD card of 32 GB bearing no. 8233DVFAB0K marked Ext. 1/2 which I examined and the same bears my signature along with the envelope in which the same contained marked for future identification.
12	Mat Ext. X as a whole.	brown envelope and box Containing , blue coloured mobile phone with SIM and SD card.

Starting with the words of the Supreme Court of Canada, in R v.Seaboyer [(1991) 2 S.C.R. 577, 650 (L'Heureux-Dubé & Gonthier JJ, dissenting in part -Canada, Supreme Court).

“The woman who comes to the attention of the authorities has her victimization measured against the current rape mythologies, i.e., who she should be in order to be recognized as having been, in the eyes of the law, raped; who her attacker must be in order to be recognized, in the eyes of the law, as a potential rapist; and how injured she must be in order to be believed.”

Here, in this context, reminding the role of we Judges, holding trials, in matters involving horrid episode of lustfulness on young children, shocking the conscience of the society, our Hon'ble Apex Court, quite a long ago in pre Nirbhya era, i.e much before promulgation of POCSO ACT , expressed some words of vigilance, which I find it pertinent to mention before advancing further -

“ JUSTICE DEMANDS. THE COURT AWARDS ”

Before parting with the judgement, with deep concern, we may point out that all sexual assaults on female children are not reported and do not come to light yet there is an alarming and shocking increase of sexual offences committed on children. This is due to the reasons that the children are ignorant of the act of rape and are not able to offer resistance and become easy prey for lusty brutes who display unscrupulous, deceitful and insidious art of luring female children and young girls. Therefore such offenders who are menace to the civilised society should

be mercilessly and inexorably punished in the severest terms.

We feel that Judges who bear the Sword of Justice should not hesitate to use that sword with the utmost severity, to the full and to the end of the gravity of the offences so demand. "

[Madan Gopal Kakkad vs. Naval Dubey & another - (1992)3 SCC 204 concluding lines]

With these, here, I am going to unravel an account of a sordid and obnoxious incidents where few debauch, now stand to trial, came up with a sinister design gratified their animated passion on a young girl and captured their licencous overtures in their cellular, in flagrant violation of human dignity, not to say in blatant disregard to the law of the land.

P R O S E C U T I O N - C A S E

The genesis of a shameless intrigue as unravelled by the Prosecution, pruned of its unnecessary details, reads as follows-

On 23.11.2021 the defacto complainant of this case, being the mother of the victim, approached IC, Murshidabad PS, with a hand written complaint, to the effect that, when her 16 years old minor daughter, had been to her maternal uncle's place at Hariganj before Durga Puja in the year 2021, she got acquainted with accused Basudeb Mondal there and the said Basudeb on 09.10.2021 at about 8 pm, in accompaniment of other three accused persons viz. Mithun Das, Arun Mondal

and Akash Mondal, came near the house of the maternal uncle of the VG, called her up and the VG, in her naive ignorance, responded to the same and came out of her maternal uncle's place and while talking with the accused, reached near a vacant place, where suddenly the accused persons pounced upon her, got hold of her mouth, laid her on the ground and firstly the accused Basudeb Mondal, raped her, while other accused Mithun Das and Arun Mondal pressed her mouth, hands and legs and the other accused Akash Mondal, videographed the incident. Later all the accused, one by one, raped her and thereafter threatened her that her naked video with rape shots, will be made viral, if she dare to reveal anything to anybody and further she will cost her life. The VG, out of fear and shame, did not disclose the incident, at her maternal uncle's place, but remained morrows and even tried to take her own life. Contending further that it was, the defacto complainant who tried to reason with her, while just immediately thereafter, the videos containing sexually explicit incident involving the VG, got viral and on being enquired the VG disclosed the entire chronicle and broke down. Finding no other alternatives, the defacto complainant /mother approached IC, Murshidabad PS.

Thus though the victim-girl suffered ignominy on 09.10.2021 but the incident got reported on 23.11.2021, at the instance of the mother of the VG being defacto complainant. The identity of the victim girl, is deliberately kept undisclosed, in this POCSO trial, to safeguard the interest of the child throughout, in terms of the provisions, u/s 23 r/w 33(7) of POCSO Act, 2012 and as such the victim girl, herein after will continue to be referred to, as VG in short.

On receipt of the written complaint, the instant case being, Murshidabad Police Station Case No. 513 of 2021 dated

23.11.2021, under Section 376(DA)/506 of IPC read with Section 6 of POCSO Act 2012, was initiated against all the accused. Police swung into action, took up investigation, arrested the accused, examined available witnesses, visited the place of occurrence, caused medical examination of the victim girl (hereinafter referred to as VG for short) at the hospital and recording of her statement through lady SI u/s 161 Crpc & before Judicial Magistrate u/s 164 of Crpc, collected medical papers, from Lalbagh Sub-divisional Hospital, made seizures of wearing apparels of the victim her birth certificate, also seized mobile phones of two accused, as well that of the father of the VG, being the OPPO touch screen mobile phone, where the obscene videos were sent, caused extraction of the contents of the same, while the accused Arun Mandal remained, absconding submitted charge sheet being no. 03 of 2022 dated 19.01.2022, u/s 376DA of IPC and 6 POCSO Act, against all the accused and cognizance was taken by this Court on 20.01.2022. Thereafter on arrest of accused Arun Mondal on 07.05.22 and the charge u/s 6/14/15 POCSO Act read with Section 376DA/506 of IPC was framed against all the accused on 10.06.2022 and the matter was taken up for evidence. On 04.08.2022 the evidence of PW1/scribe was recorded, but on closure scrutiny of case record, it was observed by this Court the prosecution though submitted charge sheet, although the OPPO mobile phone and the DVDs created on extraction of data from the same, in the form of obscene videos, have not yet been examined by forensic authorities and there has not been any prayer from the side of the prosecuting agency in that regard accordingly the matter was dropped from P Board, vide order no. 27 dated 16.09.2022 and the matter was refixed for report from forensic authority and as such, the proceeding

was kept in halt, subject to submission of further investigation report and meanwhile other VIVO mobile phone, as seized from the accused Basudeb, was sent for extraction of data and forensic examination, to CFSL, Pune. On finding cyber ramification of the instant gang rape matter and simultaneous inability of the existing special public prosecutor to address the issue, this Court vide order no. 27 dated 22.12.2022, requested Ld. Legal Remembrancer and Ex-officio Secretary, to the Government of West Bengal for appointment of panel prosecutor as per GO No. 2360-C/MISC-46/2015 dated 20.08.2015 in the interest of justice. During further investigation, the other OPPO mobile phone as seized from the father of the VG and data extracted DVDs were also sent to CFSL, Pune, for forensic examination and the subsequent IO, Inspector Gautam Mitra, on resumption of further investigation also, after observing all formalities and procedure and obtaining order from the Court, through expert, caused photography and videography of the accused for recording of their gestures postures etc. and did voice and tattoo mark sampling in presence of the Ld. Judicial Magistrate and sent the same for expert opinion to SFSL, Kolkata and after collection of expert opinion from CFSL, Pune in respect of the VIVO mobile phone of accused, Basudeb Mondal, he submitted Supplementary Charge Sheet No. 527 of 2023 dated 11.08.2023, u/s 376DA/506 of IPC read with 6 POCSO Act and 67 of IT Act against the FIR named accused persons, as aforesaid and the Court take cognizance of the same vide Oder no. 44 dated 14.08.2023, copy supplied. Thereafter, again after receipt of expert opinion from CFSL, Assam and after consultation with Superior submitted Supplementary Charge Sheet No. 598 of 2023 dated 17.09.2023 U/s 376DA/506 of IPC read with

Section 6 POCSO Act and 67B of IT Act later on 18.09.2023 though in the interregnum Ld. Special PP was appointed in this case at the instance of Ld. LR and Ex-officio Secretary to the Government of West Bengal vide Order No. 4891-C/PE-04/2023(Part) dated 14.08.2023, additional charge U/s 67B of Information Technology Act, 2000, was added against the accused persons on 29.08.2023 while interim victim compensation to the tune of Rupees one lac was recommended by this Court to the minor VG, to be defrayed at the instance of DLSA, Murshidabad, observing all formalities Vide Order No. 46 dated 22.08.2023.

Thus the entire charge U/s 6, 14 & 15 POCSO Act, read with Section 376DA/506/34 of IPC, along with 67B of IT Act, 2000 were framed against the accused in this case record on two occasions i.e. 10.06.2022, followed by another one on 29.08.2023 and on the both occasions, the contents of charge was read over and explained to each of the four of the accused persons in Bengali, to which they all pleaded not guilty and claimed to be tried.

Hence, this trial.

PER - C O N T R A

The defence case, as it appeared from the trend of cross-examination of the prosecution witnesses and also from the answers given by the accused persons in course of their examination under Section 313 Cr.P.C., is basically banked upon the denial of the prosecution story, where the accused persons abjured their guilt, with a plea

of innocence. However no defence witness was adduced in this case.

P O I N T S F O R R U M I N A T I O N :

From the rival cases of the respective parties following points have been cropped up for consideration and determination:

1. Have the accused persons committed offence punishable under sections 6, 14 & 15 POCSO Act read with Section 376DA/506/34 of IPC, along with 67B of IT Act, 2000 ?
2. Are the accused persons are liable to be convicted for the offence charged with? And if so, what would be the quantum of punishment?

E V I D E N C E O N R E C O R D

To reserve its right to the judgment, the prosecution has examined as many as twelve witnesses. They are;

List of witnesses:

P.W. 1	SUSANTA DAS
P.W. 2	MOTHER OF V.G.
P.W. 3	VICTIM GIRL (V.G.)
P.W. 4	DR. NIRMAL KUMAR SAHU
P.W. 5	DR. DEBASIS BISWAS

CNR No. WBMD08-001307-2021

P.W. 6	SANDIP DAS
P.W. 7	IMDADUL SK.
P.W. 8	DR.CHITRAKSHYA SARKAR
P.W. 9	SUBRATO SARKAR
P.W. 10	PRONOY DAS
P.W. 11	S.I. JHATULAL MONDAL
P.W.12	INSPECTOR GOUTAM MITRA

This apart, following documents have been admitted into evidence on the part of the prosecution:

Ext. P1/PW1 as a whole	Written Complaint
Ext. P1/1/PW2	Signature of PW2 on the Written Complaint
Ext. P1/2/PW2	Signature of PW2 on formal F.I.R
Ext. P1/3/PW11	Endorsement on the written complaint
Ext. P1/4/PW11	Formal FIR
Ext. P2/PW2	First Medical Document of V.G. at Lalbagh Hospital dated 24.11.2021.
Ext. P2/1/PW3	Signature of the VG on Medical Report dated 24.11.2021.
Ext. P2/2/PW4 as a whole	First Time Medical Report of V.G.
Ext. P2/3/PW11	Signature of Trishna Das, LC on medical document
Ext. P3/PW2	Seizure List of wearing apparels of V.G. dated 24.11.2021

CNR No. WBMD08-001307-2021

Ext.P3/1/PW3	Signature on Seizure List and identification of P3/PW2.
Ext. P4/PW2 as a whole	Medical Examination report of the VG dated 27.11.2021.
Ext. P4/1/PW3	Signature on Medical document after medical examination by VG on 27.11.2021.
Ext. P4/2/PW11	Signature of LHG, Ruby Dutta on medical document
Ext. P5/PW2 as a whole	DVD containing videos of V.G.
Ext. P6/PW2	Signature of PW2 on seizure list
Ext. P6/1/PW3	Signature on the seizure list of birth certificate of the V.G.
Ext. P6/2/PW11	Seizure list dated 27.11.2021.
Ext. P7/PW2	Zimmanama bond
Ext. P8/PW2	GD Complaint done on loss of Birth Certificate dated 02.09.2023
Ext. P9/PW2 as a whole	Certified Copy of Birth Certificate
Ext. P10/PW3	Statement of VG u/s 164 Cr.P.C.
Ext. P11/PW3 as a whole	SEAGATE made HDD of 1TB capacity marked as "CFSL-P/426/DFD/55/2022/Data-I" (Hard Disc A)
Ext. P11/1/PW9	Label on the Envelope containing SEAGATE made HDD of 1TB capacity marked as "CFSL-

CNR No. WBMD08-001307-2021

	P/426/DFD/55/2022/Data-I (Hard Disc A)
Ext. P12/PW4	Requisition slip in respect of seeking the medical examination and opinion of the VG sent on 23.11.2021 by Murshidabad PS duly received by Medical Officer of Lalbagh SD Hospital.
P13 as a whole (formal proof dispensed with)	Original report of CFSL Assam marked Exhibit U/s 294 of Cr.P.C. vide Order no. 51 dated 18.09.2023.
Ext. P14/PW6 as a whole	Seizure list dated 28.11.2021.
Ext. P15/PW7	Seizure list dated 24.11.2021 on seizure of : OPPO mobile phone along with one DVD containing two videos
Ext. P16/PW7	Certificate U/s 65B Indian Evidence Act dated 24.11.2021.
Ext. P17/PW8	Certificate U/s 65B Indian Evidence Act dated 03.03.2023.
Ext. P18/PW8	Voice transcription prepared by PW8.
Ext. P19/PW8 as a whole	Requisition from Court and receipts from SFSL
Ext. P20/PW8 as a whole	Report of SFSL, Kolkata dated 10.05.2023
Ext. P21/PW8	Signature of PW8 on label of HDD
Ext. P22/PW8	Signature of PW8 on another HDD
Ext. P22/1/PW9	Signature of PW9 on another envelope containing SEA GATE HDD

CNR No. WBMD08-001307-2021

	marked Exh-B (P22/PW8).
Ext. P23/PW8 as a whole with SD card	Voice transcript of Basudeb Mondal along with SD card
Ext. P24/PW8 as a whole with SD card	Voice transcript of Mithun Das along with SD card.
Ext. P25/PW8 as a whole with SD card	Voice transcript of Arun Mandal along with SD card
Ext. P26/PW8 as a whole with SD card	Voice transcript of Akash Mandal along with SD card
Ext. P27/PW8 as a whole.	micro SD card containing gait video of accused along with signature with seal of the witness U/s 65B Evidence Act dated 03.03.2023
Ext. P28/PW9	received requisition dt. 10.05.2023 for forensic examination Under case File NO. CFSL(PUN)/426/DF/55/22/1893 containing one brown colour sealed parcel.
Ext. P29/PW9 as a whole	The entire report along with the receptacle
Ext. P30/PW11	Requisition to cause examination of V.G. U/s 161 Cr.P.C.
Ext. P31/PW11	rough sketch map
Ext. P31/1/PW11	Index of Rough Sketch
Ext. P32/PW11	Second requisition slip which sent to the Superintendent, Lalbagh SD Hospital on 27.11.2021 for medical

examination of the VG

Ext. P33/PW11	Requisition dated 27.11.2021 of the three PC accused persons for their medical examination, including their private parts.
Ext. P34/P11 Formal Proof dispensed with	Medical reports of accused Akash Mondal
Ext. P35/P11 Formal Proof dispensed with	Medical reports of accused Basudeb Mondal
Ext. P36/P11 Formal Proof dispensed with	Medical reports of accused Mithun Das
Ext. P37/P11	Requisition for medical examination of accused Arun Mondal .
Ext. P38/P11	Medical report of accused Arun Mondal.
Ext. P39/P12 as a whole	Requisition slip along with the acceptance memo of CFSL, Assam.
Ext. X/1	Label containing VIVO Mobile phone sent to CFSL, Pune.

As far as material evidences are concerned the following articles have been marked as exhibits:

Mat Ext. I	Green Coloured Kameez and blue coloured Salwar full pant of V.G.
Mat Ext. II as a whole. (Formal proof dispensed with on consent).	One USB Flash drive San Disk-64 GB containing File Name: VID-20211123-WA0001.mp4 and File Name; VID-

CNR No. WBMD08-001307-2021

	20211123-WA0002.mp4, having data source Ext.C (Frontech DVD) along with its Hash Value and receptacles.
Mat Ext. III as a whole. (Formal proof dispensed with on consent)	One mobile phone handset (touch screen) with blue coloured cover, Make OPPO is, with receptacles.
Mat Ext. IV as a whole. (Formal proof dispensed with on consent)	One Frontech make DVD with storage capacity 4.7GB /120 minute is found and the same is with receptacles.
Mat Ext. V as a whole. (Formal proof dispensed with on consent)	The CD marked as ECD/1in black coloured hand written, containing File Name: VID-20211123-WA0001.mp4 and File Name; VID-20211123-WA0002.mp4, having data source Ext.C (Frontech DVD) along with its Hash Value and receptacle.
Mat Ext. VI as a whole with envelope	LAVA black coloured mobile phone seized from the accused Mithun Das.
Mat Ext. VII as a whole along with cover.	VIVO mobile phone seized from the custody of Basudeb Mondal.
Mat Ext. VII/1	Sticker on the VIVO Mobile Phone given by PW9.
Mat Ext. VII/2	Envelope containing VIVO Mobile Phone.
Mat Ext. VIII	SIM card of JIO bearing No.89918400500009853211
Mat Ext. IX as a whole.	San Disk Micro SD card of 32 GB bearing no. 8233DVFABOK marked Ext. 1/2 which I examined and the same bears my signature along with

CNR No. WBMD08-001307-2021

	the envelope in which the same contained marked for future identification.
Mat Ext. X as a whole.	Brown envelope and box Containing , blue coloured mobile phone with SIM and SD card.

[Fully provided in **Form C** appended with the Judgement]

From the side of the defence Custody Memo of Basudeb Mondal has been marked as Exhibit D-1/PW11.

BACK TO THE BASIC

It goes beyond saying that, in a case of present nature, it is imperative for the prosecution to prove the following factors:

* All the accused persons including Basudeb @ Basu Mondal had the intention to commit sexual intercourse, with the victim minor girl (VG), who happened to be in amorous relationship and previous acquaintance with the said Basudeb @ Basu Mondal and as such, gained a position of trust or authority over the VG, induced and convinced her ,to come out of her maternal uncle's place, on the ill-fated night and he in accompaniment of all the accused caught hold of her and thereafter, all committed an act upon her, which falls under circumstances punishable under descriptions specified in Section

376DA of IPC read with Section 6 of POCSO Act, to wit, committed gang rape and aggravated penetrative sexual assault, which is within the four corners of offence described u/s 5 of POCSO Act punishable u/s 6 of POCSO Act read with Section 376 of IPC, made videography of the entire episode of gang rape of the VG and later made it viral and as such, committed offence punishable U/s 14/15 of POCSO Act , read with Section 67B of Information Technology Act and also immediately after gang rape caused intimidation of the VG with a threat to make the video viral, if the VG ever dare to disclose the incident to anybody and thereby committed offence punishable U/s 506 of IPC.

DECISION WITH REASONS

Time has come to pave through the materials on record to fathom out as to how far the prosecution has been able to bring home its case against the present accused person.

Point nos.1 & 2

I take the opportunity to discuss both these points together as they are intrinsically related to each other.

It needs no emphasis that the physical scar on a rape-victim or whom such an attempt has been made may heal up, but the mental scar will always remain. So it is to be kept in mind that, when a woman is ravished, what is inflicted is not merely physical injury, but the deep sense of some deathless shame. An accused can not cling to fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable judicial response to human rights can not be bounded by legal jugglery. Thus, before entering into the dissection of the evidence of victim girl vis-a-vis the version of other corroborative evidence, I keep in my mind the watershed observation of the Hon'ble Apex Court in State Of Punjab Versus Gurmit Singh [1996 (2) SCC 384], where it has been held that–

“The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Court should find no difficulty to act of the testimony of a victim of a sexual assault alone to convict an accused where **her testimony inspires confidence and is found to be reliable.** Seeking corroboration of the statement before relying upon the same, as a rule, in such case amounts to adding insult to injury.”(emphasis by me).

Therefore, it is well settled principle of law, as like as noon day, that there is no legal impediment to place reliance on the sole testimony of the evidence of the prosecutrix, **provided such evidence inspires the confidence of the Court and such evidence is free from infirmities, inconsistencies and improbabilities** as rightly contended by Ld. defence counsel. Here it will not be out of context to refer another three Judges Bench authority of the Hon'ble Apex Court in Ganesan Vs. State as reported in (2020) 10 SCC 573 wherein the Hon'ble Apex Court was again pleased to hold that it is a settle proposition of law that even there can be a conviction based on the sole testimony of the victim however she must be found to be reliable, inspire confidence and absolutely trustworthy, unblemished, **should be of sterling quality.**

It is in this context it would be appropriate to extract a sentence from the judgment of this court in Krishan Lal Vs. State of Haryana as reported in (1980) 3 SCC 159 "a socially sensitized judge is a better statutory armour against gender outrage than long clauses of a complex section with all the protections writ into it".

Without remaining oblivious of such salutary principles of law let us test the evidences of the witnesses on the touch stone of credibility to fathom out whether the prosecution has been successful in establishing the ingredients of the offence as aforesaid or not. Let us listen to the witnesses as they are the voice and words of justice.

Before entering into the boulevard of prosecution witnesses , for the sake of brevity and convenience, I am taking the opportunity to classify the witnesses into

four categories and analyse the same in following fashion :-

* In the first segment - the versions of the victim as **PW 3**, her mother defacto complainant, as **PW 2** are taken up ;

* In the second phase- the versions of independent witness in the form of scribe, **PW 1** Sushanta Das, is analysed apart from the one Pronoy Das, Photographer **PW10** ;

* Then in the third section- the opinions of expert witnesses being the doctors, who examined the VG in the form of **PW4 &PW5** - Dr. Nirmal Kumar Sahu and Dr. Debashis Biswas have been elicited, apart from evidence of expert from Forensic labs Dr. Chitrakshya Sarkar as **PW 8** and Subroto Sarkar, Scientist from CFSL, Pune as **PW 9** ;

&

* Lastly- the testimonies of police personnel and other official witness viz. two IOs of this case being **PW 6, 7, 11 & 12** are discussed;

Starting the bandwagon is with the version of the victim herself who deposed in this case as PW1 and herein referred to as VG as stated before.

A] The prime witnesses in this case is the **victim herself** who as a minor, deposed as **PW 3**, and during her testimony identified the accused persons, before the Court, by name and narrating about her prior acquaintance with the accused Basu, she revealed that- she got acquainted with Basu, through Facebook at the beginning of the year 2021, where Basu used to message her in the

Facebook Messenger. She blocked him in Facebook. Thereafter, the said Basu somehow managed to get her number and used to call her, in her number and the VG too used to reciprocate him by calling him occasionally.

Now, referring about the incident, the VG being the only victim, and eye witness to the incident, stated that the incident occurred two days prior to the inception of Durga Puja, in the month of October in the year of 2021, when the accused Basu called her up from his mobile phone at 12 midnight and disclosed her that he has come to visit a marriage ceremony at Nasipur, while at that relevant point of time, VG was at her maternal uncle's place, at Hariganj bagan and it was two days prior to Durga Puja at 12 midnight Basu called her up and stated her that he will meet him urgently and when she refused, he insisted on her to meet him urgently. She went on saying that, thereafter, Basu arrived in front of her maternal uncle's place and when she opened the door, she found apart from Basu, there were three accused persons waiting outside the door and before understanding anything they all grabbed her hands and throttled her mouth and took her with them, to a nearby field and told her that they intend to do 'kharap kaj' with her and also asked her to cooperate with them in doing 'kharap kaj' with them. When she refused to agree in their proposal, according to the VG, they assaulted her physically and they hit her on her mouth, for which her lips caused bleeding injury. The VG continued, that somebody amongst them pushed her on the ground. In the Court, at this moment, the VG recollecting about the incident, broke down and started to cry. The VG then continued to narrate that, the accused thereafter removed her underwear, forcibly and started

to rape her. First, Basu raped her, followed by Mithun and while Mithun was raping her, Akash grabbed her legs thereafter, Akash raped her and caressed and fingered all over her private part, in one hand and used another hand to videograph the incident. He was followed by, Arun who raped her. When they found her, became very ill and exhausted, they left her there. According to the VG, before leaving the place, they threatened her with dire consequences, that if she dares to disclose the incident to anybody, they will make the video viral. After the incident, upon elapse of long time, the VG managed to return to her maternal uncle's place, but out of fear, she could not disclose the incident, to anybody and she used to consume pain-killers, to alleviate her pain, secretly, upon purchasing the same, from the medicine shop near her maternal uncle's place. After elapse of one and half months from the alleged incident, the same got divulged, when the videos of VG went viral and it came to the mobile phone of her family and her mother inquired her about the same and then she narrated the entire incident to her mother. In the context, of describing things she did thereafter, it was contended at the instance of the VG that, she in accompaniment of her parents went to Murshidabad PS and lodged the complaint and police then inquired her about the incident and she was subjected to medical examination by the doctor twice. However the medical examination of her private part on the first occasion was prevented by her ongoing menstrual cycle and after the same being over, as claimed by the VG, she visited the MO at Lalbagh SD Hospital and her private part was examined and she identified the medical documents (Identified Ext. P2/PW2 and P4/PW2 as a

whole.), in which she found and identified her signatures marked **Ext. P2/1/PW3** and **P4/1/PW3**. The VG further stated that her statement was recorded U/s 164 Cr.P.C before Magistrate in connection with this case, whom she narrated the entire incident, what she testified before the Court and she signed the same, which was marked **Ext. P10/PW3**. She continued that her wearing apparels, that she wore on the date of incident, was handed over to the police, at the instance of her mother, during investigation and she identified **Mat Ext. I** to be those wearing apparels and the seizure list, (P3/PW2) prepared, after seizure of the wearing apparels and at her instance her signature on relevant seizure list, as witness was marked **Ext. P3/1/PW3**. According to the VG, her birth certificate was seized, at the instance of the police, during investigation, from her mother where she stood as witness in respect of seizure of birth certificate from her mother and her signature on the seizure list was marked **Ext. P6/1/PW3**. Here the VG, in the Court room was shown Ext. P5/P2 a DVD(R) brand Frontech, contained in receptacle (seized under seizure list dated 24.11.2021, with inscription, with black ink, thereon, Reference being Murshidabad PS case no. 513 of 2021 dated 23.11.2021 U/s 376DA/506 IPC and 6 POCSO Act), and the same was run in the Court room, by using props, in the form of laptop, projector screen, where-in, two video files namely VID -20211123-WA0001.mp4 and VID- 20211123-WA0002.mp4, got opened in Court and were played in presence of all, including counsels for the accused as well as in presence of the accused and the witness (VG) was shown the video files, with arrangement of computer and TV screen and she identified the videos to be the same

video which were made viral and identifying, P5/PW2 as a whole, confirmed that she found herself in the videos, which, according to her, were made viral being recorded by accused Akash. The witness (VG) was again, shown, content of one SEAGATE made HDD of 1TB capacity marked as "CFSL-P/426/DFD/55/2022/Data-I" marked as Ext. A on it, which was inspected by the Ld. Counsel representing the accused on 06/09/2023, following this Court order no. 48 dated 31.08.2023, banking on the solemn direction of the Hon'ble Apex Court reported in **AIR 2020 SC 1**, following the restrictions and bindings u/s 33(7) of POCSO Act and 228A of IPC, and at the time of trial and examination of VG as PW 3, it was run in the Court, by using props, in the form of right blocker machine, projector screen, HDD and on being opened one folder named "CFSL-P/426/DFD/55/2022/Data-I" containing three other folders and amongst them EXH-1_1 containing, four folder, was opened and the Relevant Data folder was opened containing two video files viz. VID-20211024-WA0003 and VID-20211024-WA0004 along with two other folders, which got opened in which video files were played and the VG, on watching them in open Court confirmed that , to quote her verbatim - "These are the same videos in which I find myself in the video being raped by the accused persons. I find Mithun and Akash and their body parts visible in the videos apart from me and they are found raping me." Being identified by the VG in open Court the SEAGATE made HDD of 1TB capacity marked as "CFSL-P/426/DFD/55/2022/Data-I" was marked as **Ext P11/PW3as a whole**.

Some important revelations, which also acted as clarifications, on her previous statement, came to light,

when the VG was cross-examined, at the instance of the defence Counsels. She confirmed that, she used to have love affairs, with Basu since the beginning of 2021 and that she have met him, few times, after introduction with him, while she visited Bhattapara, Jiaganj, for the purpose of her tuition. According to her, Basu told her that he resides at Jiaganj, Bilkandi, while Bhattapara is far away from Bilkandi. She again reiterated that she blocked Basu from Facebook account and denied defence suggestion of stoppage of contact with Basu after blockage in Facebook and clarified that apart from Bhattapara she did not meet Basu in any cinema hall, market or at any such places, while she has never introduced Basu to any of her friends stating him as her lover and on the other hand Basu did not introduce her to any of his friend or relatives and that she came to her maternal uncle's place for pandel hopping, but she could not visit any puja pandel during her stay at her maternal uncle's place, on the aftermath of the alleged incident and she stayed with her maternal uncle, aunt, and their siblings at her maternal uncle's place and further that apart from the family members of her maternal uncle, she only met with the accused persons and none other else during her stay at her maternal uncle's place. She revealed again that the box pattern maternal uncle's house, surrounded by walls, have five rooms and when the family members of the maternal uncle's house go to sleep, they shut the door from inside but does not put any lock and key and she used to sleep alone there and used to go out from her maternal uncle's place, during her stay at day times only and that too in accompaniment of her sisters and she did not use to venture out at night. According to

her she stayed at her maternal uncle's place for 10 to 12 days and her father after Durga Puja came to her maternal uncle's place and took her back to her parental home. She came out clearly that there is no hospital or doctor's chamber in the vicinity of her maternal uncle's place and denied that her maternal uncle's place is situated in an urban area. She claimed to have knowledge of the surrounding places of her maternal uncle's place and answered the specific suggestion of the defence that she had no relation with Basu at the time of alleged incident with an emphatic NO. Though she confirmed about her awareness of the surrounding places of her maternal uncle's place, but she could not confirm electric illumination position or as to whether the area around her maternal uncle's place remain populated around midnight or not, but she clarified that she used to take sleep at night in and around 9-30 pm., during her stay, at her maternal uncle's place. It was an important elucidation from the side of the defacto complainant that the place where the alleged incident took place was a deserted place, having jungle nearby, as well as, its a vacant place and the alleged incident occurred two days prior to the inception of Durga Puja in the month of October, 2021. She reaffirmed that she got injury in her private part and she showed the doctor the place of her injury, at the time of her medical examination at the hospital. Describing the incident in particular, she stated that she has been pushed to the ground, while her front was up and she got injury on her back as well as legs and she got injury in her face and her leaps got cut, which she did show to the doctor and further revealed that, she though did not get senseless but she had no sensation of body after the

incident. The VG made it clear, further, that, she had never stated to her family members that, she had blocked Basu or she had no good relation with Basu. On her cross-examination regarding her demeanour on the next day of the alleged incident, the VG answered that she could not recollect the exact time she woke up in the morning, after the alleged incident but she woke up as usual, took breakfast, as arranged by my maternal aunt. She reasserted that she was not wearing Mat Exbt I, when she visited her maternal uncle's place from her house and she did not return back home from her maternal uncle's place, wearing it, but wore different dress, since she had several dresses in her closet and the dress was kept at her parental home. She again cleared up that she has not, on her own, tried to contact with Basu after she blocked him, rather it was Basu who contacted her. She denied all other suggestions.

As far as cross-examination on the behest of rest accused are concerned, their respective Counsels, more or less, adopted the cross-examination, as aforesaid, laid by Ld. Counsels, representing, Basu and the VG denied all other specific suggestions. [All emphasis by me].

The prime witness, is the sole victim and the only eye witness to the prosecution case. Now, on scanning the evidence of the victim as PW 3, it transpires that she during her testimony, not only she corroborated, her versions u/s 161 Crpc to the hilt but also, established more or less, the FIR version as well as her statement U/s 164 Cr.P.C dated 25.11.2021 and remained consistent, to the extent that she was insisted upon by the accused persons, just two days

prior to Durga Puja in October, 2021, to be precise, since contacted with, by the accused Basu- as clarified during her cross-examination further, of having an amorous relation with him, thus remained acquainted and in touch with each other and Basu in accompaniment of other accused ravished PW 1, in a vacant place, near her maternal uncle's place, videographed the entire episode, left the place threatening her of making the video viral, if she dares to expose the incident to others and thereafter the ordeal faced by the VG to the extent of her depressive bout, more precisely, consuming pain killers as detailed in her testimony as PW 1, supported by her version u/s 164 Crpc and lastly the incident of video getting viral and landing up into the mobile of the family members of VG. The climax came when she not only identified the accused in the Court to be perpetrators of crime, inspite of breaking down in Court, while narrating the incident, but also identified the videos, when run in the Court, divulging contents, in unequivocal terms contending that- “These are the same videos in which I find myself in the video being raped by the accused persons. I find Mithun and Akash and their body parts visible in the videos apart from me and they are found raping me”. She already disclosed in her testimony corroborating the FIR version that it was Akash Mondal who recorded the same in Mobile phone and the VG later narrated the same incident to her mother/ defacto complainant (PW 2) and thereafter the attending doctor(PW 5), about date time place and manner of alleged incident. The doctor as PW 5, testified having found signs of sexual intercourse and hymen rupture and withered the possibility of self infliction on finding the

VG having her CNS normal, where the VG claimed to have narrated the entire episode to the doctor and showed her private parts and wounds to him. The VG disclosed the same history to her mother, as corroborated by her mother/ defacto complainant PW 2 and can be considered to be the first disclosure of the VG to anybody else, eroding possibility of tutoring and independent versions of videographic depictions of the incidents through P5/PW 2, P11/PW3 , Mat Exbt IV and P 22/PW 8 as identified by PW 2, PW 3, PW 7, PW 8 & 9, whose versions corroborates all the subsequent events as claimed by the VG. As such there remains not much of discrepancy in the version of the victim and that of her mother as PW 2 or for the matter of that her rendition of the events before attending doctor PW 5 (except that the doctor did not mention the name of the accused and place of occurrence to be an yard behind the house). Defence on the other hand for the reason best known to them played a clarificatory role, to the so-called prosecution intrigue, specially where the victim's versions remained smoggy, in the sense that she got opportunity to elucidate, her prior acquaintance with Basu, who established contact with her, remained glued over phone, brought the other accused and introduced them to her on the ill-fated day itself and also about describing the place of occurrence to be a deserted place, having jungle nearby, as well as, its a vacant place. The defence it seems failed to shake the core of the prosecution case and unchallenged testimony of the VG, rather instilled confidence in the prosecution version. Nothing was read over at the instance of the defence from the testimonies of the witnesses to the Investigating Officer vis-a-vis statement of

prosecution witnesses U/s- 161 Cr.P.C to shake their credential to reveal out the truth as envisaged by the Hon'ble Apex Court in V.K Mishra =Vs.= State of Uttarakhand as reported in(2015) 9 SCC 588.

B] PW2, is the mother of the VG [name not disclosed to guard the identity of the VG as per norms and directive guidelines] and the defacto complainant, identified the accused Basu, Mithun and Akash, in the Court room. During her testimony on 31.08.23, the witness introducing VG to be her daughter, born at Lalbagh Hosptial, in the year 2005, submitted that though the alleged incident occurred in the month of October, 2021, just before two days before Durga Puja festival, but she came to know about the incident after elapse of 1 and 1/2 months, after the incident, when she received a video in the mobile phone of her house, Facebook account, showing that her daughter is being raped by few people in the video. The witness continued that on seeing the video clippings, she inquired the VG about the same and on such inquiry, her daughter broke down and disclosed her that due to fear of social stigmatization and out of fear she did not disclose them, about such incident and revealed to her that, she got acquainted with accused Basu before Durga Puja, over Facebook and she had some interaction with Basu in Facebook on few occasions before the incident and when she went to her maternal uncle's place at Hariganj, before Durga Puja and prior to two days before Durga Puja, the said Basu called her up at dead of night and asked her to come outside of her maternal uncle's house. Though initially her daughter declined to such request of Basu and refused to go outside, then again

Basu called and when her daughter came out of her maternal uncle's house, by opening the door, she found that apart from Basu there are three other males waiting outside the house. The VG further disclosed to her that, on seeing them, she tried to react, but Basu and others did not allow her to raise any alarm or state anything and forcibly gagged her mouth and took her away to a field. The defacto complainant/ witness further stated that, there in the field Basu and three others proposed her to do 'Kharap Kaj' which her daughter refused and VG further disclosed that, then said Basu and three others physically assaulted her and lied her on the field, forcibly and after that Basu first raped her, followed by, Mithun, another accused, who raped her, while Akash held her legs. Thereafter, Akash raped her and he continued to rape and molest her, by putting his one hand, all over her body and private parts and used another hand, to videograph the said incident, of such molestation. Thereafter, Aurn raped her daughter. The witness visibly broke down while narrating the incident in the witness box and started to cry profusely in disclosing such ordeal faced by her daughter. However, she continued that, her daughter, then became unwell and seeing that, the accused persons left, after threatening her that, if she disclose the incident to anybody else, the video will be made viral. As per the witness, after the incident, later on her daughter somehow came back to her maternal uncle's place and the VG also disclosed to her that after the incident, she arranged pain killers and continued to consume the same to suppress her pain, secretly. It was further revealed by the witness that even when, she inquired into the incident, on the video going viral, her

daughter tried to commit suicide, out of shame and loss of social prestige. She narrated the trying experience, while sobbing and submitted that after watching the video and coming to know about the incident she herself, her daughter (VG) and her husband, conjointly went to Murshidabad PS, situated at Lalbagh. Thereafter, she narrated the incident to the police officials present there and with the help of a scribe, drafted a complaint, written as per her direction and at her instance, her signature on the same was marked **Exhibit P1/1/PW2**, post identification of the document. As per the witness, she narrated all the incidents to the police, to the lady police officer who interrogated her and her daughter was produced before Lalbagh SD Hospital, for her medical examination, which on the first occasion could not be made due to ongoing menstrual cycle of the VG, though the witness, identified the medical document, which was marked **Exbt P2/PW2**. The witness handed over the wearing apparels of the VG, that she wore on the ill-fated day at the time of alleged incident, during investigation, at the police station and the same was seized under a seizure list, which the witness identified and marked as **Ext.P3/PW2**, while the alamat in the form of deep green colour kameez and blue coloured salwar full pant belonging to the VG, as identified by the witness/defacto complainant, was marked **Mat Ext. I as a whole**. As per witness the statement of the VG was recorded U/s 164 Cr.PC and she was medically examined for the second time at Lalbagh SD Hospital and the said report, as identified by the witness, was marked **P4/PW2 as a whole**. When the witness was shown one DVD brand Frontech, contained in receptacle (seized under seizure list dated 24.11.2021

with inscription, in black ink- Reference : Murshidabad PS case no. 513 of 2021 dated 23.11.2021, U/s 376DA/506 IPC and 6 POCSO Act) containing, two video files, namely VID -20211123-WA0001.mp4 and VID- 20211123-WA0002.mp4 and the same was opened in open Court and played, in presence of all, including counsels for the accused, as well as, in presence of the accused and the witness and shown to the defacto complainant, with arrangement of computer and TV screen, she identified the same to be the videos containing sexually explicit contents involving her daughter which she saw as video clippings prior to inquiring her daughter and she also identified DVD containing videos seized at the instance of the investigating authority from the custody of her husband marked documentary Ext. P5/PW2 as a whole. The witness, during his testimony on 08.09.2023 identified the seizure list prepared by the investigating agency at the time of seizure of the original birth certificate of the VG as issued by Murshidabad Municipality, Lalbagh and the same was marked as Ext. P6/PW2. However she claimed to have taken back the same by executing a Jimmabond marked Ext. P7/PW2 but in the meantime, she lost the same, while it was in her custody, in her parental home and she had to lodge a GD complaint, done at her instance as the same was marked Ext P8/PW2 and the certified copy of the Birth Certificate of the VG as produced from Murshidabad Municipality under the seal and signature, being issued at the instance of Murshidabad Municipality (compared the Birth Certificate with the Original Birth register against Registration No. 44392005 dated 20.01.2006 as produced through Kalyan Ghosh, Clerk, Birth and Death Section,

Murshidabad Municipality duly authorized by the Chairman, Murshidabad Municipality vide Memo dated 08.09.2023 in terms of this Court Order no. 49 dated 06.09.2023) as such duly compared with the original birth register, as produced by Murshidabad Municipality is marked **Ext. P9/PW2, as a whole** and the original Birth Register was returned, to the representative of Murshidabad Municipality, after comparison of the same with the copy of the Birth Certificate. The defacto complainant, further confirmed that she received the obscene video, involving her daughter/VG, in the Whatsapp, of their mobile phone, from a number and when she asked her son to inquire the source, her son called up the number and gave it to her and when she inquired and asked the person, on the other side of the phone to identify himself, he told that he is Basu and also told her that he did a 'Kharap Kaj' with her daughter and he wants to marry her daughter/VG for that. The defacto complainant continued that it was Basu, who requested her to arrange a meeting and as such she asked him to come and meet her, though it was intended by her that she can nab Basu in this way and accordingly, the said Basu in accompaniment of Akash and Mithun came to meet her in a tea stall at Jiaganj, after ascertaining on several occasions, over phone that it was only defacto complainant and the VG, who are waiting for him and lastly along with aforesaid three persons, Arun also came to meet her. The witness further stated that she gave prior information to the police, about such meeting and the expected arrival of the accused, so that they can nab them and the witness accordingly in Court could identify three accused persons, except Arun who according to her, fled away from the

spot. The witness identified her signature on the formal FIR and the same was marked **Ext. P1/2/PW2**.

During her cross-examination, the witness clarified that the VG is her daughter born out of the wedlock, from her previous husband and the VG has been accepted by her present husband to be his daughter. On the query, the witness specifically stated that, her daughter leads normal life everyday, except when she was mentally disturbed over the alleged incident. The witness had no knowledge about the distance from her matrimonial house to the house of accused Basu and also clarified that since the VG was unwell and lying with her ill health in the bed, she did not go pandel hopping and the VG was lying in the bed for 15 to 20 days, though no doctor was consulted. The defacto complainant further revealed that she came to know about the illness of the VG which kept her lying in the bed for 15 to 20 days, since after the alleged incident, when she enquired her brother about the same, after receipt of the obscene video, in her smart mobile phone, which the police seized. She further clarified that her daughter remained ill and stayed at her maternal uncle's place for 20 to 22 days, under illness and she visited her daughter at her brother's place i.e. at the maternal uncle's place of the VG, when her brother called her up finding her daughter ill and lying in bed and disclosed nothing to them. It was further clarified by the defacto complainant that her brother called her up after elapse of 20 to 22 days, but the witness even after reaching her daughter, could not make her visit any doctor, as she stated her that she will take medicine and get well soon, which she purchased herself on her own and consumed. The witness further revealed during her cross-

examination, that her daughter went to her maternal uncle's place, for the purpose of merriments and enjoyments during puja time with her maternal uncle, aunt and nephew and niece and other family members, including the small children in her maternal uncle's place, while Basu is not related to them but she came to know about Basu from the day she talked with him and he was called up by her and nabbed at the instance of police. According to her, the VG got acquainted with Basu through mobile phone and her daughter only informed her about the incident, when she inquired her after watching the video, after elapse of 1 & 1/2 months, after Durga Puja in the month of October, 2021. She further confirmed that, when she visited her daughter, at her maternal uncle's place, the VG did not disclose her anything or showed her wearing apparels or her private part but later on, when she inquired her about the same, seeing the video, she disclosed her everything and showed her wearing apparels and private part. On being asked specifically, the defacto complainant answered that, her daughter was not given freedom to move everywhere. She again reaffirmed that, she has stated everything at the time of lodging complaint and also stated everything to police and she met the doctor of the VG at the time of her medical examination and apprised the doctor about the incident. The defacto complainant neither could specify as to how many wearing apparels her daughter has and also failed to recollect what was her wearing apparels, when the VG returned back to her house. The defacto complainant, in her cross-examination, made it clear that the phone she had was a smart phone and all the family members of her house used the said mobile phone and further, it is only phone used by

her family everyday. According to her it is the said the smart phone which was used during puja and before puja and they gave the smart phone to her daughter for using and to contact with her at the time of puja during her stay at her maternal uncle's place. She further revealed that, she did not know the phone number of Basu previously, but after the receipt of video, she came to know about the phone number of Basu and further that after 1 & 1/2 months of the incident, neighbouring people of her brother, has seen the incident in their mobile phone but did not tell them about the incident personally. She denied all other suggestions and also cleared that they have no dispute with Akash and Mithun. She denied all other suggestions [All emphasis by me].

The instant witness is the defacto complainant and the mother of the victim girl, who is the author of this saga and she unfolded the prosecution story as a key witness before the police through her FIR. This witness as stated above, is the next important pillar of strength, on which prosecution case hinges, apart from the victim herself. Besides the victim, It is the witness who can divulge the previous and subsequent conduct of the victim i.e her daughter, who allegedly got ravished at the instance of the accused and the matter went viral and came to surface after elapse of some time. Her version corroborates, the testimony of PW 3, the minor VG and it is PW 2 being her mother, to whom the VG first disclosed the alleged incident, after one and half month of the alleged incident, when the obscene video got viral, which eventually landed up in the mobile phone

of this witness. The defacto complainant as PW 2 more or less corroborated the core testimony of her daughter (PW 3) and that of her FIR except that FIR is silent about the prior acquaintance between Basu and the VG and also about the frantic call of Basu proposing a marriage with the daughter of the defacto complainant/VG and events leading to arrest of three accused as facilitated by the witness but she identified the accused in Court. As rightly pointed out by Ld. Counsel for the prosecution, except confronting the PW 2 and testing her on the point of her geographical acquaintance, in respect of her paternal house and on the veracity of the claim of the VG, of her devastated mental state of affairs and consequent actions after the alleged incident, nothing is found where the witness was subjected to face with, any statement, before the Court with the one recorded by the police during investigation U/s- 161 Cr.P.C or the FIR or otherwise to prove contradiction, omission, improvement or embellishment. Nothing was read over at the instance of the defence, from the testimony of the witness, to the Investigating Officer vis-a-vis statement of prosecution witnesses U/s- 161 Cr.P.C to shake her credential to reveal out the truth as envisaged by the Hon'ble Apex Court in V.K Mishra =Vs.= State of Uttarakhand as reported in (2015) 9 SCC 588. Rather her identification of the viral video, extracted from the mobile phone of her husband and father of the VG, leading to identifying her daughter therein, to have been ravished and her breaking down in Court on seeing the content of

P5/PW 2, before marking it exhibit, further corroborates the authenticity of her version.

The next to hold the baton, of the prosecution, are found in the next segment of **independent witnesses**, and there first comes the version of the scribe for the complainant was examined as **PW 1**. followed by one Pronoy Das, a photographer who laid his service during investigation and he was examined as **PW 10**, while Following are the salient portions of their testimonies.

A] PW 1, Sushanta Das is the scribe who is otherwise a registered clerk by profession and as such did not know the defacto complainant, as narrated by him but rendered his service, when she approached him for help on 23.11.2021 and he scribed the complaint and read over and explained the contents to the defacto complainant before appending certificate to the effect and he identified the written complaint signed by him, where he also obtained the signature of the defacto complainant and the same was marked **Exbt. P 1/ PW 1 as a whole**.

During his cross- examination, he pleaded his ignorance or any personal knowledge, about the alleged incident and denied all other suggestions.

B] Next to him, comes the version of **Pronoy Das** the professional photographer who was examined as **PW 10**. Describing his role, the witness submitted that, his service was requisitioned by Murshidabad PS, wherein he was asked to visit Sub-Correctional Home, Lalbagh for the purpose of taking photographs of four inmates and to videograph them and accordingly he went to the Sub-Correctional Home, Lalbagh with a new memory card and his camera and there he met, with an official from

Forensic Laboratory and he instructed him to take photographs and videographs and accordingly he performed photography and videography of four inmates and after completion of the job, he disengaged the memory card from his camera and inserted it in the receptacle /pack of the memory card and handed it over to the expert from Forensic Science Laboratory. The witness identified the certificate u/s 65 B of Evidence Act, which was marked Exbt P 27/PW 8 and the SD card and also identified the four accused persons as the inmates whom he videographed and photographed. He clarified that he took up the help of the Google and the scientific expert, to prepare the 65B Evidence Act certificate which he issued after performance of the job. He was cross-examined at the instance of the defence regarding his professional expertise, credentials etc., the proper sealing and packing of the SD card used and his ability to understand purport and content of Certificate u/s 65 B of Evidence Act, the manner in which he got permission to enter into the Correctional Home and how he was remunerated by the prosecuting agency for rendering his professional service. The witness apart from providing usual reply specifically contended that he did not provide police any document showing his professional acumen nor he has any idea about Evidence Act. Even denying all suggestions the witness contended that he only followed the direction of the police officials and did not perform anything on his own and did not submit police any document regarding quality of his camera. He clarified that though he could not read the contents of the certificate/ statement issued by him due to his lack of english knowledge and also admitted that in modern

technology, photograph can be morphed. Nothing significant revealed during his cross-examination worth mentioning.

This witness being an independent witness who had nothing to do with the alleged incident but he took part in the investigation process by rendering his professional service which lead to preparation P27/PW8 and paved way towards the SFSL formulation of report in the form of P20/PW8 and his testimony was consistent and inspiring. His cross examination though sounded gruffy but inconsequential;

Coming to the Expert speak, first crony as **PW4**, was the version of **Dr. Nirmal Sahu**, who was the M.O., attached to Lalbagh S.D. Hospital on 24.11.2021, but the same was found quite insignificant, since on that date of the examination of the VG, to be done on the basis requisition from the investigating agency, dated 23.11.2021 -which the witness identified as **P12/PW4**, she was found in the midst of her menstrual cycle and as such her examination could not be performed at the instance of the witness and he accordingly issued report which the witness identified and marked as **PW 2/2/PW 4**.

He during his cross-examination, clarified that he took the help of his staff nurse to declare that VG was having her menstrual cycle going on and nothing significant revealed during his cross examination worth mentioning.

Thereafter, comes the version of **PW 5, Dr. Debashish Biswas**, who is a specialist Medical Officer (G & O) in one word a Gynaecologist who on 27.11.2021 at 1-15 pm clinically examined the VG, brought at the instance by one LHG 629 Ruby Dutta in accompaniment with the mother of the VG and he identified medical examination report

marked as Exbt P4/ PW 2 and revealed that he examined the VG personally and prepared the report in his own handwriting. He further emphasised that in his report it is mentioned that, the VG on giving consent for medical examination signed along with her mother and the LHG who brought the VG also signed on the document. According to him, he has summarized the history of the VG as given by the VG and he recorded that the date of incident as per her statement was three days before Durga Puja at around 00:00 am (night) and she was subjected to sexual assault on the yard behind her house and on examination of the VG, he found multiple old healed nail scar marks on both of her breasts and her hymen was found ruptured and healed (old rupture) having sign of sexual intercourse but he did not find bleeding per vagina at the time of her examination but also opined that the injury found in the body of the VG may or may not be 1 & 1/2 months old and the hymen rupture found may be due to sexual intercourse resulting from sexual assault and there may be multiple assailants causing the injuries mentioned in the report. Although the doctor opined that not all sexual assault result in proper fertilization and pregnancy. On being specifically asked the doctor remarked that it is difficult for him to comment that multiple nail scar mark are self inflicatory or not but he found the lady was mentally sound and he has stated it in his report particularly that her CNS was normal and for a normal lady that type of self infliction of injury is rare, while during menstruation period medical examination of vagina, is difficult but he found there were signs of complete sexual intercourse as he gets from the report. He confirmed that he has mentioned the

identification mark of the VG at the time of her clinical examination and the VG was examined after she gave her consent and accordingly signed on the document along with her mother and LHG Ruby Dutta in his presence.

During his cross-examination at the instance of the defence, the VG clarified that at the relevant point of time, no female doctor was available, when the VG was examined and since he is a gynaecologist, he did not find it necessary for medico legal examination, he need to refer the VG to any female doctor, though in his report, it has not been specifically mentioned that at the relevant point of time in the hospital there was no available lady medical officer. He admitted that the report is prepared in handwriting in a loose paper, without any hospital paging or index. The witness again affirmed that he recorded the date of incident time of incident, manner of incident, place of incident as stated to him by the VG **and he summarized the same** and also he mentioned the address as provided to him by the VG in his medical report. The witness admitted possibility of injury mentioned in the breasts, can occur due to self inflicted itching on some irritation, though the scar mark found in the breast of VG at the time of examination was found prominent by him, but at the same time the doctor revealed that it is difficult for him to opine that nail scar marks are 10 to 15 days old but may be possible and also extended general opinions on phenomenon, that rupture of hymen may occur due to strenuous physical activities or rupture of hymen can occur due to penile penetration or physical penetration or due to masturbation hymen rupture can occur. Quite interestingly, on being asked specifically the

doctor revealed that it is difficult for him to opine as to how many days of sexual assault he examined the VG.

[all emphasis by me]

This witness is the first independent person whom the defacto complainant and the VG confronted and recorded the incidents lead to alleged offence, but the history of injury was noted by the doctor, in course of his official duty as M.O his own handwriting but it was his own summary which he admitted before the Court. The witness also explained that during menstrual period medical examination of vagina is difficult.

PW-8 Dr. Chitrakshya Sarkar, attached to SFSL, Kolkata as Assistant Director deposed in this case and identifying all the accused, revealed that on 03.03.23 photography and videography of all the accused persons were taken by him at Lalbagh Sub-Divisional Correctional Home and the photograph was taken by one Mr. Pronoy Das, S/o Haradhan Das, who issued certificate U/s 65B of Indian Evidence Act, in his presence and he signed on the same as all process were done in presence of him. The witness identified the document bearing his office seal marked **Ext. P17/PW8**. He further stated that the Controller of the Correctional Home identified them the accused persons, whose photography and videography were taken. The witness continued that on the following day i.e. on 04.03.2023 voice samples of the four accused persons were taken at Lalbagh Court, before Ld. JM., where he even prepared the draft voice transcription script for utterance of the accused and recording of the same. The voice transcription was marked as **Ext. P18/PW8**. As per

witness, on 20.03.2023 in their office SFSL, Kolkata they received 7 (seven) sealed exhibits which were duly sealed and forwarded at the instance of the Court, through the IO, marked 'A' to 'G' for forensic and identified before the Court, the requisition sent from the Court and receipts issued by the SFSL, Kolkata marked **Ext. P19/PW8 as a whole**. He further revealed that on receipt of the above exhibits, after their examination, he prepared a report, dated 10.05.2023, bearing his seal and signature, categorically mentioning the result in his report. The report dated 10.05.2023 along with envelope was **marked Ext. P20/PW8 as a whole**. The witness identified the HDD (Ext. P11/PW3) bearing his dated signature, showing examined in Physics Division FSL, Government of West Bengal, dated 05.04.2023 kept in one brown coloured receptacle with pasted label and seal mentioning docket number of Physics Laboratory of FSL, Kolkata which contains Ext. P11/PW3 and on identification of the same it was marked **Ext. P21/PW8**. Simultaneously, he identified another HDD (kept in receptacle marked B) which was also examined in the Physics Division, FSL, Government of West Bengal by him, which bears his dated signature marked **Ext. P22/PW8**. The witness identified the micro SD card kept in a sealed envelope marked C containing voice sample of accused Basudeb which was duly examined by him and as such bearing examination seal dated 10.04.2023, with signed voice transcript prepared by him in presence of Ld. JM, Lalbagh and also signed by him and IC, Murshidabad PS where the voice transcript along with SD card is marked **Ext. P23/PW8 as a whole**. The witness identified the micro SD card kept in a sealed envelope marked D

containing voice sample of accused Mithun Das which was duly examined by him and as such bearing examination seal dated 10.04.2023 with signed voice transcript prepared by him in presence of Ld. JM, Lalbagh and also signed by him and IC, Murshidabad PS where the voice transcript along with SD card is marked **Ext. P24/PW8 as a whole**.

The witness identified the micro SD card kept in a sealed envelope marked E containing voice sample of accused Arun Mondal with signed voice transcript prepared by him in presence of Ld. JM, Lalbagh and also signed by him and IC, Murshidabad PS where the voice transcript along with SD card is marked **Ext. P25/PW8 as a whole**.

The witness identified the micro SD card kept in a sealed envelope marked F containing voice sample of accused Akash Mondal which was duly examined with signed voice transcript prepared by him in presence of Ld. JM, Lalbagh and also signed by him and IC, Murshidabad PS where the voice transcript along with SD card is marked **Ext. P26/PW8 as a whole**. The witness also identified another sealed envelope containing one micro SD Card comprising video of appearance, gesture, posture, physique complexion, tattoo mark etc of the accused persons taken at Lalbagh Sub-Divisional Correctional Home by FSL Expert by the Order of the Court, which was torn opened in the Court, in presence of all and he submitted that said micro SD card containing the video of the appearance, gesture, posture, physique complexion, tattoo mark, etc of the accused persons taken at his instance at the Lalbagh Sub-correctional Home and contended that it was done with help of the photographer Pronoy Das and the witness signed on the document certifying that the process was

done in his presence and identified his dated signature with seal. Accordingly, the micro SD card along with signature with seal of the witness U/s 65B Evidence Act dated 03.03.2023 was marked **Ext. P27/PW8 as a whole.**

Lastly, he clarified that the report bears one typographical error, i.e in the description of Article, point no. 5, against the same Ext. F has been inadvertently typed in place of Ext. E, that means item no.5 would be treated relating to Ext. E, but the rest contents mentioned against Item/point no. 5, is correct and the same correlates to Ext. E, not Ext. F and further revealed that the gait pattern and the voice are unique for an individual.

During cross-examination at the instance of the defence representing all the accused the witness cleared that in the report the manner, mode and method of recording voice sample has been mentioned but as far as the video is concerned the same has not been mentioned and there is nothing reflected in the report as to who identified the accused persons, as far as photographs and voice sampling are concerned. The witness denied all other suggestions and nothing further significant revealed during their testimony worth mentioning.

[All emphasis by me].

PW 8 is one of the prime expert witness who belongs to Forensic Science Department whose professional service and expertise was, hired by the prosecuting agency from sample collecting to preparation of report on the same to maintain the standard required, to make the same suitable for examination. **He was instrumental in proper collection of voice samples of the accused persons in the presence of the Learned Judicial Magistrate and at the same time he took the**

initiative for capturing still and videography of the accused persons to record their gesture, postures, physique, complexion, gait pattern etc. for proper final analysis of the same vis-a-vis the extracted data captured under two hard discs marked **Exbt.P21/PW8** and **P22/PW8** . He then compared the contents of the hard discs HDD as extracted by CFSL, Pune and identified by PW 9 (containing two viral videos, discussed in details later) with the voice samples and gait pattern videography of the accused taken by his instance on the basis of transcript prepared by him in the form of **P 18/PW 8** and recorded with the help of PW 10 and marked as **PW 23 to PW 27/PW 8** and prepared report marked as **P20/PW8** where two HDD are mentioned as **Exhibit A & B** and voice sample of Basudeb Mondal is described as **Exhibit C**, Mithun Das as **Exhibit D**, Arun Mondal as **Exhibit E**, Akash Mondal as **Exhibit F** and gait pattern as **Exhibit G** and the result of Examination more fully described in Exbt P 20/PW 8, in summarized form, is that -

1. Male person found on the video footage **VID-20211024-WA003.mp4** in Exhibit A & B, as aforesaid, appeared to be identical with the photoes and gait pattern videos of male person found in Exhibit G within folder named '**Mithun Das**'
2. Another one of the male persons found in the aforementioned video footage in Exhibit A & B appeared to be identical with the photoes and fait pattern videos of a male person found in Exhibit G , within the folder '**Akash Mondal** ' in respect of gesture, overall physique and body hair ;
3. One of the male voice sample found in the video footage **VID-20211024-WA003.mp4** in Exhibit A & B appeared to be identical with the recorded voice sample of Exhibit F which belongs

to **Akash Mondal** again in respect of energy and frequency plot ;

4. Another male voice sample found in the video footage **VID-20211024-WA003.mp4** in Exhibit A & B appeared to be identical with the recorded voice sample of Exhibit D which belongs to **Mithun Das**, again in respect of energy and frequency plot ;

It means that the witness from the voice sample and videographs through his expertise could identify two male persons amongst the perpetrators to be the accused Akash Mondal and Mithun Das, who were allegedly instrumental in videographing the incident of rape of the VG and the same corroborates the version of the VG or for the matter of that, the defacto complainant and in other words the prosecution case ;

Lastly, another scientific expert who has been examined at the instance of the prosecution is **Subrata Sarkar**, Scientist B, attached to Pune CFSL, since October 2020, who deposed in this case as **PW 9** who submitted that his office on 10.05.2023 received requisition for forensic examination under case File No. CFSL(PUN)/426/DF/55/22/1893 containing one brown coloured sealed parcel, against which he in the capacity of registration personnel of CFSL, Pune issued receipt and identified the same marked as **Ext. P28/PW9**. He then identified the report prepared on the basis of exhibit containing enclosures of which 4 pages are report and rest 13 pages are enclosures and the entire report with enclosure, since prepared by him, bearing his signature with official seal, with one label, pasted as prepared by him, bearing his signature with official seal stating the content being the case examination report i.e. the entire

report along with the receptacle has been marked as **Ext. P29/PW9 as a whole**. The witness identified the material exhibit which he claimed to have sent back, after preparation of case examination report in a separate receptacle, in connection with the case containing one VIVO android phone bearing Model No. v2027 marked EXH-1, one JIO SIM card marked EXH-1/1 and one SanDisk Micro SD Card of 32 GB marked EXH-1/2 and as such identified the mobile phone Mat Exbt VII and sticker on Mobile Phone, being done at his instance was marked as **Ext.VII/1** and the envelope was marked **Ext. VII/2**. The witness also identified the Jio SIM card bearing No.89918400500009853211 along with the receptacle, on which the same contained, bearing his signatures and the same was Marked **Mat Ext. VIII as a whole**. Thereafter the San Disk Micro SD card of 32 GB bearing no. 8233DVFABOK, marked Ext. 1/2 which he examined bearing his signature along with the envelope in which the same contained, labelled for future identification, was Marked **Mat Ext.IX** as a whole. Brown envelope and box in which the entire exhibit, blue coloured mobile phone with SIM and SD card was sent to the CFSL Pune was marked **Mat Ext. X as a whole** on being identified by the witness. Identifying Ext. P22/PW8 and another SEAGATE device signature on which has already been marked as Ext. P21/PW8 and further identifying P11/PW3, the witness revealed that he sent the extracted data from the aforesaid exhibit ie. Mobile phone, SIM and SD card in those two separate SEAGATE made external Hard Disc of 1 TB each and both the Hard Disc contains same data and further clarified that he sent SEAGATE HDD marked EXH-A (now marked as

P11/PW3) in a brown coloured envelope with label stating content bearing his signature with official seal and the envelope it his instance was marked Ext. P11/1/PW9. He further claimed to have sent another SEAGATE HDD marked EXH-B (now marked as P22/PW8) in a brown coloured separate envelope with label stating content bearing his signature with official seal and the said envelope has been marked **Ext. P22/1/PW9** again at his instance.

Defence again confined there cross-examination on handling of Alamat sent for examination in CFSL and their interim custody at CFSL and it went to the extent of asking him whether he has brought the register in which entry of alamat/ documents for examination are made, as if he was summoned for the same by the defence. Nevertheless the witness clarified that he has not brought to Court any CFSL office property. He expressed his inability, to highlight the ownership details of the SIM card he examined and confirmed that he had the permission from his Laboratory-in-charge to perform examination of the Alamat though it is not mentioned in the report. The witness denied all other suggestions.

[All emphasis by me].

The expertise of this witness being scientific expert attached to CFSL Pune, as Scientist was sought for extraction of data from EXH- 1, EXH- 1/1 & EXH -1/2 i.e. the VIVO Android mobile phone bearing model no. V2027, its JIO SIM and SanDisk Micro SD Card of 32 GB all belonging to accused and seized from the accused Basu. On extraction of data as per scientific procedure more fully described in the report marked **P 29/PW 9** as

identified by the witness it can be summarised from opinion/report to be precise under item no. II, III, IV & V – **obscene videos/ pornography were found available in the data extracted from the VIVO mobile** (seized from accused Basudeb) , though it could not be ascertained whether the video files were recorded using the same mobile phone or not but **relevant two obscene videos/ pornographic video files – VID-20211024-WA0003.mp4 & VID-20211024-WA0004.mp4 were found where presence/appearance of male persons were observed** and on analyzing the videos ‘ **frame by frame** ’ using facility of the laboratory, fully specified in the report the witness/ expert opined that in the same, **no signs of alteration/ tampering were found**. Specifying further the best available frame range in the report the Expert witness further opined that- though the appearance of the male persons could not be observed properly but in the two obscene videos, **TATTOO mark on the forearm (in between wrist and elbow) of a male person could be seen multiple times in one of the video files VID-20211024-WA0004.mp4** in the given range of frames. The witness further opined that **obscene videos/ pornographic contents were retrieved from the deleted data of the exhibit marked “ EXH – 1/2 ”** [EXH – 1/2 is the Sandisk micro SD card of 32 GB capacity – it is the memory card found in the mobile seized from Basu] and **NO obscene videos/ pornography could be found in the extracted data from the exhibits marked “ EXH -1/1 ”** [EXH – 1/1 is the JIO SIM Card found in the VIVO mobile belonging to the accused Basu]. Astonishingly the defence attempted to challenge the scientific finding as rightly pointed out by the Ld. Special Prosecuting Counsel, on the chain of custody, as well as, official procedure adopted and formalities

prevalent and performed though the same may not have any bearing with the present case, specially when the Examination Report, from forensic laboratory., dated 31.05.2022, begins with the clean-chit to the prosecuting agency, by certifying the alamat/ parcel received for forensic examination with seals intact and tallied with the specimen seal, otherwise CFSL being a Central Government, independent statutory body would not have accepted the same. Thus prosecution contention was crystal clear that the defence could raise nothing questioning the veracity and authenticity of the two videos , stated above and as such, though the entire process of collection and examination of digital and forensic evidences, could not be reported, but the same does not mean the same were not done in terms of principles u/s 114(e) of Evidence Act.

Now, as far as official and other witnesses are concerned, starting the bandwagon with **PW 6, Sandip Das**, is a Civic Volunteer no. 51 attached to Murshidabad P.S. since 2013 submitted that on 28.11.2021 at about 10-00 a.m., the IO Jhatulal Mondal called him up in the IO room of the PS and in his presence and in presence of other Civic Sanjay Mondal, the IO seized two mobile phones from two accused Basudeb Mondal and Mithun Das by preparation of seizure list and he identified both the accused before the Court. The witness identified LAVA black coloured mobile phone seized from the accused Mithun Das, as brought out before the Court opening a brown coloured sealed envelope and the same is marked **Mat Ext. VI as a whole with the envelope**. Thereafter when one VIVO make android mobile phone Model No. v2027 kept in one white envelope, with blue coloured plastic cover and one JIO SIM card in a white envelope, marked EXH- 1/1 and a SAN

Disk Micro SD Card of 32 GB capacity bearing No. 8233DVFABOK Mark EXH-1/2, in another white coloured envelope found with on the blue coloured VIVO mobile one tag describing CFSL-P/426/DFD/55/2022 EXH-1 being pasted at the instance of CFSL, Pune, endorsed with signature, opened in Court from the gala sealed box as sent from CFSL, Pune, in presence of all the witness identified the same to be the same VIVO mobile phone which was seized from the custody of Basu by the IO in my presence marked **Mat Ext. VII along with the cover.** The witness also identified the signature of his colleague Sanjay Mondal, on the seizure list, who according to him, signed the same, as seizure witness in his presence and that of IO and the accused and also confirmed that the accused two persons, signed on the same in his presence and that of IO. Accordingly the witness identified the seizure list marked **Ext. P14/PW6 as a whole.**

During his cross-examination the witness further clarified that he signed on the witness column, after finding the same in the seizure list and signed the seizure list after going through its purport and contents. He further affirmed that he has seen the mobile phones at the time of seizure and he has seen several mobile phones of the same company in the market but he can identify the seized mobile phone from the bunch of mobile phones of same company make if given to him, by its model number VIVO Y20i. He on being quized again, reiterated that he knew the model number of the seized mobile phone and also admitted that he saw the seizure list at the time of deposition before the Court and also the contents of the seizure list, as well and also names of the signatory.

Nothing further revealed during his cross-examination worth mentioning.

[All emphasis by me].

This witness is not the police personnel but a Civic Volunteer who assist police in performance of respective duties. The witness during his testimony identified the seizure list and the alamat – containing black coloured Lava mobile phone seized from accused Mithun Das and another VIVO mobile phone seized from accused Basu @ Basudeb and also identified the relevant seizure list and his signature and that of his colleague's, there on, prepared, in his presence on seizure. He also identified the accused Mithun and Basu in Court. As rightly pointed out from the side of the prosecution, the cross-examination on the factum of seizure did not disapprove the prosecution case rather substantiated it since exhibition of none of the documents went with any objection regarding procedure adopted and those are Exhibited without objection. As far as non recording of statement of formal seizure witness, performing routine works in PS, u/s 161 CrPC is not always mandatory and as far as prior perusal of the document is concerned, method adopted to refresh memory of the witness is not an alien concept of law and there are provisions like Section 159 of the Evidence Act to address the issue, rather it would have raised doubt had the witness without perusal of any document straight away recollected the events which occurred around 2 years ago in the PS during his ordinary course of duty. Another thing is that the seizure of mobile phone from the two accused from the PS raised certain doubts as far as defence side is concerned who questioned about absence of any

recovery statement regarding the same, and against which on proper scrutiny of case record and the CD it is found that both the accused were arrested 23.11.2021 which further gets corroboration, from Custody memo for Basu marked Exhibit D-1/PW -11 at the instance of defence and on that night at 20-50 hrs after observing hazat rules two mobile phones of the accused two arrested persons were deposited in switch off condition, as personal property of the accused vide GDE no. 1481 dtd 23.11.2021 and later the accused on being produced before the Court was granted 3 days PC on vide order no. 02 dated 25.11.2021 and he was produced and returned to the Court on 28.11.2021 at 10-25 hrs (CD page no. 93 b) and on that day at 10-10 hrs vide Exhibit P14/ PW 6 i.e seizure list dated 28.11.2021 before production of accused before the Court in presence of the present witness PW 6, the mobile phones were seized and the Exhibit list was marked without any objection. This being the situation nothing grave irregularity was found. Case record suggests that the said date 28.11.2021 being holiday the accused were produced from PC before the Ld Remand Magistrate, who in turn by preparation of Supplementary Case Record caused production of the accused two persons before this Court on 29.11.2021 and no where the accused side raised any objection regarding any procedural irregularity.

The testimony of the witness, was followed by the version of another Civic Volunteer no. 149 **Imdadul Sk.** attached to Murshidabad P.S. who was examined as **PW 7**, being technical witness. According to him he is having a qualification of Government of India 'O' Level Certificate holder under Jadavpur University, works in Murshidabad

P.S. as computer operator. He continued to disclose that, during end of November, 2021 at about 10 am while he was working as a Computer operator at Murshidabad PS, he was called up by the IO Jhatulal Mondal in the IO room of the PS and there he also found one Ratan Das, the father of the victim, present there and in his presence the said Ratan Das, handed over one OPPO mobile phone, to the IO, containing two video clips which got viral and he was asked to use his office computer device, to copy both two viral videos in two new DVD Disc. The witness further revealed that he accordingly took the IO to the computer room and in presence of Ratan Das he 'burned' separately those two viral videos from the aforesaid mobile, into two new DVD Disc by using 'NERO' Software and after the burning process, the contents of the viral videos in two new DVDs, the IO asked him to issue certificate U/s 65B of Indian Evidence Act 1872 and the IO prepared a seizure list by which the OPPO mobile phone along with one DVD containing two videos, were seized in his presence and in presence of another witness Laltu Mondal and the said Ratan Das and the witness identified the said seizure list and the same was marked as **Ext.P15/PW7**. The witness identified the certificate issued by Ratan Das U/s 65B under Indian Evidence Act, which he drafted and it was issued to the IO after burning of the video viral content of OPPO mobile phone, into the DVD and the same was marked **Ext. P16/PW7**. The certificate also bears the signature of Ratan Das who signed on the same in his presence. The witness also identified Mat Exbt III as a whole, stating that it was the OPPO mobile phone seized in his presence, through the seizure list, as stated above, by the IO. The witness also identified Mat Ext. IV as a

whole, which was shown to the witness and content of the same was displayed before the Court using DVD player and projector system and on opening the same in the screen, a folder under the name and style 'New folder' date modified 24.11.2021, was found and on opening the same, two video files viz. VID20211123-WA0001 and VID20211123-WA0002, are found and the same are played with KM player, one by one, in presence of all concerned in open Court and on watching the same the witness replied that, these are the two viral videos which he burnt from the aforesaid OPPO Mobile phone in the DVD identified as Mat Exbt IV by him. The witness also identified another DVD being already identified as Exbt. P5/ PW 2 and revealed that it was another DVD, in which he also burnt the contents of the viral video from the aforesaid OPPO mobile, as aforesaid, as copy, in presence of the said Ratan Das and Laltu Mondal and reconfirmed that the contents of Ext. P5/PW2 is same as Mat Ext. IV, both prepared at the same time by him, in the same process at a time, in same transaction, by burning the contents from OPPO mobile phone as aforesaid in both the DVDs ,the contents are mentioned by using marker.

During his cross-examination the witness clarified that Ratan Das, issued the certificate. Most of the cross-examination of the witness at the instance of defence was confined to technicalities and his degree and knowledge in English language to understand the purport and content of certificate u/s 65 B of Evidence Act. He admitted that he was given seizure list for recollection, before deposition and he also confirmed that he does not have any personal relation with any of the accused and that he has not shared the password of his office computer to IO, while

the computer room in the PS is a protected place inside it and everybody does not have any access to the computer room. He also clarified about his domain of duty, at the time of joining was assisting in maintenance of traffic in roads and crowd management in Mela etc. As far as certificate u/s 65 B of Evidence Act is concerned he dispelled all the defence confusion by revealing that the format is available in Google and he simply downloaded the same and with the help of the Google he prepared the draft. He denied all other suggestions.

[All emphasis by me].

Like the previous one, this witness is not the police personnel but a Civic Volunteer who assist police in performance of respective duties. The witness during his testimony identified the seizure list and the alamat and the alamat. He is one of the technical witnesses as well as the seizure witnesses whose expertise has been used by the prosecuting agency to extract two video files from the mobile phone of the victim girl's family as brought by her father in the PS from which the witness extracted two viral video files into two DVDs and one is sent along with the mobile phone to CFSL, Assam and another one was kept in the CD and the later one was shown to the PW2 and PW3, who identified the contents of Frontech DVD seized on 24.11.2021 being P5/PW2 and the witness being the extractor identified Mat Ext.IV being another DVD of Frontech to be the one identical in contents with P5/PW2 and as rightly pointed out by the Ld. Counsel for the Prosecution the Cross-Examination on the point of Section 65B of Evidence Act and the authenticity of the process of extraction of the viral videos become

insignificant when the reports from CFSL, Assam and Pune coupled with the version of the experts in the form of PW8 and PW9 corroborates the content of PW5/PW2 are identical with the contents of P11/PW3 and the same are untampered and as such the same goes to suggest that contents of Mat Ext. IV are identical with that of P5/PW2 and for the matter of that P11/PW3 and P22/PW8 which will be explained further during discussion hereinafter with a schematic diagram. As discussed earlier non recording of statement of formal seizure witness, performing routine works in PS, u/s 161 Crpc is not always mandatory and as far as prior perusal of the document is concerned, method adopted to refresh memory of the witness is not an alien concept of law and there are provisions like Section 159 of the Evidence Act to address the issue, rather it would have raised doubt had the witness without perusal of any document straight away recollected the events which occurred around 2 years ago in the PS during his ordinary course of duty. The witness has in detail discussed the process he adopted for burning the contents of the mobile into two DVDs and those are marked exhibits without any objection, raising any technical issue from the side of the defence. The Ld. Counsel for the Prosecution in his written argument clarified that the data from the mobile phone was first transferred and then only the mobile phone was seized, otherwise transferring of the data after seizure was not possible without taking permission from the competent authority. The CFSL, Assam already confirmed presence of two videos in the DVDs and the contents of the DVDs were identified by PW3, PW2, and expert witnesses being PW8 and PW9 and as

such there are enough corroboration of the same.

PW-11, Jhatulal Mondal, is the first I/O of this case and he submitted that on 11.09.2022, he was endorsed with the responsibility of investigation of this case and he identified the formal FIR prepared by Duty Officer Maya Dey Dutta which was marked **Exhibit- P1/4/PW 11**. The witness also identified the endorsement on the complaint marked **Ext. P1/4/PW 11**. He during investigation examined the defacto complainant, scribe and other available witnesses etc. caused recording the statement of the V.G through lady officer, LSI Maya Dey Dutta on requisition identified and marked **Ext. P30/PW 11**. visited the P.O, arrested the accused, caused medical examination of the V.G at Lalbagh S.D Hospital and identified the requisition dated 23.11.2023 to the effect marked Exbt P12/PW4. The witness identified the rough sketch map and index prepared by him on visitation of the P.O. which was marked **Exhibit P31/ PW11 and P 31/1/PW11**. He also claimed to have held raid and arrested three accused Basudeb Mondal, Mithun Das and Akash Mondal and identified them before the Court and they were taken into PC for three days, as granted at the instance of this Court. The witness further submitted that the VG was initially sent for medical examination on 23.11.2021 but the same could not be performed due to unavailability of gynaecologist and on the next day the VG was again sent to Lalbagh SD Hospital for her medical examination but they also the same could not be performed due to her ongoing menstrual cycle and accordingly report was given. The witness identified P2/2/PW4. The witness further revealed that on 24.11.2021, Ratan Das, father of the VG visited him in the PS and handed him over the mobile

CNR No. WBMD08-001307-2021

phone in which the viral videos of the VG were contained and Ratan showed him the OPPO mobile phone and the viral videos and the witness, then called up the computer operator Imdadul Sk and asked him to copy the viral two videos, from the OPPO mobile phone to two freshly procured DVDs of Frontech company using their office computer and thereafter the witness seized the OPPO mobile phone and one DVD after preparing proper seizure list and accordingly identified seizure list P15/PW7, Mat Ext. III & IV and he used the marker pen personally to state the contents of the DVD inscribing over it. Identifying P16/PW7 the witness stated that Ratan Das issued the said certificate U/s 65B Evidence Act in his presence being drafted by Imdadul Sk with the help of Google. He submitted that he sent the seized article including the Frontech DVD to the malkhana and kept another unseized DVD with the CD. Thereafter, the witness also revealed that, the mother of the VG handed him over the wearing apparels of the VG which she wore at the time of alleged incident. Identifying Mat Ext.I as a whole the witness stated that the mother of the VG handed him over the wearing apparels of the VG, that she was wearing at the time of alleged incident and he prepared the seizure list and seized the wearing apparels in presence of the defacto complainant in his own handwriting and identified Ext. P3/PW2. As per witness the statement of the VG U/s 164 of Cr.P.C was recorded on 25.11.2021. The witness continued that the VG was again sent for medical examination before Lalbagh SD Hospital, Murshidabad and on 27/11/2021 she was examined by the doctor on the basis of requisition marked **Ext. P32/PW11** and the witness identified medical examination report of the VG already marked P4/PW2 as a

CNR No. WBMD08-001307-2021

whole. The witness further claimed that he through requisition dated 27.11.2021 sent the three PC accused persons as aforesaid, for their medical examination, including their private parts. He identified said requisition slip to the Superintendent, Lalbagh SD Hospital marked as **Ext. P33/PW11** and submitted that the accused three persons were examined separately and the examination report in respect of the accused Akash Mondal, Basudeb Mondal and Mithun Das were marked **Ext P34/PW11**. (Formal proof dispensed with), **P35/PW11** (Formal proof dispensed with) and **P36/PW11** (Formal proof dispensed with) respectively at the instance of the witness. The witness on 27.11.2021 by preparation of seizure list seized original birth certificate of the VG marked **Ext. P6/2/PW11** and left it in the custody of the mother of the VG/defacto complainant by execution of jimmanabond which the witness identified (P7/PW2). However, the witness revealed that in the seizure list he has wrongly written the date of birth of the VG as 16.12.2005 instead of 26.12.2005, which is a pen mistake by him and later he identified the same. The witness identified P9/PW2 and claimed the same is the copy of the birth certificate of the VG which the mother of the VG brought before him in its original at the time of its seizure and he after seizure of the same handed over the original birth certificate to the defacto complainant being the mother of the VG by execution of jimmanama as aforesaid. Identifying P14/PW6 the witness submitted that he by preparation of the said seizure list on 28.11.2021 seized two mobile phones viz. VIVO y20i mobile phone from the accused Basudeb Mondal and another black coloured keypad mobile phone of LAVA brand from the accused Mithun Das and identified Mat Ext.

CNR No. WBMD08-001307-2021

VI & VII/1. The witness revealed that due to an accident made by him during investigation he became unavailable and SI Manoj Baidya took up the investigation as second IO and the witness claimed to have acquaintance of his handwriting and his signature. Then the witness revealed that during investigation, in his tenure, the said SI Manoj Baidya sent blue coloured VIVO mobile phone to CFSL, Pune which the witness seized previously, observing proper procedure for its forensic examination and accordingly, identified the brown coloured sealed envelope which Manoj Baidya prepared and pasted label on the same and gala sealed the content stating one blue coloured VIVO y-20i mobile phone on the label and at his instance the said label was marked **Ext. X/1 as a whole**. The witness contended that pending report from scientific expert, within statutory time specified he submitted final report he submitted final report in the form of charge sheet being no. 03 of 2022 dated 19.01.2022 U/s 376DA/506 of IPC read with Section 6 of POCSO Act against four accused persons citing Arun Mondal as absconder, rest three accused Basudeb Mondal, Mithun Das and Akash Mondal as accused in judicial custody. Later Arun Mondal was arrested on the strength of warrant of arrest by Jiaganj PS subjected to medical examination during investigation by SI Manoj Baidya and the witness identified the requisition marked **Ext. P37/PW11** and Medical report is marked as **Ext. P38/PW11**. The witness again joined into service on 25.06.2022 and took up further investigation and continued the same till he was transferred to Burwan PS, made over the CD to the then IC, Murshidabad PS Asit Baran Kuila and at the end of his examination the witness identified all the four accused and also identified signature of lady escort Trisha Das and Ruby

CNR No. WBMD08-001307-2021

Dutta over the medical examination reports of the VG on two occasions marked **Ext.P2/3/PW11** and **Ext. P4/2/PW11**.

During his cross-examination perusing sketch map P31/PW11 the witness replied there is nothing in the sketch map showing jungle near the PO and on the index B & C are katchha roads which are used for the purpose of approaching to the field and denied the suggestions that SNG brick field is a running brick kiln and as per his information the same is abandoned though it is not mentioned in the index. Here, too the defence mostly confined their cross-examination on technicalities about non-mentioning of GD entry in the CD on receipt of reports, non examination of attending doctors U/s 161 Cr.P.C., non-seizure of ownership documents of the mobile phone of Basu or checking the same with its tower location, call register, hash value etc. for the relevant point of time or locating the PO for future identification or non-examination of the medicine shop owner wherefrom the VG purchased medicine U/s 161 of Cr.P.C or reproducing the statements U/s 161 Cr.P.C in the case diary content U/s 172 (1A) of Cr.P.C. [?]. The witness during cross-examination confirmed that in the formal FIR, the time of occurrence of the alleged incident has been mentioned as 8 pm. From the arrest memo of accused Basu Mondal, the witness reiterated that on 23.11.2021 at 20.35 hours the witness arrested Basu from Kathgola, Murshidabad identified the arrest memo which was exhibited and marked as **Ext. D1/PW11**. The witness reconfirmed that he did not visit the house of Basu at Bilkandi Colony, Jiaganj to arrest Basu. The witness revealed that he did not collect any document to ascertain the ownership of seized mobile from Mithun or did not

consult any call list from the handset of Mithun Mondal and he did not know Akash or Mithun prior to the incident. The witness denied all other suggestions. Nothing significant revealed during his cross-examination worth mentioning.

He is the first IO of this case who identified the accused person and defined the role of the witnesses through his testimony starting from lodging of FIR two statements of the witnesses, visitation of the PO, arrest of the accused, seizure of mobile phones not only from the father of the VG but also from the accused, extraction of the contents of the mobile phone from the VG side to the seizure of wearing apparels, birth certificate of the VG causing medical examination of the VG as well as the accused and thereafter sending the mobile phones for forensic examination to CFSL authorities etc and also vetting the action taken by the interim IO Manoj Baidya . As rightly pointed out from the side of the defence, the cross-examination reaffirmed the serenity of the place of occurrence by more fully describing the same apart from what clarified by the VG . It is the IO who identified the same to be an abandoned brick kiln with kuchha roads for the purpose of approaching the field. The seizure of the mobile phones from the accused remained unchallenged as far as procedure adopted is concerned and as such exhibited without any objection and the extraction of relevant videos found in the mobile phone of Basu through PW7 at the instance of the IO has not been objected by the accused during their examination U/s 313 of Cr.P.C. Some procedural latches has pointed out from the side of the defence are not found so overwhelming to overwrite substantial justice. Upon panoptic resume of the Cross-examination of the aforesaid IO except touching some technicalities of non-examination of the VG by a Lady Doctor or type of occurrence mentioned in the formal FIR, non-photography or videography of the PO or non-collection of tower location, call registers of the accused Basu or ownership of his mobile or proper maintenance of

the CD by recording events, nothing significant found in his cross-examination and quite interestingly not a single line has been found where the IO was confronted with any statement of the vital witnesses say the defacto complainant or the victim, before the Court, with the one recorded by the police during investigation U/s 161 Cr.P.Cor for the matter of that the FIR, to prove contradiction, omission, improvement, or embellishment to shake their credentials, to reveal out the truth as envisaged by the Hon'ble Apex Court in V.K.Mishra Vs State of Uttarakhand as reported in (2015) 9 SCC 588

The final IO of this case is the present IC of Murshidabad PS, Inspector **Goutam Mitra** who took up further investigation of this case during the last part of November, 2022 and during his tenure he sent to CFSL, Assam one Frontech DVD and one OPPO mobile phone for forensic examination by proper requisition after observing all procedure with an endorsement of Ld. Special Judge, Lalbagh, Murshidabad and identified Mat Ext. III and IV. He identified his requisition memo to CFSL, Assam marked **Ext. P39/PW12 as a whole**. As per the witness In the month of January, 2023 he received back the alat sent earlier, along with two external Hard Disc and report from CFSL, Pune. During further investigation the witness sent requisition to State Forensic Laboratory for deputation of an expert for collection of voice sample of the accused four persons in custody and also the gait photography, still and videography of all the four accused persons for the purpose of investigation observing all formalities and accordingly on 03.03.2023 as per direction of this Court, he upon requisitioning, one profession photographer Pronoy Das, over phone, went to Lalbagh Sub-divisional Correctional Home and there the expert deputed from SFSL, Kolkata Dr.

CNR No. WBMD08-001307-2021

Chitrakshya Sarkar joined and conducted gait photography, still photography and videography with the assistance of photographer cum videographer Pronoy Das and the same was recorded and captured in fresh SD card observing all formalities. The witness continued that, on 04.03.2023, in presence of Ld. Magistrate, as per direction of this Court the aforesaid SFSL expert Dr.Chitrakshya Sarkar, collected voice sample of all the four accused persons separately on four separate freshly procured SD card in his presence and thereafter the SD cards as aforesaid i.e. one captured in the correctional home and other recorded before the Magistrate were then handed over to the IO i.e. the present witness in five sealed covered envelope. The witness then sent two hard disc that he received from CFSL, Pune, along with aforesaid five numbers of SD cards, in sealed covered five numbers of envelopes to SFSL, Kolkata, with queries for examination and opinion with query and as such identified alamat in the form of Ext.P23/PW8, P24/PW8, P25/PW8, P26/PW8, P27/PW8, P22/1/PW9, P11/1/PW9 which were sent to SFSL, Kolkata in separate envelope pasted on it with counter signature of the Court and duly received by SFSL, Kolkata vide memo No. P19/PW8 as a whole. The witness after receipts of reports from CFSL, Pune followed by SFSL, Kolkata submitted **supplementary charge sheet No.527 of 2023 dated 11.08.2023 U/s 376DA/506 IPC read with 6 POCSO Act and 67 IT Act** against all the four accused persons and lastly after identifying Mat Ext. III and IV and on 08.09.2023, after receipt of report from CFSL, Assam , along with alamat in the form of OPPO mobile phone and Frontech DVD (Mat Ext. III and IV), he submitted supplementary charge sheet supplementary charge sheet no. 598 of 2023 dated

CNR No. WBMD08-001307-2021

17.09.2023 against four accused persons U/s 376DA/506 of IPC read with 6 POCSO Act and 67B of IT Act before the Ld. Special Court, Lalbagh, Murshidabad whom he again identified before the Court.

During cross-examination the witness clarified that he did not find it necessary to resort to any help of any Photography Bureau of Criminal Investigation for the purpose of photography or videography during investigation. Here, too the cross-examination remain confined to technicalities, custody chain of alat including electronic records, sealing safe custody, preservation and retention of the same in malkhana and its proper registration and return of alat after forensic examination its physical verification etc. He did not receive CD from previous IO through any GD entry or sealed pack though the alat was sent to CFSL for investigation and the forensic record was sent according to the witness through Court. Nothing revealed during his cross-examination worth mentioning.

Upon panoptic resume of the testimony of the aforementioned IO too, except touching some technicalities regarding handling of alat, their safe custody, chain of custody, preservation etc. before sending the same to the FSL authorities nothing significant found worth mentioning. As stated earlier since none of the exhibits at the time of their marking were objected at the instance of the defence and since nothing was put into question by the accused during their turn of examination U/s 313 of Cr.PC and specially when none of the FSL authorities say it SFSL, Kolkata or

CFSL, Assam or Pune turned down the examination of alat on the point of tampering or return the same for physical damage and where all the electronic evidence were identified and marked exhibit in the form of P5/PW2, P11/PW3, P18/PW8, P21/PW8, P22/PW8, P23 to P27/PW8, apart from Mat Ext. II to X without any objection the question of raising technical flaws in a rape trial does not hold much ground. It is this IO who took all the pain during further investigation, to cause and collect rest of the corroborative scientific evidence and expert opinion, in this case, which was a challenging job which was done by the investigating officer very efficiently. I would be failing in my duty if I do not appreciate the role so efficiently performed by second the investigating officer of this case namely-IC Goutam Mitra of Murhsidabad P.S.

These are the sum and substance of the evidence from the side of the prosecution.

RIVAL CONTENTIONS

Ld. Special Public Prosecutor Shri Bivash Chatterjee, appointed to conduct the instant case at the instance of the Ld. LR & Ex-Officio Secretary to the Government of West Bengal, submitted a written memorandum of arguments on

CNR No. WBMD08-001307-2021

behalf of the prosecution in terms of the provision U/s 314 of Cr.P.C after serving copy of the same on the defence and addressed a concise oral argument summarizing the salient portion of the written argument consisting page nos. 1 to 108 starting with the heading mixed question of law and facts with several sub-headings.

According to the Ld. Counsel the only eye witness to the incident is the injured victim who has been ravished by the accused and her version before the Court is of sterling quality, requiring little or no corroboration, being capable enough to generate enough confidence in the prosecution story and as such insisting upon TIP for identification of the accused, where she identified all of them being FIR named as well, before the Court, does not require corroboration through TIP and she was described them in her statement before Magistrate U/s 164 Cr.P.C except that she could not identify Arun Mondal by name then. It is also not expected that a VG when getting raped will ask her perpetrator to give introduction and brief description of them before performing their nefarious activities. **The prosecution on this bank on the authority reported in Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21: (2012) 3 SCC (Cri) 750: 2012 SCC OnLine SC 590 at page 29).** On the score of the right of the accused to demand TIP, the Ld. Counsel placing reliance upon authority of the Hon'ble Apex Court reported in - Mulla & Anr Vs State of UP-AIR 2010 SC 942 ; (2010) 3 SCC 508 tried to convince the Court that it is the observation of the Hon'ble Apex Court that - **the question whether a witness has or has not identified the accused during the investigation he is not one which is in itself relevant at**

the trial. The actual evidence regarding identification is that what is given by the witness in the Court. There is no provision in CrPC entitling the accused to demand that an identification parade should be held at or before the inquiry in the trial. [Para-41]

Further contending that the version of the victim cannot be equated and put at par with the testimony of accomplice put her reliance upon authority reported in **Punjab vs Gurmit Singh &Ors. [(1996) 2 SCC 384]** and also placed reliance authority reported in **State of Maharashtra v. Chandraprakash Kewalchand Jain [(1990) 1 SCC 550 : 1990 SCC (Cri) 210]** speaking for the Bench summarised the position in the following words: (SCC p. 559, para 16)" and **Rameshwar v. State of Rajasthan, 1952 SCR 377: AIR 1952 SC 54: 1952 SCJ 46: 1952 Cri LJ 547**. In this context the Ld. Counsel also pointed out that minor discrepancies in the versions of the witnesses becomes hallmark of truth since, if a case is proved too perfectly, it may be argued that it is artificial since it is quite inevitable that human beings are prone to error. (Reliance was placed on authority reported in - (Inder Singh v. State (Delhi Admn.)), (1978) 4 SCC 161: 1978 SCC (Cri) 564 at page 162).

Placing reliance on the provision U/s 5, 6, 7, 8 , 9, 14 of the Indian Evidence Act the Ld. Prosecution Counsel submitted that not only the VG was sexually ravished by all the accused one by one but they captured the moments in a form of video recording to intimidate the VG in disclosing the incident to anybody and the same phenomenon is a relevant fact, substantiating the fact in issue in a sense that accused persons kept the VG silent over the incident

CNR No. WBMD08-001307-2021

forcibly with a threat to make the content of the video viral, if she dare to disclose the same to anybody but ultimately when the accused uploaded the video and make them viral, the VG had no qualms in uncovering the saga before her family and the same are the part of the same transaction in terms of the relevant provision of the Evidence Act and as such there was no delay in filing FIR, as may be claimed from the side of the defence. Stating further that, even the conduct of the parents of the VG, when they got the news, are also an important and relevant factor in proving that their version over the incident, where minor discrepancies in the testimony of the witnesses does not render their entire submission unreliable since the principle of falsus in uno, falsus in omnibus does not apply in India. In this context reliance was placed on Krishna Mochi v. State of Bihar, (2002) 6 SCC 81: 2002 SCC (Cri) 1220 at page 113 AND also in (2015) 11 SCC 43.

Banking on the expert versions in the form of PW 4, PW 5, PW 8, PW 9 and report of CFSL Experts from Assam under Section 294 of Crpc and conclusive reports from FSLs which were marked Ext. P13, Ext.P20/PW8 and P29/PW9 and further identification of the obscene videos through P5/PW2, P11/PW3, P21 & 22/PW8 and Mat Ext. IV as extracted from the Mat Ext. III on the one side and Mat Ext. VII and IX on the other side and from the VG to defacto complainant and from independent witness in the form of PW7 to Ld. Experts in the form of PW8 & PW9 where found all those videos to be identical and untampered, the Ld. Special Public Prosecutor, submitted that the testimonies of the experts coupled with electronic evidence and their reports on examinations, together with their unchallenged versions corroborating the evidence of the

CNR No. WBMD08-001307-2021

victim girl and defacto complainant mother, proves veracity of the prosecution case to the hilt proving all the charges be it U/s 376 DA / 506 of IPC or Section 6 of the POCSO Act 2012 armed with Section 67B of Information Technology Act, specially when the acts fall under the mischief of presumptions u/s 29 and 30 of the POCSO Act . To be precise, relying on the provisions u/s 157 of Evidence Act, the bone of contention from the side of the prosecution was that apart from some trivial apparent and flimsy contradictions or omissions attributed to wear and tear of time in the versions of rustic witnesses, when compared to version of statement of VG u/s 164 Crpc but corroborative of each other if versions of defacto complainant PW 2 and victim PW 3 are taken aside and as such verbatim non reproduction of the previous versions in the form of u/s 164 Crpc and /or statement u/s 161 Crpc are not fatal, since none stands as substantive piece of evidence. Moreover, accused persons did not use any opportunity to explain their conduct or denied their special knowledge regarding transmission of sexually explicit materials attracting offence punishable U/s 67B of the Information Technology Act when they have the duty to speak U/s 106 of the Evidence Act, by offering suitable explanation, specially when PW2 & 3 clearly identified the accused in the videos, including further identification of Akash and Mithun, in the video through their voices and tattoo mark, where the videos were extracted at the instance of CFSL Pune and SFSL, Kolkata , extracted from the mobile phone of the accused Basudeb, vis-a-vis the mobile seized from the side of the defacto complainant are proved conclusively, after comparing the same with the voice samples, gestures postures etc by the experts.

Attributing the mismatch of timing of the incident in FIR to the later versions of the witnesses before the Court be it PW2/ defacto complainant and PW 3/ VG, to the trauma and shock where the defacto complainant depending upon the acumen of the scribe could not do much to submit FIR with the same discrepancy and FIR since not an encyclopaedia, be not considered as a substantive piece of evidence to obfuscate overwhelming prosecution case. Moreover the narrative of history of the incident is what was summarised by him, specially when the VG has claimed to have apprised everything to him and the matter can be ascribed as distortion of communication, at best and as such can be ignored.

Upon scanning the entire evidence of the prosecution witnesses the Ld. Counsels submitted that narration of incident by the VG before the PW2 and the circumstances which she has gone through before such disclosures are relevant even U/s 8 of Evidence Act specially as per illustration (j) apart from corroboration of the version of PW2 by the VG as PW3 as identification of the accused before the Court followed by identification of written complaint, medical examination reports etc. seizure of wearing apparels, all marked exhibits. Moreover, identification of the accused and the VG herself in the video clippings, when the DVD contents were played before the Court, demeanour of both the witnesses when the videos were played before the open Court, for the purpose of identification are found relevant facts. Proving of minority of the VG at the relevant point of time, to identification of the signature of the witness in the seizure list on the jimmanama bond on the age proof document, disclosure of sources of receipt of the obscene video in the mobile phone

by PW2, to apprehension of accused three persons except Akash and also futile attempt from the side of the defence to put a dent on the otherwise trustworthy deposition of the victim, the behavior of the VG to conceal the incident to prevent the same getting exposed to avoid social stigmatization, for a long time, all were highlighted by the Ld. Counsel representing the Prosecution. Revealing further that arrest of the accused from a different place from their house also corroborates the prosecution version. Attempt from the side of the defence to create discrepancy as far as place of occurrence is concerned is foiled by repeated cross-examination of PW3, VG who despite such tormented situation after such physical and mental violence described the PO to be a deserted vacant place having jungle nearby and she reaffirmed the date of incident. The wearing apparels of the VG on the ill fated day was not only exhibited at the instance of the prosecution but the same were found clearly visible in the digital evidence as well which the defence failed to make any in roads. As far as attending doctor who examined the VG i.e. PW5, gynaecologist is concerned he summarized the history of the injury stated by the VG and the same more or less supports the prosecution version and found the VG having ruptured hymen which may be due to violent sexual intercourse and also found multiple nail scar marks in an around her breasts and the said doctor clarified the same to be non self inflicitory since the VG was found by the doctor to be mentally sound and he has mentioned the same in his report but the defence, since did not cross-examine the VG on any strenuous activity or masturbation, general opinion of the doctor coming out at the instance of the defence during cross-examination that rupture of hymen

CNR No. WBMD08-001307-2021

may occur due to strenuous physical activities holds no relevance is the submissions of the Ld. Counsel from the side of the Prosecution. Further from proving seizure of mobile phone from the custody of the accused Basudeb Mondal, to extraction of content of the smart mobile phone to the extent of report from the CFSL authority regarding having the untampered version of the obscene videos and identity of the same being found unique with those received by the father of the VG in the mobile phone, coupled with the report from the expert authorities, CFSL Kolkata, Pune and Gowghati in unison, points the guilt towards the accused, beyond reasonable doubts. Thereafter, identification of the gait pattern and voice samples upon comparison of the same with those of the accused more fully establishes the guilt of the accused without any further corroborative proofs. The attempt of the defence to challenge the scientific findings on the chain of custody of the alams following official procedure by the Scientific Forensic Laboratory Authority, as per Ld. Counsel representing the Prosecution, holds no grounds when the contents of the same i.e. the digital evidences were found authentic and remained unchallenged and as such the entire evidence of the Prosecution armed with sterling quality testimony of the victim fortified by the versions of her mother/defacto complainant, corroborated by other supporting evidence, including digital evidences, as far Ld. Counsel for the Prosecution is sufficient enough to prove the prosecution case beyond reasonable doubt. As far as minor discrepancies are concerned in the appreciation of evidence where they are tallied vis a vis the FIR or the previous statement U/s 161 of Cr.P.C or Section 164 Cr.P.C of the victim or the time of incident referred in the FIR

being found in variance from the statement of the VG and other witnesses, so the place of occurrence, as noted by the attending doctor, reliance was placed by the prosecution on the celebrated authority of the Hon'ble Apex Court reported in Leela Ram Vs State of Hariyana & Others - (1999) 9 SCC 525 and submitted that **minor embellishments and previous discrepancies, held do not by themselves rendered the evidence of eye witnesses unbelievable, there should be material contradiction and instead of hair splitting on such trivial issues, totality of the situation are required to be reviewed and the evidence should be considered from the point of view of trustworthiness.**

Lastly, Ld. Special Prosecution Counsel - appearing for the State, boastfully, submitted that in the present case the prosecution have been able to prove their contention through 12 numbers of prosecution evidence of which PW 3 is the VG herself, being the daughter of the defacto complainant and the mother of the VG, was examined as PW 2. VG as per her deposition before the Magistrate and before the Court first reported the matter to her mother, In this case the prosecution has meticulously proved all the allegations against the accused as far as discrepancy in the version of place of occurrence amongst the prosecution witnesses. It was the specific contention from the side of the prosecution, that the evidence of the VG was quite elaborate, pointing guilt towards, the accused and his sole testimony is enough. Accordingly, the prosecution prayed for conviction of the accused, considering the incriminating materials on record with which the prosecution was able to prove the charge levelled against the accused, while the later could not shift the burden as onus lied upon him, to establish his innocence.

CNR No. WBMD08-001307-2021

On account of mischief of Section 29 & 30 of POCSO Act also comes against the accused.

Apart from the above the Ld. Counsel placed reliance on some authorities as detailed in the following table

Sl. No.	Citation	Details
1.	State of Punjab vs. Major Singh 1966 Supp SCR 286: AIR 1967 SC 63	...that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the women possesses a modesty capable of being outraged.
2	Malkhan Singh vs State of Uttar Pradesh AIR 1975 SC 12: (1975) 3 SCC 311: 1974 SCC (Cri) 213: 1975 Mad LJ (Cri) 450.	CRIMINAL TRIAL-witness-injured-held, unlikely that he would spare the real assailant and implicate another.
3	Rameswami vs State of Tamil Nadu, AIR 1976 Sc 2027: (1976) 3 SCC 779 : 1976 CrLJ (SC) 227	7..... he was injured in the same occurrence, undoubtedly, his ocular version of the incident is of great value to prosecution.
4	Appabhai vs State of Gujarat AIR 1988 SC 696 : 1988 Supp SCC 241 : 1988 CrLJ 848 : (1988) 1 Crimes 606.	13..... He has not attributed overt acts to individual accused in his statement before the police whereas he has attributed such overt acts in his evidence before the Court. But that is no ground to reject his entire testimony. It must not be forgotten that he was a victim of the assault. Fortunately, he has survived. He must therefore be considered as the best eye witnesses. The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to the normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance.
5	Om Prakash vs State of Haryana, 1994 Supp (2) SCC 366: 1994 SCC (Cri) 1477: JT 1994(3) SC 289: 1994(2) Scale 599: (1994) 2 Crimes 126(SC)	4..... the presence of the injured witnesses at the scene of occurrence cannot be doubted then even if they exaggerate about gun shots fired by accused as three or four as against post mortem report that deceased received single gun shot that by itself is no ground to doubt the veracity of those witnesses.
6	Ram Bhukan vs State of Uttar Pradesh, AIR 1994 SC 561 (563) : 1994 SCC (Cri) 159: 1994 CrLJ 596: 1994 SCC (Cri) 159: 1994 CrLJ 596: 1994 CrLR (SC) 73	6.....Having witnessed a ghastly occurrence and having himself received injuries PW-2 cannot be expected to go about giving details to each other and everybody inquiring
7	Mohar vs State of U.P. AIR 2002 SC 3279 : (2002) 7 SCC 606 : 2003 SCC (Cri) 121 : 2002 CrLJ 4310: JT 2002 (7) SC 393: (2002) 4 Crimes 301.	F.... testimony of an injured witness has its own efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was present at the place of occurrence by himself. Conviction evidence would be required to discredit an injured witness.
8	Surinder Singh vs State of Haryana (2006) 2 SCC (Cri) 444 (448) JT 2006 (1) SC 645 : 2006 (2) SCJ 35: 2006(1) Crimes 153	D.....The testimony of an injured witness has its own relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence lends support to the testimony that the witness was present during the occurrence and saw the occurrence with his own eyes.

CNR No. WBMD08-001307-2021

9	Vijay Shanker Shinde vs State of Maharashtra AIR 2008 SC 1198 : (2008) 2 SCC 670: 2008 (1) SCC (Cri) 535: 2008 CrLJ 1632 (1633) :2008 (1) Crimes 216 (SC) .	9..... injured person who is examined as a witness lends more credence because normally, he would not falsely implicate a person thereby protecting the actual assailants. The trial court as well as the High Court have rightly paced on the evidence of eye witnesses and their evidence was clear and cogent.
10	Dinesh Kumar vs State of Rajasthan AIR 2008 SC 3259 : (2008) 8 SCC 270 : 2008 Cr LJ 4311 . TO THE SAME EFFECT : Suresh vs State of Hrayana 2008 CrLJ 2619 (2622)	Testimony of injured witness is given importance- Testimony of an injured witness is given importance-
11	Mano Dutt vs State of U.P (2012) 4 SCC 79.	31.... and because the witness would not want to let actual assailant go unpunished.
12	Akhtar vs State of Uttaranchal (2009) 13 SCC 722 : 2009 (2) crimes 192 (SC) : 2009 (5) SCR 771: JT 2009(5) SC 408.	18... Unless there are compelling reasons, the evidence of injured witness has great evidentiary value. their evidence cannot be brushed aside lightly.
13	Brahm Swaroop vs State of UP , JT 2010 (11) 437: 2010 (11) Scale 443 : 2010 (7) Supreme 549: TO THE SAME EFFECT: (1) CBI vs Kishore Singh , JT 2010 (12) SC 489. (2) Ranjit Singh vs State of Madhya Pradesh, JT 2010 (12) SC 167. (3) Abdul Sayeed vs State of Madhya Pradesh (2010) 10 SCC 259: 2010 (4) Crimes 86 (SC)	Injured Witness considered more reliable- Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone “Convincing evidence is required to discredit an injured witness”.
14	(2004)3 SCC 654;2004 SCC CRI 851	Not fatal to prosecution where ocular testimony is found credible and cogent-court has to be circumspect while evaluating the evidence in a case of such type. Thus accused cannot be acquitted solely on account of defect in investigation.
15	AIR 2010 SC 2119	Defective investigation effect held criminal justice should not be made a casualty for wrongs committed is.
16	State of Madhya pradesh vs Chamru, 2007 12 SCC 423	Defective investigation cannot be a ground to discard credible evidence.
17	(2004)3 SCC 654;2004 SCC CRI 851	Not fatal to prosecution where ocular testimony is found credible and cogent-court has to be circumspect while evaluating the evidence in a case of such type. Thus accused cannot be acquitted solely on account of defect in investigation.
18	1991 Cr IJ 1269 (Guj)	Minor discrepancy due to lapse of memory immaterial.
19	Appabhai vs State of Gujarat AIR 1988 SC 696 : 1988 Supp SCC 241 : 1988 CrLJ 848 : (1988) 1 Crimes 606.	Contradiction in evidence of victim of assault- The Supreme Court in a case after pointing out that to same situation the behavioral pattern of different persons is not identical held that it is true that there are many contradictions in the evidence of the victim of assault. He has not attributed overt acts to individual accused in his statement before the police whereas he has attributed such overt acts in his evidence before the Court. But that is no ground to reject his entire testimony. It must not be forgotten that he was a victim of the assault. Fortunately, he has survived. He must therefore be considered as the best eye witnesses. The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to the normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance.

20	<p>CRIMINAL APPEAL NO.144 OF 2022</p> <p>Nawabuddin ..Appellant(S) Versus State of Uttarakhand ..Respondent(S)</p>	<p>10. Keeping in mind the aforesaid objects and to achieve what has been provided under Article 15 and 39 of the Constitution to protect children from the offences of sexual assault, sexual harassment, the POCSO Act, 2012 has been enacted. Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure.</p>
21	<p>AIR Online 2019 Del 1221 Prem Bahadur alias Bhoj Bahadur v. State</p>	<p>Penal Code (45 of 1860) , S.366, S.376, S.506— Protection of Children From Sexual Offences Act (32 of 2012) , S.5, S.6— Evidence Act (1 of 1872) , S.3— Kidnapping and rape or aggravated penetrative sexual assault - Appreciation of evidence - Cogent, reliable and consistent testimony of prosecutrix - Same corroborated by other witnesses - Age of prosecutrix proved to be 13 years at time of alleged incident - Offence of "aggravated penetrative sexual assault", within meaning of S.5 of Act, clearly made out - Penetration of penis, to any extent, into vagina, mouth, urethra or anus, of prosecutrix, answers definition of "rape" - Guilt of accused proved beyond doubt - Conviction, proper - Since offence perpetrated by accused on prosecutrix falls both within clause (i) of S.376 (2) of IPC and S.6 of POCSO Act, it merits punishment under former provision.</p>
22	<p>AIR Online 2018 Del 1413 Gopi Nisha Mallah v. State</p>	<p>Penal Code (45 of 1860) , S.376(2)(i), S.376(2)(m), S.363, S.325— Protection of Children From Sexual Offences Act (32 of 2012) , S.6— Kidnapping and rape (After amendment of 2013) - Penetrative sexual assault - Accused allegedly committed rape on minor girl aged 8 years - Prosecutrix stating that accused took her to park and committed rape on her by inserting finger in her anus and penis into her vagina causing grievous injuries - Medical evidence establishing vaginal tear caused due to penetrative sexual assault - testimony of prosecutrix corroborated with medical evidence - Conviction proper.</p>
23	<p>2022 CRI. L. J. 1782 Sudhir v. State of Karnataka</p>	<p>(A) Penal Code (45 of 1860) , S.450, S.376(2)(i)— Protection of Children from Sexual Offences Act (32 of 2012) , S.4, S.6, S.29, S.30— Evidence Act (1 of 1872) , S.3— House trespass and rape - Proof - Testimony of victim that accused forcibly entered house, gagged her mouth and committed forcible sexual intercourse and somehow she was able to escape from clutches of accused corroborated by her sister, mother and medical evidence - No previous enmity between accused and victim to falsely implicate accused - Not a case of accused that he was falsely implicated in case by taking advantage of delay in lodging FIR - Accused except denying materials put to him in prosecution evidence, did not place his version about incident - Prosecution proved guilt of accused - Conviction, proper - Benefit under S. 428 Cr.P.C. already accorded by Special Judge - Sentence under S. 376(2)(i) IPC reduced from R.I. 12</p>

		years to 10 years minimum punishment. (B) Penal Code (45 of 1860) , S.450, S.376(2)(i), S.5
24	AIR Online 2021 Tri 71 Bultan Das v. State of Tripura	Protection of Children From Sexual Offences Act (32 of 2012) , S.8, S.4— Penal Code (45 of 1860) , S.451, S.376(1)— Evidence Act (1 of 1872) , S.3— Sexual assault - Proof - Accused allegedly trespassed into house of victim and by taking advantage of her loneliness, he forcefully raped her - Birth certificate proving age of victim to be 15 years i.e. below age of consent - Since SFSL report does not support case of rape, trial Court discarded charge framed against accused under S. 376(1) of Penal Code and S. 4 of POCSO Act - Testimony of victim girl that accused came to her house, hugged her, gagged her mouth and committed sexual assault with her corroborated by her parents - Accused committed act of sexual assault defined under S. 7 of POCSO Act and punishable under S. 8 of POCSO Act - Conviction, proper.
25	(2016) 3 BomCR(Cri) 9 Rakesh Kisan Nagarale v. State of Maharashtra and Others	(A) Indian Penal Code (45 of 1860) S. 376 (2)(i) — Protection of Children from Sexual Offences Act (32 of 2012), S 4 — Rape — Victim a minor girl of 5 years age — Medical evidence proving that victim was sexually assaulted — Failure by accused to prove that injuries sustained by victim were accidental injuries — Victim though child witness, giving logical answers — Her evidence clearly showing that she could understand what was told to her — Victim stating about incident in her own language and her evidence was not shaken in cross-examination — Her evidence was truthful and inspiring confidence — Evidence of victim and her mother was corroborated by medical evidence — Conviction of accused, proper (Paras 18 to 22)
26	2020 (1) ABR (Cri) 844 Ganesh Kisan Navale v. State of Maharashtra	(A) Protection of Children From Sexual Offences Act (32 of 2012) , S.3(d), S.4, S.6, S.8, S.10— Penal Code (45 of 1860) , S.376(f)(i)— Evidence Act (1 of 1872) , S.6— Sexual assault on girl child - Accused allegedly lured prosecutrix under pretext of giving her sweet to secluded place and committed sexual assault on her - Prosecutrix stated that accused removed her clothes and moved her hand on her person , inserted his finger in her private part and touched his external genitals to her private part - Prosecutrix came cring before teachers, narrated incident and it was stated by her mother to police - Immediate reporting of matter to police - Absence of any motive of false implication of accused - Evidence of class teacher corroborating testimony of prosecutrix in material particulars - Scratches on hands of prosecutrix and leaves of Tamarind tree found on her hair substantiating fact that during recess she had been to place where there was chance of getting scratches over her hand - Medical evidence indicating that hymen was torn completely and old healed tears were present which proves penetrative vaginal sexual intercourse - Conviction proper . (B) Protection of Children From Sexual Offences Act (32 of 2012) , S.42— Penal Code (45 of 1860) , S.376(f)(i)— Alternate punishment - Sexual Assault of girl child - Accused convicted and sentenced under POCSO Act (2012) - Punishment under POCSO Act (2012) is not greater than what has been provided under S.376 of IPC but the sentence is of same description i.e 10 years - Provisions of said Act are in addition to and not in derogation of provisions of any other law in case there is any inconsistency between the two Acts - Thus,

		the sentence awarded to accused under section 376 (f) (i) is set aside. and fine amount of Rs.1,000/- be refunded to the accused if paid.
27	Imran Shabbir Gauri v. State of Maharashtra, AIROnline 2021 Bom 657	Penal Code (45 of 1860) , S.376, S.506— Protection of Children From Sexual Offences Act (32 of 2012) , S.4— Rape - Proof - Allegations that accused-father sexually abused his own victim-daughter - Victim had chosen not to speak about incident before Court - Not case of filing of FIR by tutoring because no such material on record - Statement of victim recorded u/S.164 of Criminal P.C has not been given status of examination-in-chief - Nothing on record to suggest that what compelled victim not to state those facts which she stated before police - Conviction set aside. Information Technology Act (21 of 2000) , S.67B— Publishing or transmitting of material depicting children in sexually explicit - Allegations that accused had obtained nude photographs of victim-daughter on his mobile handset on various dates - Mobile phone seized from accused during personal search - Pornographic images of victim and certain image files of victim girl found in memory card of accused - Depicting children in obscene or indecent or sexually explicit manner in electronic form punishable u/S.67-B of Act - Conviction proper.

While entering into defence Ld. Counsels representing the accused persons, during their short and subtle oral arguments, jointly refuted the prosecution contention, rendering it to be so obscure, which is far little enough even to bring home charges against the accused, even prima facie. Since proving beyond reasonable doubt is a distant proposition and by placing argument remonstrated a multi- pronged defence, which are as follows : -

- A] To be precise, the Ld. Defence Counsel, representing Arun Mondal, submitted that his client has been falsely implicated in this case, later on, to settle some personal score, since the VG initially failed to divulge his name, in her statement before the Magistrate U/s 164 of Cr.P.C and as per version of the VG as PW3, she had no prior acquaintance with the accused Arun. To say it otherwise except Basu, none of the accused had any prior history of exposure, to the VG. Contending further that exhibit P20/PW8 did not make any reference, entangling or roping in Arun, with the

crime alleged, the Ld. Counsels confidently submitted that accused Arun who is a family man having wife and children has nothing to do with the offence alleged. Rather it is the defence contention that Arun and his family were known to VG, before hand and as such he has been falsely implicated in this case.

B] Ld. Counsel for the accused Arun Mondal placing reliance on the authority of the Hon'ble Apex Court, reported in **AIR 1973 SC 2723** submitted that in a criminal trial the view which is favourable to the accused to be accepted. Banking again, on the authority of the Hon'ble Apex Court in 1997 **SCC (CrI) 121** it is further contended from the side of the defence that initial burden remains on the prosecution U/S 101/105 of Evidence Act. Highlighting the discrepancy on the place of occurrence and questioning the credibility of the evidence, Ld. Counsel tried to place reliance again upon the authority of the Hon'ble Apex Court reported in **1997 SCC (Criminal) 966** and lastly banking on the authority of Hon'ble Apex Court reported in **2001 C Cr LR (SC) 446** tried to convince the Court that delay in lodging FIR without explanation makes the prosecution case questionable.

C] As far as the rest of the accused persons are concerned, certain discrepancies in the evidence of the prosecution witnesses, have been pointed out which according to Ld. Counsels representing the rest of the accused, are so grave enough to exonerate them from the charges levelled against them. Following are they :-

I) Pointing out that, as per the FIR the alleged incident occurred at 8 pm at Hariganj but as per version of the VG the incident took place at 12 midnight, which she told before the

doctor as well, apart from her testimonies, including her statement U/s 164 of Cr.PC and the such variance makes the FIR, doubtful and questionable if not after thought ;

II) There is also discrepancy on the date of the incident as well, where FIR mentioned a specific date i.e. 09.10.2021, but as per VG in her testimony as PW3, she stated that the incident occurred **two days** prior to Durga Puja, while VG disclosed before the doctor that the incident took place **three days** prior to the Durga Puja and the same creates wide discrepancies amongst the version of the witnesses, with that of the FIR and the said phenomenon again questioned the veracity of the prosecution.

III) Pointing out, further **discrepancies, as far as place of the occurrence is concerned**, it was contended from the side of the defence that, while the VG disclosed the same to be the backside yard of her maternal uncle's place, but as per the testimony of the VG as PW3, same occurred in a field which she later clarified to be a vacant place and to be a jungle nearby but the IO in his sketch map and index of the PO, did not mention about any jungle but the same was described as an abandoned brick kiln. It means that the basic ingredients to prove a prosecution case i.e. date, time and place of occurrence are at complete disarray, amongst the version of the prosecution witnesses and the same is in wide

divergence from the documentary versions, even that from the testimonies of independent witness PW5, as well, who recorded the PO to be the back side yard of the house of the VG.

- IV) Citing the statement of the VG U/s 164 Cr.P.C., Ld. Counsel further revealed that in her statement, the VG has referred about being threatened of a **fake video** of rape, which the accused will make viral citing her to be part of the same and if that be so, then there is no existing real video of the incident and a story is based on fake video was circulated, which has nothing to do with the incident, as alleged and the same is not sufficient enough to rope in the accused. Moreover, the accused Basu is not visible in any such video, is the specific contention from the Ld. Counsel representing accused Basudeb @ Basu. The defence padded up its argument further, claiming that, the videos relied upon have no details when the same was created and as such nothing has come in the evidence to that effect. Moreover, call register, SIM and # value of the electronic document have not been mentioned at the instance of the prosecution.
- V) Questioning the authenticity of the Section 65B of the Evidence Act, it was also contended from the side of the defence that neither the certification of Ratan, father of the VG has been testified by producing him,

nor the other witnesses have any clue of the contents of the certificate U/s 65B of the Evidence Act and as such the same should be discarded without giving any credence.

VI) Referring further that prosecution witness mostly material prosecution witnesses viz. LSI Maya Dey Dutta who recorded the statement of the VG, and other witnesses whose statements were recorded U/s 161 of Cr.PC., i.e. material witnesses were withheld by the prosecution by not being testified, to be challenged by the defence and for **that presumption U/S 114 (g) of Evidence Act will go against the prosecution.**

VII) Further contending that no independent witnesses have been testified to prove prior acquaintance and relations, in between the accused Basu and the VG and as such the presence of the Basu who belongs to a far away place Bilkandi, **from the place of occurrence, is nothing but absurd and instance of framing of the accused.**

VIII) It is also specific case, from the side of the defence, that PW1 never stated that her daughter went to her maternal uncle's place or her daughter's intimacy with Basu in social medial platform or otherwise and the **mother of the VG** did not provide call details, phone numbers or ownership of the phone call she received the call allegedly from the side of the accused and all these

irregularities put serious doubt about the veracity of the prosecution case.

- IX) Questioning the behaviour of the VG immediately after the incident, where she behaved normally, on the next day but remained to claim ill and bed-ridden for the next 20 to 22 days and further doubting the behaviour of the family members of the VG where she was even not consulted with the doctors-** The Ld. Counsel for the defence stated that these are beyond normal human conduct, specially when a woman is allegedly ravished. Putting query of non seizure of underwear of the VG, to the wearing apparels of the VG remaining free from any mud or grass or soil, it is specifically contended from the side of the defence that, these are planted development, improvement of prosecution case, who have not come before the Court in clean hands. Disputing the prosecution story ,it was stated from the side of the defence that Basu's calling up the defacto complainant over the phone to propose marriage with the VG or the VG's continuation conversation with the accused Basu at midnight, in presence of strangers are all fictitious and improbable story and concocted for the purpose of the case and as such had no mentioning in the FIR.
- X] Lastly, questioning the seizure of the mobile phone from the accused during PC** the defence raised the veracity of the

prosecution story to the extent that the same is bereft of recovery statement and as such the seizure remained not intact and since based on surmise and conjecture, cannot be relied upon and accordingly prayed for acquittal of the accused persons.

Accordingly the defence has prayed for acquittal.

LOGOMACHY - CANVASSING & ANALYSIS

First in the line of disceptation, is the contention raised from the side of the Ld. Lawyer representing the accused, that there was an unexplained delay on the part of the defacto complainant to bring the VG to medical attention or for the matter of that lodging FIR on the alleged incident, which according to defence is unusual conduct thus dented the prosecution case, questioning its veracity. The VG inspite of her claimed, illness was not insisted upon from the side of the defacto complainant or from the side of the maternal uncle of the VG, where she was allegedly lying ill for 20 to 22 days, to take medical attention and she was allowed to take the situation on her own and choice her own medicine specially when the VG is a minor and the same creates doubt on the veracity of prosecution contention.

To discuss the issue let us have the sequence of events as unfolded from the side of the prosecution marshalling the evidence on record.

The chain of circumstances vis-a-vis source of the same from the prosecution testimonies, upon panoptic resume of the same, accordingly may be thus summarized as follows:

A] On 09.10.2021 (as per FIR, scribed by **PW 1**, on **23.11.21**) i.e. two days, before Durga Puja (as also stated by Defacto complainant as **PW 2** on **31.08.23**, corroborated by testimony sole victim as **PW 3**, on **08.09.23** and reconfirmed during her cross-examination) or three days before Durga Puja, as recorded by doctor (**PW 5**), though as per statement of whom, though not recorded in report (Exbt. P4/PW 2) [*as per local calender of the year 2021, Durga Shasthi was on 11.10.2021*] at about **8-00 pm** as stated in the FIR, but as per version of the **the VG** first, in her statement before Magistrate **u/s 164 of Crpc** on **25.11.21** and thereafter in the testimony of defacto complainant/ mother, as **PW 2** and that of the VG as **PW 3** at about **12 midnight**, at a **vacant place** at little distance from the house of the maternal uncle of the VG (**as per FIR- P1/PW 1**), further specified it as a **field** during recording of statement of the VG u/s 164 Crpc and fortified by defacto complainant as **PW 2** and **VG** herself testifying as **PW 3** and further clarified by **VG**, during her cross-examination, **to be one deserted, vacant place having jungle nearby** which the IO as **PW 11** explained with the sketch map and index [**P 31 / PW 11** and **P 31/1/PW 11** to be one field beside the kachha road at Hariganj and opposite SNG brick klin which was further explained, during his cross- examination to be **abandoned one**, but as per summary done by the attending doctor PW 5 on 27.11.21 in the injury report P 4/PW 2 ,the place of occurrence is a yard back side the house of VG, she was taken at the instance of all four accused ;

B] The VG as per her **prior acquaintance with accused Basu** (as per statement of VG as PW 3 and fortified by statement of defacto complainant as PW 2) answered to the call of the accused and **when came out of her maternal uncle's place, confronted the rest three accused** (as per statement of VG. U/s 164 Crpc, corroborated by the FIR and fortified by the version of VG before the Court as PW 3 and reaffirmed through

the testimony of PW 2/ defacto complainant- the mother of the VG) whom VG identified in Court by name and apperance and only by name of all accused except Arun in her statement u/s 164 Crpc ,took her to the place of occurrence (as per FIR and statement of VG u/s 164 Crpc) more specifically describing the manner in the testimony of the defacto complainant/ mother as PW 2, fortified by the version of VG herself as PW 3, that the accused all got hold of her, forcibly gagged her mouth throttlng her, grabbed her mouth , before taking her to the place of occurrence as described above ;

C] Thereafter the VG was severely beaten up by Akash and the accused proposed her to have sexual intercourse, which she denied (as per statement of VG u/s 164 Crpc) **more clarified by the VG in her statement as PW 3, that accused all proposed her to do ‘ kharap Kaj ’(copulation)** and they asked her to cooperate with them to perform sexual intercourse, **which she refused and severely assaulted on her mouth causing bleeding injury to her lips** and the same incident was further fortified by the version of defacto complainant before the Court as PW 2 ;

D] Thereafter, she was pushed on the ground (as stated by the victim as PW3, corroborated by PW2 by stating that she was lied on the field forcibly) and **she was first raped by the accused Basudeb Mondal,**(as stated in the FIR and further corroborated by the statement of the victim U/s 164 of Cr.P.C and substantiated in the testimony of the defacto complainant as PW2 and that of the victim herself as PW3) **while Mithun Das and Arun Mondal forcibly grabbed her hands, mouth and legs (as described in the FIR only) and thereafter, the VG was raped by Mithun Das and Arun Mondal and the other accused Akash Mondal continued to videograph the incident in the mobile phone (as described in the FIR) and morefully specified during recording of her statement U/s 164 of Cr.PC to the extent that after Basu, Mithun raped her, followed by Akash and another person whose name she could not utter during her testimony U/s 164 of Cr.P.C.** The version aforesaid was further substantiated in the testimony of PW2 (defacto complainant) **that Mithun raped the VG after Basu, followed by accused Akash who held her legs and the said Akash**

continued to rape and molest her by putting his one hand all over her body and private parts and used another hands to videograph the said incident of molestation. The victim herself in her testimony as PW3 also corroborated the version of her mother that after Basu raped her the accused Mithun raped, while Akash grabbed her legs and thereafter Akash raped her and caressed his fingers all over her private part in one hand and used another hand to videograph the incident. Thereafter, another accused Arun raped her which apart from the victim PW3 herself her mother as PW2, also described and both while disclosing the incident before the Court started to cry.

E] Thereafter, before leaving the place, all the accused threatened the VG with dire consequence, if she disclosed the incident to anybody, the accused will make the video viral. (the same has been narrated in the FIR, followed by the statement of the VG U/s 164 Cr.P.C and further substantiated in the testimony of the defacto complainant as PW2, fortified by the version of the victim herself as PW3) :

F] Immediately after the incident, as per VG (in her statement U/s 164 Cr.P.C) she kept mum and did not tell about the incident out of fear since she got threatening again from the accused and used to consume pain killer after purchasing the same from the shop and she elaborated her ordeal further in her testimony before the Court as PW3 that she out of fear could not disclose the incident to anybody and used to consume pain killer to alleviate her pain secretly by purchasing pain killer from medicine shop near her maternal uncle's place. She further clarified during her cross-examination that she could not visit puja pandel during her stay at her maternal uncle's place on the aftermath of the incident and stayed there for 10 to 12 days and as per her mother/defacto complainant, her daughter disclosed to her that she arranged pain killer and continued to consume the same to suppress her pain secretly and she during her cross-examination as PW2 clarified that her daughter was ill /unwell lying with her ill health in her bed for 15/20 days but she disclosed nothing to them ;

G] As per testimony of PW2, post the alleged incident of rape, after elapse of 1 ½ months she received a video in her mobile phone showing her daughter is being raped by few people and on seeing the video and inquiring the VG about the same, she came to know about the alleged incident from the disclosure of her daughter who out of fear and social stigmatization could not disclose the incident to her previously. The VG in her statement U/s 164 of Cr.P.C corroborated the same sequence of events leading to the disclosure of the fact to her mother. She during her testimony as **PW3 further confirmed that after 1 ½ months passed the video went viral and reached the mobile phone of her family and she on inquiry by her mother disclosed the incident to her which was further reconfirmed by PW2 during her cross-examination that she came to know about the illness of her daughter and her lying in the bed for 15 to 20 days after the alleged incident when she inquired her brother about the same, after receipt of the obscene video in her mobile phone while on her visitation to her daughter, on the call of her brother after elapse of 20 to 22 days of the illness of the VG, she did not disclose anything to her maternal uncle's family ;**

H] **The Subsequent incidents involved mother /defacto complainant's personal knowledge and her subsequent conduct, in course of same transaction, she after watching the video and coming to know about the incident, in accompaniment of her daughter and husband went to police station to lodge FIR and the same was lodged on 23.11.2021. The aforesaid fact was corroborated from the testimony of VG as PW3 as well apart from the version of PW2) ;**

I] **The VG claimed to have narrated her ordeal in her testimony before Magistrate U/s 164 of Cr.P.C followed by her assertion before the doctor on 27.11.2021 where she disclosed the incident. The PW2 also substantiated the version of her daughter stating that VG disclosed the incident to the lady police officer and further confirmed during her cross-examination that she was present when the VG met the doctor for her medical examination and she apprised the doctor about the incident and she herself disclosed the doctor about the date and time of the incident and also stated the name of the accused**

persons who committed the crime. (while the VG was examined U/s 164 Cr.P.C on 25.11.2021 she was medically examined after her menstrual cycle is over, on 27.11.2021 before PW5 who summarized the history as stated by the VG, in his own words, in the medical examination reports).

J] Another interesting feature, which have mentioned above as well, for the purpose of contradictions and corroborations of the aforementioned events, taken out from different sources, as adverted in brackets, in the entire cross-examinations of prosecution witnesses including the IO, none of them were confronted by the defence, in terms of Section 145 and 155 of Evidence Act, to prove contradiction, omission, improvement or embellishment to shake their credential, vis-a-vis their previous statement, to reveal out, which as per the defence, is the truth as envisaged by the Hon'ble Apex Court in V.K Mishra =Vs.= State of Uttarakhand as reported in (2015) 9 SCC 588 ;

Thus, at the end of the day the VG, if her version is believed, as per her own rendition of ordeal before the magistrate, while recording of her statement u/s 164 Crpc, and further corroborated in her testimony before the Court that she made disclosure about the alleged incident, after elapse of 1½ months of the alleged incident, for the first time and that too, to her mother/defacto complainant when the obscene videos as recorded by the accused got viral and the defacto complainant wasted no time and she accompaniment of the VG and her husband went to the Murshidabad police station to lodge complaint. As such from the state of events as unfolded through the version of the prosecution in the testimonies of so many witnesses, I do not find any inconsistencies, prima-facie, showing delay,

in reporting the incident and consequent providing medical attention, to the VG, specially when, it is found, that the mother/defacto complainant, being a rustic lady, faced the storm, since elucidated during her cross-examination that **after 1 ½ months of the incident neighbouring people of her brother have seen the incident in their mobile phone though she did not tell them about the incident personally.** Going against all such odds, the defacto complainant braved the situation and did what she found reasonable for her and resorted to knock the door of the law enforcement agency. From the situation narrated above, I find the same is enough explanatory, in seeking out police resort at a belated stage, after elapse of more than one month from the alleged incident though if the act of going viral of the obscene videos of the alleged incident are taken into consideration and treated as **same transaction** which occurred after elapse of close to 1 ½ months of the alleged incident, I find there is no delay at all in registering the FIR. Moreover as far VG's role, as aforesaid, in the entire episode, contributing to apparent delay, is concerned, I think it is quite plausible that it will take some time for the survivor VG, to come out of the trauma and reveal the occurrence, specially when she is ravished and gang raped by four persons and the entire episode was videographed with a threatening to her to keep her mouth shut, for not seeing it get viral. Now, eventually it got viral and landed up in the mobile phones of not only the defacto complainant but also the neighbouring people of her brother and the VG had to disclose the same. The mother as defacto complainant, being a rustic village lady and housewife, by taking help of a scribe, a law clerk, conjured up the courage to lodge a

written complaint, against the accused four persons and reported the incident before the police keeping the family honour and reputation at stake. Here I place reliance on the observation of the Hon'ble Apex Court in the form of Karnel Singh v. State of M.P., **AIR 1995 SC 2472 = 1995 AIR SCW 3644**; and State of Punjab v. Gurmeet Singh, **AIR 1996 SC 1393 = 1996 AIR SCW 998** where in it has been observed that - In a rape case the prosecutrix remains worried about her future. She remains in traumatic State of mind. The family of the victim generally shows reluctance to go to the police station because of society's attitude to words such a woman. It casts doubts and shame upon her rather than comfort and sympathies with her. Family remains concern about its honour and reputation of the prosecutrix. After only having a cool thought it is possible for the family to lodge a complaint in sexual offence. Similar was the view of the Hon'ble Supreme Court in another instance in State of Himachal Pradesh v. Prem Singh, reported in **AIR 2009 SC 1010 = 2009 AIR SCW 105**, it was also observed as under:

"So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault cannot be equated with the case in evolving other offence."

Here I would also like to refer to the reflection of Hon'ble Justice Arijit Pasayat in Tulshidas Kanolkar vs State of Goa - Criminal Appeal no. 298 of 2003 dated **27.10.2003** where in it has been observed that-

In any event, delay per se is not a mitigating per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactory explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen to her. That being so, the mere delay in lodging of first information report does not in any way render prosecution version brittle.

This being the situation, on thread bare analysis of the facts and circumstance of the instance case, the conglomerations of happenings, which the defacto complainant mother endured through, with her victim girl child alone and inspite of the long ordeal, on the aftermath of the incident which left the VG shattered , dungeon to bed, the way she lodged the complaint, against all four accused persons and, single handily arranging scribe for her, to draft the same, shows little chance of deliberation upon the complaint and to make embellishment or even make fabrications on the same and further the courage and conviction, which she maintained throughout, keeping aside the aspect of social stigma attached to the alleged incident, and made an effort to establish communication with the accused Basu, over

mobile phone, convincing him to meet her with other accused to settle the dispute, with a sole objective to get them nabbed by the prosecuting agency and the way same was categorically described, defeating any chance of the soiling and it seem an untarnished version of the case was presented before the Court, at the earliest instance and as such, I find the delay reason explained by the defacto complainant/ PW2, is quite rational and explanatory and the defence apprehensions, in this regard are found utterly misconceived, specially when there is no separate story came up from defence side, to obfuscate the same. Thus, there is nothing on record to doubt about the genesis or genuineness of the prosecution case on account of the alleged delay.

At this juncture, coming to the core issue, as to what I am to look for, allowing me the indulgence to quote the observation of the Hon'ble Apex Court, in - State of Himachal Pradesh vs. Manga Singh reported in -(2019) 16 SCC 759, since, which can act as a polaris and seeking answer on the guidelines articulated therein, can lead this trial to its logical end. Here it is-

Observing that there are number of unmerited acquittal in rape case and that Courts have to display a greater sense of responsibility and to be more sensitive while dealing with the charges of sexual assault on woman , in State of Rajasthan Vs N. K.[reported in (2000) 5 SCC 30 (Para 9 & 10)]

“ 9.A doubt, as understood in Criminal Jurisprudence, has to be reasonable doubt and not an excuse for a finding in favour of acquittal . An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females. It is the spurt in the number of unmerited acquittal recorded by criminal Courts which gives rise to the demand for death sentence to the rapists. The Courts have to display a greater sense of responsibility and to be more sensitive while desalting with the charges of sexual assaults

on women. In *Bharwada Bhoginbhai Hirjibhai Vs State of Gujarat*[(1983)3 SCC 217]this Court observed that refusal to Act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, as adding insult to injury. This Court deprecated viewing evidence of such victim with the aid of spectacles fitted with lenses tinted with doubt, disbelieve or suspicion. We need only remind ourselves of what this Court has said through one of us (Dr. A.S. Anand, J as his Lordship then was) in *State of Punjab Vs Gurmit Singh*[(1996) 2 SCC 384- in Page 403, Para-21].

“21..... [A] Rapist not only violates the victim’s privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault- it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such case with utmost sensitivity. The Court should examine the broader probabilities of a case and not to get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.”

The question arising for consideration before us are : whether the prosecution story, as alleged , inspires confidence of the Court on the evidence adduced ? Whether the prosecutrix , is a witness worthy of reliance ? Whether the testimony of a prosecutrix who has been victim of rape stands in need of corroboration and if so, whether such corroboration is available in the facts of the present case? What was the age of the prosecutrix? Whether she was a consenting party to the crime ? Whether there was unexplained delay in lodging the FIR ?

[emphasis by me]

Now, in the light of such observation, setting my journey in quest of proof, my first deprecation, will be seeking conclusive proof of the age of the VG as far as her minority is concerned, on the date of alleged incident, to bring the matter under the realm of POCSO Act, though the defence never questioned the age of the VG in their

entire refutations. In the FIR (Exbt. P 1/ PW 1) the defacto complainant claimed, the date of birth of VG to be 26.12.2005 and during her testimony claimed that police during investigation seized the birth certificate of the VG and the same was later marked Exbt P 6/2/PW 11 at the instance of the IO, without any objection from the side of defence, where though the IO stated her date of birth to be 16.12.2005 but the said IO as PW 11 clarified that she wrongly wrote the date of birth of the VG as 16.12.2005 instead of 26.12.2005 and the matter got further clarification when on the loss of original birth certificate at the instance of the defacto complainant / PW 2, since she received back the original birth certificate by executing a zimma bond (marked Exbt P 7/PW 2), the said defacto complainant, during the proceeding lodged a GDE over the factum of loss (marked Exbt P 8/PW 2) and the Court had to call for the original birth register from Murhsidabad Municipality with an authenticated copy of the same and same on being produced during the testimony of PW 2 was marked as Exbt P9/PW 2 as a whole and from the document it is crystal clear that the VG was born on 26.12.2005, which goes to suggest without any doubt that on the date of alleged incident, i.e. in the month of October 2021 the VG was around 15 years + and as such a minor i.e. a child in terms of the provision U/s 2 (d) of the POCSO Act, 2012.

Now this is an **unique case**, where the prosecution has tried to prove its contention through two of its prongs, since the matter pertains to two vital aspects- - **Firstly**, the VG was alleged to have been gang raped at the instance of the accused persons & **Secondly**, the accused

persons videographed the entire episode, threatened the VG to make the same viral, if she dare to disclose anything to anybody and eventually the same got viral. Thus the prosecution tried to prove their contention not only through the oral testimony of VG and the defacto complainant, but also sought corroboration of the same through oral, documentary and electronic evidence coupled with testimonies of technical and expert witnesses, to bring home the factum of gang rape and making the same viral at the instance of all the accused, as threatened by them.

Now, adventing again, to the testimony of the victim, marshalling the same with the other evidential *ennui*, I find that, first of all the VG identified all the accused before the Court and testified against them and not only recorded, her statement before the Judicial Magistrate u/s 164 of Crpc, but also appeared before the Court to vouch the incident on the ill fated day after eleven months of the alleged incident, **all voluntarily**. She correctly testified, the date and time of the alleged incident, corroborating the F.I.R version more or less, since the alleged incident occurred as per FIR on 09.10.2021, and as per version of the VG before the Court, the incident occurred two days prior to Durga Puja (on consultation of the local Bengali calendar it was found by this Court that in the year 2021, Durga Sasthi was on 11.10.2021), though the attending doctor/PW5, recorded the date of incident as three days before Durga Puja, referring the same to be recorded, 'as per statement', but did not disclose/ mention in so many words, as per whose statement, the same was recorded. The version of VG as PW3 was corroborated by the defacto complainant

in her testimony as PW2. In this context it should be remembered that, PW3 being the victim-girl (VG) is the only eye witness to the alleged incident. The VG, grossly narrated the atrocities perpetrated by all the accused upon her, as described above, with their individual roles in details and same as narrated above remained consistent with her version u/s 164 Crpc., before the Magistrate, recorded, after 45 days of the alleged incident. Her explanation, to the manner of occurrence remained concordant, with her statement before the magistrate u/s 164 Crpc. and validate finding of the attending doctor PW 5, who though reportedly examined her, two days thereafter, where he found **multiple old healed nail scar marks on both of her breasts and her hymen was found ruptured and healed (old rupture) having sign of sexual intercourse but no bleeding per vagina found at the time of her examination and further clarified during her testimony that the hymen rupture he found may be due to sexual intercourse resulting from sexual assault which he already mentioned as manner of incident in his report** and further according to him there may be multiple assailants causing the injuries mentioned in the reports which may or may not be 1 ½ months old. He further confirmed that since in his report, he found the VG to be mentally sound having her **CNS normal, for a normal lady, causing multiple nail scar marks, by way of self infliction is rare.**

Here the victim girl (VG) as stated before, was under threat from the side of the accused, of making the rape incident video viral, since the incident of rape being videographed. Still after such personal set back, whereas per FIR the VG, wreathing under tremendous bodily pain

and while remaining under huge mental trauma and distress, on the aftermath of such barbaric act, tried to take her own life and the same was further corroborated in the testimony of the defacto complainant as PW 2, showed the courage to come out to depose against the accused, not once but thrice - **one before the police, second before the Ld. Magistrate u/s 164 Crpc and lastly before the Court as PW3**, apart from what she has claimed to have stated on the first occasion to her mother/ the defacto complainant, here in, when she was confronted and inquired, after the videos of the rape incident got viral and even landed up in the mobile phone of the house of the VG. Avoiding a rigmarole, if the salient portion of her testimony before the Court is reckoned, she has categorically stated in her testimony as PW3 that on the ill-fated night, to be precise at 12 midnight while she was at her maternal uncle's place, the accused Basu with whom she had a prior acquaintance, called her up in her mobile phone, (as clarified by the mother of the VG defacto complainant during her cross-examination as PW2 in paragraph 51, 52 and 53 that the only smart phone they have for use in their family was given to the VG for using the same and to establish contact with her at the time of puja, during her stay at her maternal uncle's place) and disclosed that he has come to Nasipur to visit a marriage ceremony and he needs to meet her urgently. The VG accordingly, on arrival of Basu in front of her maternal uncle's place, opened the door and to her utter surprise, found other three accused persons also waiting outside the door, the events so narrated gets corroboration in the version of PW2/defacto

complainant as well, apart from the VG's own version U/s 164 of Cr.P.C. The VG during her cross-examination on being queried, again quelled the doubt of the defence, when she disclosed that her maternal uncle's house is a box pattern house having five rooms and when the family members of the maternal uncle's house go to sleep, **they shut the main door from inside but do not put it under lock and key and further the VG used to take sleep at night at around 9.30 pm during her stay at her maternal uncle's place where she used to sleep alone.** The entire revelation only seconds the prosecution case bolstering the same, step by step. [emphasis by me]

Now, I ask myself, what she told before the Magistrate during her examination u/s 164 Crpc is consistent with her later version as PW 3 or not ? which was marked **Exbt P10/PW 3** , which was relatively soon after the alleged incident i.e. on 25.11.2021, exactly after one and half months of the alleged incident, to be precise, where defence did not question its authenticity or the manner or mode in which the same was recorded. Recollecting about the ill fated night, VG categorically told that, it was Basu on whos call followed by repeated insistence the VG opened the door and immediately thereafter she was grabbed by Basu and dragged out and he was in company of Akash, Mithun and other accused (whose name she did not disclose then) and they all dragged her to the field and she was first severely beaten up by the accused Akash, who proposed her to have sex and when she refused it was Basu who raped her first then the rest accused took their turn viz. Mithun and Akash and lastly by the person whose name she did not know then but

during her testimony before the Court as PW 3, identified him to be the other accused Arun. She even stated that even after rape the accused persons physically assaulted her thought in her testimony she described the situation as that, after finding her ill and exhausted the accused left her with a threat of viraling the video which they made while raping her. The even elaborated her situation during her cross- examination that thought she did not got senseless but she had no sensation left in her body after the incident. Since the VG was threatened by the accused of costing her life, if she discloses, anything apart from the obscene video getting she was left to fend her wounds in solitude and the same got revealed not only in the testimony of the VG during her examination-in-chief, rather got elaborated more in her cross-examination at the instance of the defence. The VG also admitted in her testimony u/s 164 Cr.P.C before the Magistrate that out of fear, she could not at first disclose the incident to her family members and used to consume pain killer in a clandestine manner which got further corroboration in the testimony of the VG as PW 3 fortified by the version of PW 2. The VG seems to have in her statement before Magistrate U/s 164 of Cr.P.C not only corroborated her version before the Court as PW 3, rather being the earliest recorded version, narrated her ordeal in vivid details and remained consistent through out, standing firm during the onslaught by the defence. Thus it was an elaborate memoir of her version before the Court, where she testified the sequence of events.

Here, I must add a note of caution that, the law enunciated by the Apex Court in catena of decisions is that, the child is a competent witness but since there is a chance of tutoring of such child, the Court should accept the evidence of child witness, after carefully evaluating the evidentiary value of such witness and relying on other corroborative evidence.

The Apex Court, has categorically, observed that child witnesses are amenable to tutoring and often they live in a world of make believe, though it is established principle that child witnesses are dangerous witness as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of evidence the Court comes to the conclusion that there is an impress of truth in it, there is no bar in accepting the evidence of a child witness and as such it is not desirable that the evidence of child witness should be altogether discarded, on the ground that it is the evidence of a child witness. On the contrary, if the evidence of child witness finds support from subsequent corroboration of the fact disclosed by the child witness as well as other witnesses and if the evidence of the child witness inspires confidence of the Court then the same may safely be accepted. Reference may be had of from the i). **(2011) 4 SCC 786** (State of Madhya Pradesh v. Ramesh) ii). **(2009) 12 SCC 731** (State of Karnataka v. Shantappa Madivalappa Galapuji) in this regard.

The trite position of law, which has been, fortified by several authorities, of the Hon'ble Apex Court, in case of reliability on the testimony of the child witness, is that the evidence of the child witness cannot be rejected Per

se, but the Court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality, of the statements and its reliability, base conviction by accepting the statement of the child witness. The fact that the witness being a child witness would require the Court to scrutinize, her evidence with care and caution. **If she is shown to have stood the test of cross examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone.** Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence and there is no point in adding insult to her injury if word to word stringent corroboration is sought. In Suryanarayana v. State of Karnataka reported in (2001) 9 SCC 129, the Apex Court solely relied on the evidence of a girl, being the sole witness aged about 4(four) years at the time of incident and 6(six) years at the time of her deposition before the Trial Court and upheld the conviction of the appellant.

What is left is now is to fathom out whether the material discrepancies or bit of exaggeration or embellished version of the incident, as pointed out at the instance of the defence, regarding description of P.O. or non-examination of father and other relative of the VG or other CS witnesses, LSI Maya Dey Dutta who recorded the statement of the VG u/s 161 of Crpc or the medicine shop owner, are so animate to discredit the otherwise consistent version of the prosecution case, providing an escape route to the defence or not taking benefit of presumption- u/s 114 (g) Evidence Act or not ?

It is well settled principle, as we all know, that a **Criminal Trial cannot be equated with a mock scene from a stunt film.** The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the Courts are required to adopt rational approach and **judge the evidence by its intrinsic worth and the animus of the witnesses.** First of all, the cross-examinations of the PWs do not suggest that they made any contradiction in their respective examination-in-chief, with what they had stated before Police or before the Magistrate u/ 161 Crpc. None of the documentary or material exhibits, were objected to from the side of the defence when those are exhibited and admitted into evidence. As we all know that, discrepancies do not necessarily demolish the testimony as held by the Hon'ble Apex Court in Narolom vs. State AIR 1978 SC 1542. Discrepancies in the testimony of eye witnesses on material or broad points have to be carefully weighed in arriving at the truth. Relying upon the watershed decision reported in Tahsilder Singh vs. State of UP reported in AIR 1959 SC 1012, Hon'ble Apex Court, in the year 2004, has observed that ".....omission to make a statement in terms of Section 161 Cr.P.C. would amount to contradiction, if same appeared to be significant and otherwise relevant having regard to context in which it occurred." [Shri Gopal vs. Subhas, 2004(1) Crimes 378 (SC)...relied on]. It is equally true that discrepancy has to be distinguished from contradiction. The word 'contradiction' is of a wide connotation, which takes within its ambit all material omissions and under the circumstances of a case a Court can decide whether

there is one such omission as to amount to contradiction.[State of Maharashtra Vs Bharat Chaganlal Raghani & others, (2001) 9 SCC 1...relied on].

Needless to mention that, a person witnessing the incident is not supposed to narrate the finer details of the entire incident in a parrot like manner. The normal course of the human conduct would be that while narrating a particular incidence there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot like statements are dis-favoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. The Hon'ble Apex Court in Ousu vs. State of Kerala, [1974] 3 SCC 767, held that minor variations in the accounts of the witnesses, are often the hallmark of the truth of their testimony. In Jagdish vs. State of Madhyapradesh reported in [1981] SCC (Crl.) 676, the Hon'be Apex Court has held that, when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. Apex Court, once again, in State of Rajasthan vs. Kalki & Anr., [1981] 2 SCC 752 adjudged that in the depositions of witnesses there are always normal discrepancy, however, honest and truthful they may be. **Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as**

shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

In this monological demonstration, where the VG is seen as a child witness, there is no point in losing sight of another aspect of her status, where she is also a gang rape victim and a victim of rape or sexual assault, is not to be treated as an accomplice, to the crime but is a victim of another person's lust and therefore her evidence need not be tested with the same amount of suspicion as that of an accomplice [State of Maharashtra vs. Chandraprakash Kewalchand Jain - (1990) 1 SCC 550 relied on] and as such finding fault in her versions and seeking unnecessary corroboration of her ordeal, from the mouth of different witnesses is not a sine qua non [AIR 2006 SC 1267 relied on] and banal position of law, requiring no proof further is that, testimony of the victim of sexual assault stands almost **on a par with the evidence of an injured witness** and to an extent even more reliable, entitling more weight absence of corroboration, notwithstanding [(1996) 2 SCC 384 & (2000) 5 SCC 30 relied on]. The said position of law, is in over and above the settled principle that children by their inherent nature are honest. Corroboration of the testimony of the child witness is not a rule but a measure of caution and prudence which is a well-accepted principle [Hari Om v. State of Uttar Pradesh (2021) 4 SCC 345 relied on].

Now, coming back to the situation under discussion, in an epoch making authority Ganesan vs. State reported in **(2020) 10 SCC 573**, three Judges Bench of the Hon'ble

Apex Court, explained the touch stone on which testimony of sole witness and rape victim is to be testified. Explaining further that where testimony of victim is found to be reliable & trustworthy, unblemished and of **sterling quality**, reliance and conviction on her sole testimony is justified. Then explaining through case law - what is ' **Sterling Witness** ' which must be of very high quality and calibre, whose version is unassailable, the Hon'ble vertex Court referring citation of case of Krishan Kumar Malik v. State of Haryana reported in **(2011) 7 SCC 130**, it is observed and held that- ' to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. Who can be said to be a "sterling witness", has been dealt with and considered by this Court in the case of Rai Sandeep alias Deepu v. State (NCT of Delhi), reported in **(2012) 8 SCC 21**. In paragraph 22, it is observed and held as under:

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance

should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

On evaluating the deposition of PW1 - victim, on the touchstone of the law laid down by the Hon'ble Apex Court in the aforesaid decisions, it can be safely opined, on the basis of the aforesaid elaborate discussion, that the sole testimony of the PW1 / victim girl is itself, on its own, absolutely trustworthy, consistent and remained unblemished, in its core spectrum, barring some minor insignificant, prevarication in which the description of PO(place of occurrence) also falls and her evidence ,is of sterling quality in material particulars and stood firm on the anvil like an edifice of truth in terms of the test applied in latest authority of the Hon'ble Apex Court in

Phool Singh vs. State of Madhyapradesh reported in (2022) 2 SCC 74, as far as, relying on the sole testimony of prosecutrix victim girl (VG), is concerned. Here I am not oblivion that the evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. [**CRIMINAL APPEAL NO. 1910 OF 2010 - BALU SUDAM KHALDE AND ANOTHER vs. THE STATE OF MAHARASHTRA**, relied on in this context]. Here the context in this case, I here stumble across the defence raised at the instance of the defence citing the behavioural pattern of the VG, post incident unusual conduct, or immediately thereafter the alleged incident of gang rape, till filing of the FIR, where referring selective portion of cross examinations of the VG - in paragraph 42, 43 of the cross-examination - where she told that she woke up in the morning, after the incident as usual and took breakfast, as arranged by her maternal aunt or further referring cross-examination of the defacto complainant, where it was stated that the VG remained bed ridden for 20/22 days which the maternal uncle's family of the VG as well as the mother of the VG allowed to remain, without knowing the reason for the same and without consultation of any doctor - I start my discussion with the observation of the Hon'ble Apex Court on the **manner of appreciation of evidence** in Rakesh & another vs. State of Uttar Pradesh & another reported in (2021) 7 SCC 188 [para 14] has been pleased to hold that - **one is required to consider entire evidence as a whole with other evidence on record. ...Mere one sentence here or there and that too to the question asked by defence in cross-examination,**

cannot be considered stand alone. Now coming to the demeanor of the VG or post incident conduct leading to doubting of the prosecution case, here I would prefer to invite attention of all to the - **HANDBOOK ON COMBATTING GENDER STEREOTYPES** as published and circulated at the instance of Hon'ble Supreme Court [vide Hon'ble High Court Letter/ Notification no. 9938-RG dated 10.10.2023 and communicated through Ld. District Judge, Murhsidabad office Memo no. 4476 (54)/ XII-B dated 17.10.2023) aimed at assisting the legal community in identifying, understanding and combating stereotypes about women by identifying common stereotypes about women, many of which have been utilised by courts and some of the stereotypes **concerning sex and sexual violence-** which are relevant for this discussion are mentioned below following the table format :-

Sr No.	Stereotype	Reality
1.	Women who are sexually assaulted or raped by men cry incessantly and are depressed or suicidal. If a woman's behaviour does not conform to this mould, she is lying about having been raped.	Different people react differently to traumatic events. For example, the death of a parent may cause one person to cry publicly whereas another person in a similar situation may not exhibit any emotion in public. Similarly, a woman's reaction to being sexually assaulted or raped by a man may vary based on her individual characteristics. There is no "correct" or "appropriate" way in which a survivor or victim behaves.
2.	Women who are sexually assaulted or raped by men complain about the injustice immediately. If they complain after a time, they are lying	It takes courage and strength to report a sexual offence because of the stigma attached to them. The stigma attached to sexual violence makes it difficult for women to disclose the incident to others. Women may therefore register a complaint after a lapse of some time, when she thinks she is able to. Further, as noted above, several other factors such as lack of familial support or fear of repercussions may cause a survivor / victim to delay their reporting.
3.	Women are very likely to make false allegations of sexual assault or rape.	Women find it difficult to report instances of sexual assault or rape due to the stigma associated with such crimes. Women often

		do not receive familial support in reporting sexual crimes. It can also be traumatizing for a survivor / victim to participate in the criminal justice process, which requires her to repeatedly recount the violence she was subjected to in detail, in the presence of strangers who are often male (police officers, lawyers, judges, etc.). Women are also frequently disbelieved when they report sexual violence. A combination of these factors results in women being very reluctant to report sexual violence. It is therefore untrue that women are very likely to make false allegations. Each case must be judged on its merits and assumptions regarding the (dis)honesty of women as a class must not be made.
4.	Women who say “no” to sexual advances are shy and they actually mean to say “yes” and welcome the sexual advances.	Women who say “no” mean “no” and there exists no further ambiguity. Women who wish to welcome sexual advances will communicate their consent using clear language such as the word “yes.” There cannot be a presumption of consent based on a woman’s broader behavioural characteristics.
5.	A woman who has previously had sexual relations cannot be raped because she has “loose morals” or “loose character.”	A woman who consents to sexual activity with one man does not consent to sexual activity with all men. Similarly, a woman who consents to sexual activity with a man at a particular instance does not ipso facto consent to sexual activity with that same man at all other instances. A woman’s character or morals are unrelated to the number of sexual partners she has had. Her sexual history does not define her and must not influence criminal proceedings. Section 53A of the Indian Evidence Act 1872 attempts to combat this very stereotype by prohibiting lawyers from adducing “evidence of the character of the survivor / victim or of such person’s previous sexual experience” where the question of consent is in issue.
6.	“Good” women prefer death rather than being raped by a man.	It is a patriarchal and harmful belief that women should prefer death rather than being raped by a man. Such beliefs may cause survivors / victims to consider suicide because they have been raped by a man.
7.	If a woman does not scream for help, attack the rapist or if she does not have any injuries on her body such as cuts and scrapes, she has not been raped	A woman who is facing sexual violence by a man may not be in the position to attack him. Rapists frequently threaten survivors / victims with death and even threaten to kill their family members if they attempt to resist. Moreover, injuries such as cuts and scrapes may not always result even if the woman attempts to resist as the rapist may overpower her.

These stereotypes indoctrinated by several precedents in the past to be common course of conduct vis-a-vis the reality thus demonstrates why they are inaccurate and how they may distort the application of the law- in the word of Hon'ble Apex Court - Joseph Shine vs. Union of India [2018 : INSC 898]

"191. The law on adultery is but a codified rule of patriarchy. Patriarchy has permeated the lives of women for centuries. Ostensibly, society has two sets of standards of morality for judging sexual behaviour. One set for its female members and another for males. **Society ascribes impossible virtues to a woman and confines her to a narrow sphere of behaviour by an expectation of conformity.** Raising a woman to a pedestal is one part of the endeavour. The second part is all about confining her to a space. The boundaries of that space are defined by what a woman should or should not be. [...] This is part of the process of **raising women to a pedestal conditioned by male notions of what is right and what is wrong for a woman.** The notion that women, who are equally entitled to the protections of the Constitution as their male counterparts, may be treated as objects capable of being possessed, is an exercise of subjugation and inflicting indignity. **Anachronistic conceptions of "chastity" and "honour" have dictated the social and cultural lives of women, depriving them of the guarantees of dignity and privacy, contained in the Constitution.**"

Thus as a member of judiciary, as guarantors of the dignity I thus refrain myself in perpetuating discussion on getting swayed by such anachronistic conceptions the

defence intends to impress the Court showing behavioural pattern of the VG.

In my search, to fathom out, whether the other supporting witnesses co-relate with the version of the VG and the same consistently, match with the version of the other witnesses or not, I find version of PW2 /defacto complainant, mother of the VG, followed by the, independent witness, be the testimony of the attending doctor in the form of PW 5 or for the matter of that the seizure witnesses or the technical witness in the form of PW7 or the experts PW 8 & 9 all corroborated the prosecution version qua the accused and there versions are more or less consistent and trustworthy and minor variance in them does not erode their probative value coming in the way of their acceptability in the light of principles enunciated by Hon'ble Apex Court in - Sukhdev Yadav & ors vs. State of Bihar - reported in **(2001) 8 SCC 86**.

Though the mother of the victim, being the defacto complainant, of this case was not an eye witness of the entire episode, but she is the first person, to whom the victim after the incident confided to, may be after she decided to open up and ventilate about her ordeal, to the world she preferred her mother first and her crumbling down before her mother on seeing the viral videos, was simultaneous and spontaneous. As such as rightly contended from the side of the prosecution, the conduct of the VG and the circumstances prevailing is in perfect conformity with the situation illustrated u/s **8, Evidence Act, Illustration (j)**, where after her ordeal, whenever she got the first opportunity to grab the olive

branch, she disclosed everything to her mother and none else Here, I again take recourse to the hallowed provision of law as articulated u/s 6 of Evidence Act, to explain conduct of the defacto complainant/ mother.

The concept of **Res gestae**, as nicely elucidated by the Hon'ble Apex Court, in similar circumstances in an authority reported in Krishan Kumar Malik v. State of Haryana, reported in (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61 : 2011 SCC OnLine SC 869 is extracted below, is worth mentioning -

As per the FIR lodged by the prosecutrix, she first met her mother Narayani and sister at the bus-stop at Kurukshetra but they have also not been examined, even though their evidence would have been vital as contemplated under Section 6 of the Evidence Act, 1872 (for short "the Act") as they would have been res gestae witnesses. The purpose of incorporating Section 6 in the Act is to complete the missing links in the chain of evidence of the solitary witness. There is no dispute that she had given full and vivid description of the sequence of events leading to the commission of the alleged offences by the appellant and others upon her. In that narrative, it is amply clear that Bimla Devi and Ritu were stated to be at the scene of alleged abduction. Even though Bimla Devi may have later turned hostile, Ritu could still have been examined, or at the very least, her statement recorded. Likewise, her mother could have been similarly examined regarding the chain of events after the prosecutrix had arrived back at Kurukshetra. Thus, they would

have been the best persons to lend support to the story invoking Section 6 of the Act.

We shall now deal with Section 6 of the Act, which reads as under:

“6.Relevancy of facts forming part of same transaction.— Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”

***Black's Law Dictionary* defines res gestae as follows:**

“(Latin: ‘things done’) The events at issue, or other events contemporaneous with them. In evidence law, words and statements about the res gestae are usually admissible under a hearsay exception (such as present sense impression or excited utterance).”

Section 6 of the Act has an exception to the general rule where under hearsay evidence becomes admissible. But as for bringing such hearsay evidence within the ambit of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there could not be an interval which would allow fabrication. In other words, the statements said to be admitted as forming part of res gestae must have been made contemporaneously with the act or immediately thereafter. Admittedly, the prosecutrix had met her mother Narayani and sister soon after the occurrence, thus, they could have been the best res gestae witnesses, still the prosecution did not think it proper to get their statements recorded.

.....

[emphasis by me]

Now, in this case though the VG is the only eye witness, being the victim injured, but her mother/defacto complainant i.e. PW 2 is the vital res gestae witness, as enunciated by the Hon'ble Apex Court, in Krishan Kumar Malik (supra). With this, again on returning to the her mother's version, as PW 2, it is found that, she took up the baton where her daughter concluded and took initiative not only to report the matter to the prosecuting agency but also as per statement of the VG before the magistrate u/s 164 of Crpc the mother/ defacto complainant was instrumental in contacting the accused and eventually played a crucial role in nabbing all of them barring one and the aforesaid factum got further clarification from the testimony of PW 2, where she during her testimony categorically stated that - when the accused Basu contacted her after the obscene video got viral and offered to marry the VG, she grabbed the opportunity to arrange a meeting in order to lay a trap, to nab Basu with police assistance and the accused Basu fell into the trap when arrived with other three accused - Mithun. Arun and Akash, at a tea stall at Jiagunj, after prior ascertaining that she is alone waiting there and eventually got arrested except the accused Arun who fled away. Thanks to the effort from the side of the defence this fact further got corroborated when the Custody Memo of the accused Basu was marked Exhibit no. D-1/PW 11 to prove that while Basu belonged to Bilkandi was arrested from a far away place at Kathgola and the said phenomenon corroborates the prosecution contention since Jiagung is very adjacent to Kathgola. The same spell of events, starting from viral video dropping at the mobile of the defacto complainant to disclosure of VG

about the events, to lodging of complaint by the defacto complainant and her subsequent conducting in nabbing the accused persons laying trap of settlement, are seemingly part of the same transaction, where the mother as PW3, unfolded all the events before the Court. The nil explanation from the side of the defence to such disclosures leaves little scope for consultation and/ or exaggeration. The version of the defacto complainant was recorded after elapse of close to 2 years, from the date of alleged incident but the same corroborates the version of the VG, detailing subsequent facts, incidents, which occurred immediately after the alleged incident, with the VG. The witness further in her cross-examination avouched, the other prong of evidence brought at the instance of the prosecution in the form of electronic evidence, discussion on which I am going to unfold here in the latter part of the discussion.

On panoptic resume of the entire gamut of the evidence, I also find that as far as inconsistencies as to the description of place of occurrence, by different witnesses is concerned or the manner of VG's reaction to the same, as raised by the defence, to create little doubt on the prosecution case, I find the same are not sufficient enough, to obfuscate the prosecution case, to render it improbable. Only little bit of variance came when the VG described the place of occurrence to be a field in her testimony as PW 3 more particularly depicted it to be a deserted place having jungle nearby and further being corroborated by defacto complainant as PW 2, to be a field, got a little varied topography in the version of IO as PW 11, who identified it to be a place near a

abandoned brick kiln, which means bereft of human commute, and beside kaccha road for the purpose of approaching field, as specified in sketch map and index marked as (P 31/ PW 11). It is quite unlikely, to expect that, at the dead of the night when the some vultures are playing with the body of the VG, to satisfy their carnal desire, the VG will concentrate more in devouring topography of the place of occurrence for her future reference. It is a trite position of law fortified by several authorities that minor variations or contradictions of this nature, do not erode the otherwise reliable version of the prosecution. The minor discrepancies or inconsistencies, which do not go to the root of the matter and do not shake the basic version of the witnesses, can never be annexed with undue importance, more so, when the all important 'probabilities-factor 'echoes in favour of the version narrated by the victim-girl. Here I bank upon the observation of the Hon'ble Apex Court, reported in State of Uttar Pradesh vs. Krishna Master & ors. - (2010) 12 SCC 324, wherein it has been observed that discrepancies, inconsistencies, infirmities or deficiencies of minor nature not touching the core of the case, cannot be ground for rejecting the evidence, to separate falsehood from truth , without adopting any hyper technical approach. Moreover when her version was fortified by the other mode of evidence, which I am going to discuss while elaborating on the second prong of the prosecution case.

Moreover, I am not unmindful of the fact that the instant case pertains to allegation of ravishment of a minor girl who turned up before the Court to testify.

She as narrated above is the only eyewitness to the incident. She is also a child witness. Considering her tender age and perception of time, place and things, her testimony can be said to have remained free from blemish. **Flabbergasting blisters, from the side of the defence, to erode credibility of the version of a child witness, cannot wither away her otherwise trustworthy rendition of events.** Words were snatched from her mouth, at the instance of the defence, on her attire i.e. on Mat Exhibit I, to the effect she never worn that, inspite of the fact that she was found in the video clips, being ravished while wearing the same dress as Mat Exhibit I. There was no alternative explanation from the side of the defence. As far as recording of the history by the doctors concerned, as stated above the same can at best be considered to be his own summary based on the representation of VG, translated into english and as such minor discrepancies, which are apparently appearing, they are like pebbles which can be easily trodden upon and can not be relegated as insurmountable, boulders in establishing prosecution contention. As far the question of refraining to adduce other independent witnesses are concerned, specially not calling for the evidence of father as CSW , I again reiterate the trite position of law fortified by several authorities right from the Apex Court that - it is not the law, that in every case the version of the prosecutrix, must be corroborated, in material particulars by independent evidence on record or quantity of proofs. It depends upon the quality of evidence and not quantity of prosecution evidence. If the same is trustworthy, implicitly

reliable, conviction can be recorded [(2006) 1 SCC (Cri) 78 relied on]. Here we must not be oblivious of the phenomenon of law as indoctrinated under the provisions u/s 231 of Criminal Procedure Code, that it is the absolute prerogative and discretion of the prosecutor as to what witness to be called for and Court tread in to the territory and will not interfere to dictate exercise of such discretion, unless it can be shown that the prosecution has been influenced by some oblique motive. Here it will be pertinent to quote the following observations of The Hon'ble Supreme Court made in Krishna Mochi Versus State Of Bihar, 2002 Cr.L.J 2645(Supreme Court) -

It is matter of common experience that in recent times there has been sharp decline of ethical value in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or heir evidence is not found to be credible by Courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high ups in the Government or close to powers, which may be political, economic or other powers including musclepower. A witness may not stand the test of cross-examination which may be some time because he is bucolic person and is not able to understand the question put to him by the skilful cross-examiner and at times under the stress of cross-examination, certain answers are snatched from him. When a rustic or illiterate witness faces an astutel lawyer, there is found to be imbalance and, therefore, minor discrepancies have to be ignored. These days it is not difficult to gain over a witness by money power or giving him any other allurement or giving out threats to his life and/or property at the instance of persons, in/or close to powers and muscle

men or their associates. Such instances are also not uncommon where a witness is not inclined to depose because in the prevailing social structure he wants to remain indifferent. It is most unfortunate that expert witness and the investigating agencies and other agencies which have an important role to play are also not immune from decline of value in public life. Their evidence sometimes becomes doubtful because they do not act sincerely, take everything in a casual manner and are not able to devote proper attention and time...”

This being the ground reality, if the prosecution choose not to adduce, the evidence of so called independent witnesses, or other CSWs, the same is not sufficient to turn the gun to their face. It is a well established position of law, fortified by several authorities right from the Apex court, that testimony of witness otherwise trustworthy, can not be discarded on the ground that he being a relation of the victim is an interested witness. On the contrary it has become a fashion that the public is reluctant to appear and depose before the Court specially in criminal cases because of varied reason starting from being subjected to lengthy cross-examination and harassment of witnesses. In such circumstances only natural witnesses available to the prosecution are the immediate relatives of the victim, who will try to prosecute the real culprit and the last person to screen him to escape unpunished. Here I am placing further reliance on a celebrated decision of the Apex Court S. Sudershan Reddy and others =Vs.= State of A.P., as reported in (2006)3 SCC (Cri) 503 where it was observed that -

Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against the innocent person. Foundation is to be laid if plea of false implication is made.

It is hard to believe, that a even relatives, in a tradition bound society, will falsely out of vendetta with no apparent reason, will try to settle score, where there is no history of previous animosity between the parties. Regarding member of the relative witnesses, it has been held by the Hon'ble Apex Court in State of Himachal Pradesh Vs. Mast Ram (2004) 8 SCC 660 that evidence of witnesses who were relatives the deceased can not be discarded in the absence of any infirmity in said evidence. The law on the point is well settled, that the testimony of the relative witnesses, can not be disbelieved on the ground of relationship.

72. In this regard, again, reference can be have of the epoch making observation of the Hon'ble Apex Court in Krishna Mochi =Vs.= State of Bihar reported in 2002 SCC (Cri) 1220 wherein it was held that some discrepancy is bound to be present in each and every case which should not weigh by the Court so long it does not materially affect the prosecution case. It was further observed that as long as the discrepancies pointed out are **in the realm of pebbles, the Court should tread upon it, but if it the same are boulders, the Court should not make an attempt to jump over the same.** (Para-32).

Here also, we must not be unmindful to the fact that education, level of perception, endurance, intelligence, profession, wit, memory, retention, wit of the witnesses are all relevant factors to assess the credibility of the witnesses. The prime witnesses, are mostly bucolic and they belonging to weaker section of the society, conjured up the courage to ventilate such ignominy before the society at large, which the tradition bound society hold as taboo. Thus the witnesses here are people of easy conscience and the power to perceive also differ from man to man. Taking a cue from the observation of the Hon'ble Apex Court, mentioned above, it can be safely concluded here that from the trend of deposition from the side of the prosecution there is no iota of doubt that the same may not be free from little bit of normal or minor discrepancies, but it will not affect it materially and in my view same is not fatal and such hyper- technical stultifying access to justice shall be given an easy exit from the portal of justice as the same is unwarranted. I must at the cost of repetition, again the present discussion, before advancing further with an observation of the Hon'ble Apex Court in this context. In Dinesh @ Bud dha v. State of Rajasthan[**Criminal Appeal no. 263 of 2006**] the Hon'ble Mr. Justice A. Pasayat & S.H. Kapadia jj. have been pleased to observe that -

In the Indian Setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as arule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred.

She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is in built assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in Rameshwar v. The State of Rajasthan (AIR 1952 SC 54) were:

"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge..."

This being the position I think the point raised from the side of the defence at the time of argument as to the credibility of the so called interested or relative witness and non examination of rest CS witnesses at the instance of the prosecution, are accordingly answered.

As far the question raised at the instance of defence that the intimacy of the accused Basu, in social media platform Face Book was not proved at the instance of the prosecution the answer lies in the version of the VG herself as PW 3, that accused Basu did not confine his relation with the VG in Face Book arena rather the VG when blocked her there, the accused somehow managed

to collect the phone number and used to call her and she used to reciprocate as well. Her version was not shaken rather invigorated further when she during her cross-examination clarified in unequivocal terms that - she never introduced Basu to any of her friends stating him as her lover nor Basu introduced her to any of his friends and relatives and she never stated to her family members that she has blocked Basu or she had good relation with Basu and she on her own never tried to contact Basu, after she blocked her, rather it was Basu who contacted her. The aforementioned phenomenon coupled with denial of defence overtures and non explanation from the side of the defence clearly paves the way for the prosecution to have an unchallenged version in their pool.

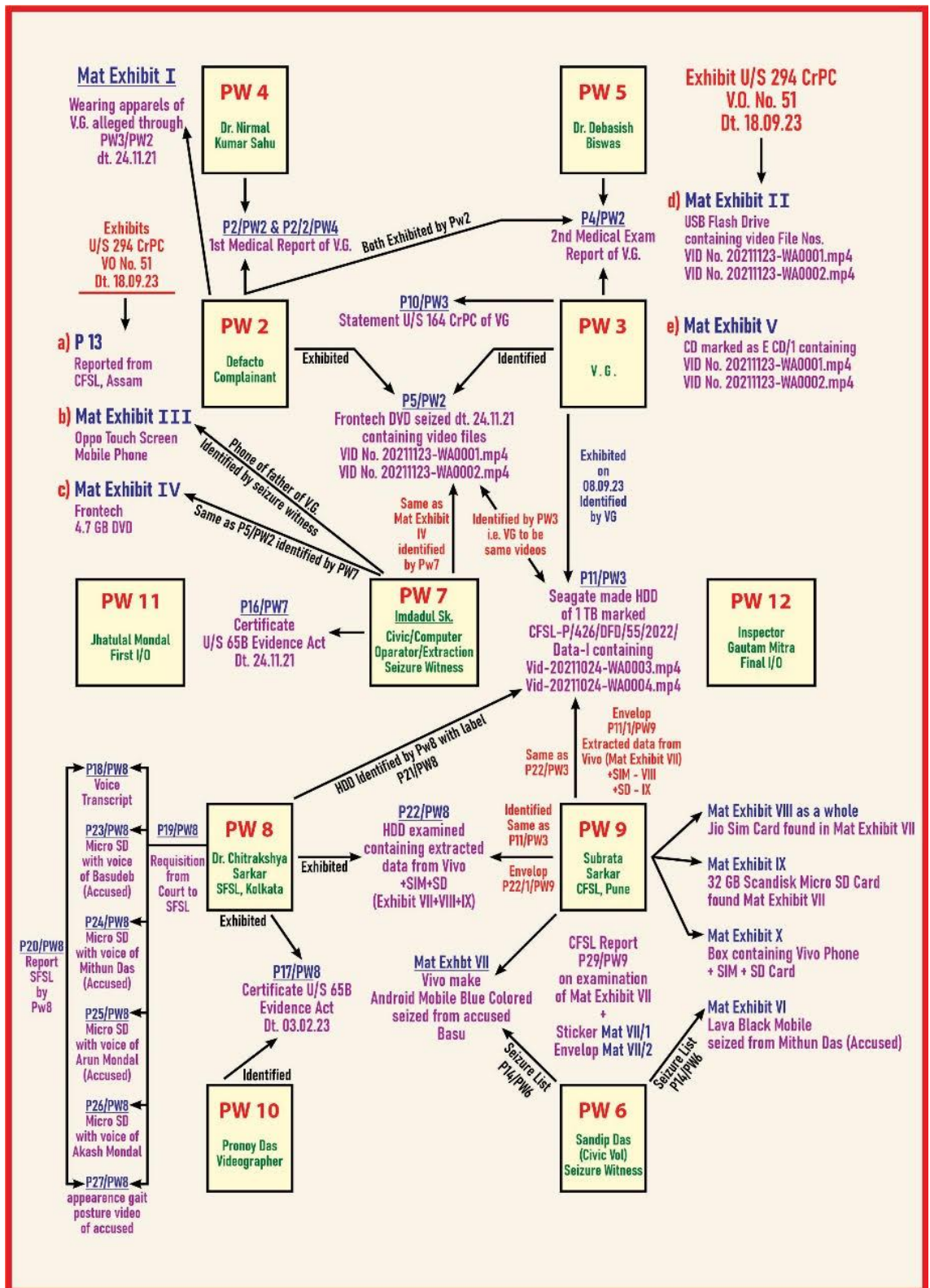
At this, discussion will remain incomplete, if another technical aspect remain unaddressed in this case where the attending doctor gynaecologist at Lalbagh S.D.Hospital was a male doctor. Question raised from the side of the defence that, medical examination of victim should not have been conducted by P.W.5, a male doctor, is based on section 27(2) of the POCSO Act, which states that in case the victim is a woman the medical examination of the victim (P.W.1) in the case in hand, the same should have been conducted by woman doctor. Here in this case the situation is quite different where the VG was first sent to Lalbagh SD Hospital on 23.11.2021 through a lady police escort, with requisition (P 12 / PW 4) but she was referred to Gynaecologist by the attending doctor/ Medical Officer at the hospital and the PW 5 is the said

Gynaecologist who ultimately examined her clinically. Moreover the VG consented to have her private part examined by the male doctor PW 5 (P4/1/PW 3) and it was her third occasion, when she was taken to hospital and produced for clinical examination. As such there is nothing on record as to how the accused got prejudiced due to such examination and treatment by male doctor. There is no dispute that the purpose of POCSO Act is to treat the minors as a class by itself and treat them separately so that no offence is committed against them as regards sexual assault, sexual harassment and sexual abuse. The sanguine purpose is to safeguard the interest and well being of the children at every stage of judicial proceeding. Section 27(2) of the POCSO Act has been designed to protect the girl child from embarrassment and to ensure that she is comfortable, as it was thought to be in the best interest of the girl child. It is not meant to be a safeguard in favour of the accused. Since the learned counsels for the accused persons, have not been able to show any prejudice which has been caused to their clients, as because the victim was examined by a male doctor like P.W.5 or that P.W.5 has submitted a wrong report, no importance can be attached to such contention that, come what may, the medical examination of girl child shall be conducted by a female doctor only in all circumstances, the same factum will not enure any benefit in favour of the accused, since his usual and ordinary course of business as a doctor to record the history of the physical assault on the patient admitted, in terms of the provision U/s 32 (2) of the Evidence Act, are relevant facts.

CNR No. WBMD08-001307-2021

Now, last, not the least, the death knell in the coffin, sealing the fate of the already doomed, defence attempt to salvage, the situation in favour of the accused, came with a defining blow when the electronic evidences are set forth against them, from the second prong of the prosecution arsenal.

To discuss the same I find that a schematic and graphical representation of the entire prosecution story, as far as proving through electronic evidences are concerned is extremely beneficial. Following is the same :-



In the diagrammatic depiction of the entire events, it is crystal clear, in a summarised form that -

A] During investigation, the first IO, at the instance of his technical expert, computer operator, of the PS in the form of **PW 7**, extracted two viral videos by burning the contents of the OPPO phone of the father of the VG, in two Frontech readable DVDs more fully described in the testimonies of the witness previously - which were exhibited as **P5/ PW 2** as identified by PW 2 (Defacto complainant) and **Mat Exbt. IV** and the said OPPO phone was marked **Mat Exbt III** on seizure by IO and it was later sent to CFSL Assam for its forensic examination and report was marked **Exbt. 13** later on, invoking provision **u/s 294** of Crpc ;

B] The content of **P5/PW 2**, seized by IO on 24.11.21, in the form of video files, were shown to PW 2/ defacto complainant and she identified both of them to be the videos containing sexually explicit contents, involving her daughter, which she previously saw as video clippings before inquiring her daughter over the same, while the VG during her testimony on seeing the contents of the videos during her turn, identified them to be the videos that went viral, being recorded by Akash in the month of October, eoew at 12 midnight two days prior to Durga Puja and she found herself in the videos.

C] The VG on being shown contents of a **SEAGATE made 1 TB, HDD** video files, identified the same to be one in which she find herself being raped by the accused persons and she further elaborated that she found Mithun and Akash and their body parts visible in the videos apart from her. VG thus identified both **P5/ PW 2** and **P 11/ PW3** ;

D] The other seizure witness PW 6 identified the seized **VIVO** make mobile phone, from Basu by the IO through seizure list (P 14/ PW 6) and the same was marked **Mat Exbt VII** , apart from black coloured Lava phone as seized from accused Mithun.

E]The expert witness from CFSL, Pune in the form of PW 9 on the other hand identified **Mat Exbt VII**, as well as SIM card and 32 GB memory card in the said mobile and those were marked **Mat Exbt. VIII** and **IX** respectively. The witness identified the extracts of the VIVO mobile that he prepared in the form **P 11/PW 3** and he identified the same before the Court and also **P 22/PW 8** both of which were prepared by him on extracting the contents of the VIVO mobile phone of the accused in the same process and as such testified before the Court that P 11/PW 3 and P 22 /PW 8 contains the same data. He too identified his report marked **P 29/PW 9**. Quite interestingly the expert witness further revealed in his report that **obscene videos/ pornographic contents were retrieved from the deleted data of the exhibit marked " EXH - 1/2 "** [EXH - 1/2 is the sandisk micro SD card of 32 GB capacity - it is the memory card found in the mobile seized from accused **Basu**]and **NO obscene videos/**

pornography could be found in the extracted data from the exhibits marked " EXH -1/1 "[EXH - 1/1 is the JIO Sim Card found in the VIVO mobile belonging to the accused Basu]. This phenomenon goes to suggest that the obscene videos were later got deleted from the mobile of Basu, and he did not provide any explanation about the same though he had a solemn duty to speak, u/s 106 of Evidence Act, to explain his conduct ;

F] The technical witness PW 7, identifying **Mat Exbt IV** further certified that contents of **Mat Exbt IV** are same as **P5/ PW 2**, since both prepared by him at the same time, in the same process at a time, in same transaction by burning the contents of the OPPO mobile phone.

G] The other expert witness in the form of PW 8, identified both **P11/ PW 3** and HDD examined by PW 9 marked as **PW 22/PW 8** and he upon study of the same comparing it with the voice samples and gait pattern of the accused he collected in the form of **P 23 to P 27/PW 8** and concluded in his report **P 20/PW 8** that two male persons amongst the perpetrators to be the accused Akash Mondal and Mithun Das, who were allegedly instrumental in videographing the incident of rape of the VG could be identified and the same corroborates the version of the VG or for the matter of that, the defacto complainant and in other words the prosecution case

Thus, at the end of the day the biggest corroboration of the prosecution case, to prove the same beyond reasonable doubt and quite conclusively from the mobile phone of the accused themselves where with the help of technical and expert witnesses extracting the data of viral videos not only the complicity of the accused in dastardly act could be proved but also it could be confirmed that all the accused persons, who threatened the VG of making the obscene video showing her to be ravished, viral did the same eventually. It is to be remembered again that testimony of sole victim is sufficient enough to ensure conviction if the same is trustworthy and found reliable, finding corroboration is a rule of prudence but the same does not mean that corroboration should be coextensive with all the proofs. Unless there is any contra evidence, where the version of the sole witness / victim found unblemished, the same should be relied upon as a whole and it answers to the point raised at the instance of Ld. Counsel for accused Arun that his involvement is not found in electronic corroborative evidence as such he has been roped in by the prosecution, but apart from this assertion nothing contrary proof or evidence has been adduced from the side of the defence to bring home the fact that, why on the earth the VG will be up in arms, staking her own reputation to rope in an unknown person with whom there is no proof of prior acquaintance or animosity.

In this context, I must address to the defence contention that was made referring to the statement of the VG . U/s 164 of Crpc ,that the accused threatened of making FAKE VIDEO and as such there

was no original video of the said incident but on closure scrutiny of the statement marked Exbt. P 10/PW 8, I find that the accused threatened the VG of making the obscene video viral by creating **FAKE ID** and it is not same of making fake video. Rather by utterance of the same the accused side further proved their complicity and malafide intention to commit the crime and at the same time cover their own identity by remaining incognito. This phenomenon gives another additional presumption against the accused persons.

As far as question raised at the instance of the defence regarding improper certification U/S 65 B of the Evidence Act is concerned which were marked Exbt P 16/PW 7 and P 17/PW 8 without any objection here I put reliance on the hallowed observation of the Hon'ble Apex Court - Arjun PanditRao Khotkar vs. Kailash Kushan Rao Gorantyal & ors - (2020) 7 SCC 1 where in it has been categorically observed that **certificate u/s 65B of Evidence Act becomes mandatory when instead of primary evidence, secondary evidence is being lead i.e. original when not produced.** Here in this case on both the instances the original device in the form of Mat Exbt III and the SD card P 27/PW 8 were exhibited and as such certification in terms of the aforementioned authority becomes redundant, at best an empty formality.

From the analysis of the evidence of the above prosecution witnesses, starting from VG to corroborations through the testimonies of defacto complainant PW 2, etc. fortified by the independent versions of attending doctor and experts, electronic

corroborative evidences and otherwise, what transpires is that not all the witnesses can be said to be unreliable. Furthermore, it has never been the requirement of the rule of evidence that oral testimony of an independent witness must be produced. It is a time honoured principle that evidence has to be weighed and not counted and on this very principle stands the edifice of section 134 of Evidence Act, which lays down that in any case, no particular number of witnesses shall be required for proof of any fact in the case. Thus, even if assuming, though not inferring, that the witnesses who deposed in favour of the VG cannot be relied upon, being hearsay testimonials, the evidence of the injured witness/ victim girl PW 1, duly corroborated by the medical evidence and electronic evidences as elaborated above, cannot be discarded because as a general rule, a court can act on testimony of a single witness, even if uncorroborated, in a criminal trial for the simple reason that one credible witness whose version is found trustworthy, consistent with other material and documentary proof and remained unblemished, in its core spectrum at the onslaught of the defence and out-weighs the testimony of other witnesses of doubtful veracity.

Here, coming to the defence case staring with the discussions with the observations of superior Courts, in Madhu Alias Madhuranatha v. State of Karnataka reported in (2014) 12 SCC 419, the Apex Court has observed relying on Nika Ram v. State of H.P. reported in (1972) 2 SCC 80 and Ganeshlal v. State of Maharashtra reported in (1992) 3 SCC 106, that it is obligatory on the part of the accused while being examined under

Section 313 Cr.P.C to furnish some explanation with respect to the incriminating circumstances associated with him and the Court must take note of such explanation even in a case of such circumstantial evidence to decide whether or not the chain of circumstances is complete (Musheer Khan v. state of Madhya Pradesh reported in (2010) 2 SCC 748 and Sunil Clifford Daniel v. State of Punjab reported in (2012) 11 SCC 205 para 24, 25. Moreover, the said proposition of law has also been reiterated by the Apex Court in Rohtash Kumar v. state of Haryana reported in (2013) 14 SCC 434.

It was, therefore, necessary, on the part of the accused , to explain any incriminating circumstance during their examination under Section 313 Cr.P.C., but they have simply, tried to avoid the said circumstances by saying that, they had no knowledge about such alleged incident or circumstances or that such circumstances were not true with omnibus denials. It is sometimes difficult on the part of the prosecution to prove the actual incident - since the incident remained within the knowledge of the accused and the victim. In order to avoid that situation Section 106 of the Indian Evidence Act may safely be invoked and accordingly it becomes the bounden duty of the accused to explain the circumstance, which were within the special knowledge of the accused and could be brought to counter the incriminating circumstances coming against the accused persons but they miserably failed in their duties. As such, since nothing favourable is forthcoming from the side of the accused, the authority cited at the instance of the defence in the form of AIR 1973 SC 2773 does not come to much help for the defence. The prosecution seems to have performed their

part of the duty to bring home the case against the accused in terms of the provision u/s 101 , 105 Evidence Act and as such the decision relied upon from the side of the defence in the form of 1997 SCC (Cri) 121 does not exonerate the accused from the charges levelled against them.

In the case the accused themselves or for the matter of that, from their side of did not offer any explanation as to what happened, when they went to meet the VG to her place and where they were thereafter. The defence Counsel while cross examining the PW 5, tried to extricate opinion from the mouth of the attending doctor that this type of injury and rupture may cause due to strenuous physical activities or masturbation or physical penetration etc. but there is nothing on record either from the side of the defence explanation or in the prosecution story or investigation that the VG ever indulged into physical activities , or fell on a sharp blunt object and she got injured in her private part. Rather the conduct of the accused were not awe inspiring , rather they were found to have made the video viral and seeing that the same has gone against their interest leading to their disclosure of identity before the prosecuting agency deleted the same from the mobile phone seized. Since nothing obscene found from the SIM card in the mobile of the accused Basu and video found deleted in the SD card it was left for the accused Basu to explain how it was found from his mobile handset but the accused failed in their duty to help themselves, in explaining circumstances going against them. Thus the accused are definitely duty bound to explain the circumstances as to how and under what circumstances, the victim suffered such sexual assault on her person. The Hon'ble Apex Court in Phool Singh vs.

State of Madhya Pradesh reported in (2022) 2 SCC 74 has already made it clear, that it is not a sine qua non that, external or internal injury, **should be detected in the body of the VG to prove the prosecution case of rape, otherwise it will be treated as consent,** (explained in details while discussing Stereotype and Reality), rather here the VG is a minor and as such question of consent is inconsequential and at the same time, defence never questioned the VG in her cross- examination, even remotely on such aspect and as such, no such defence proposition of injury in private part, otherwise by sexual assault, is rejected outright. In absence of any such explanation, it would not be justifiable to accept that the VG suffered such injury on her private part otherwise, instead of definite conclusion on the basis of entire evidence on record, in most certain terms and without any ambiguity and in all probabilities, that it is the accused persons who are the joint author of such crime, in view of the proposition of law as enunciated by the Apex Court in the decisions reported herein above.

On the question of technicalities or ill handling of case properties at the instance of the prosecuting agency, as raised from the side of the defence leading to break in chain of custody, which they even vigorously tried to prove while cross- examining PW 12, regarding his receipt of alat from in seal and pack and for the matter of that to the expert PW 9 appearing from CFSL, Pune regarding their chain of safe custody and handling of alat , I find as far as PW 12 is concerned he being the Inspector -in -charge of the concerned PS, U/S 168 of Crpc was the over all in charge of the entire affairs of the PS under his

dispensation and specially when there is no clear guidelines in the Criminal procedure Code (CrPC) regarding seizing electronic devices, it is a common phenomenon that the investigating agencies are taking such material from suspects or accused persons in a rather haphazard manner, but the million dollar question is whether the same amounts to violation of one's right to privacy and most importantly, right against self-incrimination and prejudicing the accused or not ! Here the answer lies in the certification of reports in the form of P 20/PW 8, P 13 and P 29/PW 9 where in all the cases the FSL and CFSL authorities found the alamsats in seal packed condition and the independent authorities never questioned samples on the issue of any fault in packing and sealing of the same, paving way to contamination and tampering and all of them were marked Exhibit without any objection. Nevertheless I have the honour to bank on the latest authority and observation of the Hon'ble Apex Court in - **Balvir Singh vs. State of Uttarakhand - Criminal Appeal No. 2430 OF 2014** where in on 06.10.2023 the Hon'ble Apex Court has been pleased to observe that -

These appeals remind us of what this Court observed in the case of **Dharam Das Wadhvani v. State of Uttar Pradesh**: *“The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct.”* **The role of courts in such circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities, perfunctory investigation or insignificant lacunas**

in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished. The courts are expected to be sensitive in cases involving crime against women.

[All emphasis by me]

Now, for what has been discussed here in above, it is also but clear that the foundational facts of the offence alleged against the accused have been established to the hilt. In the present case, the prosecutrix (VG/ PW 3) being a young girl aged 15 years, had no reason to falsely implicate the accused persons, specially when three of them had no previous acquaintance with her. In the given set of circumstances, based on the well settled principles of law, as recounted before in the body of discussions, it could be safely said that the doctrine of presumption contemplated by Section 29 of POCSO Act, came into operation and the burden to disprove the same came staying on the defence side ; and it was for them, to rebut the presumption and to prove that they have not committed the offence, which the defence side miserably failed to discharge the burden and on the principles stated therein and in terms of Section 29 of POCSO Act, the presumption would only lead to the finding of guilt against the accused.

P O S T S C R I P T

Therefore, after giving a serious cogitation, to the factual aspects of the case, the evidence adduced by the prosecution, this Court fails to find out anything which can divert the needle of guilt from the accused - as far as charge of offence punishable u/s 6/14/15 of POCSO Act,

Section 376 DA/506 IPC read with 67 B of IT Act is concerned, to any other person or probability. The thread with which the prosecution case is knitted is sufficiently strong to disdain any doubt as to the guilt of the present accused persons, in the joint conception and commission of the crime where they have been found to have gratified their animated passions and sexual pleasures, by having carnal knowledge of a minor child, VG herein, an innocent girl of tender age, like pedophilic disorderly persons- besmirching all sacred relations in tradition bound Indian society and a formidable conclusion can be arrived that the prosecution has been successful in bringing home the guilt of the accused on sexual assault in terms of Section 5 of the POCSO Act punishable u/s 6 of POCSO Act Read with Section 376 DA / 506 of IPC, in committing gang rape of the VG and causing intimidation to her leading to her mental set back and apart from the above the prosecution through the oral, documentary and electronic evidences have been able to prove that the accused persons in their common intention, were instrumental in using the VG for pornographic purpose while committing the offence u/s 5 of POCSO Act by videographing the ordeal and storing the same, to intimidate her and later on to make the same viral, which they eventually did as conceptualised from the very beginning, by declaring their intention and sinisterous design and there by attracting offence punishable u/s 14/15 of POCSO Act and Section 67 B of the Information Technology Act, 2000. They thus deserve to be convicted in absence of any negative legal evidence and benefit of doubt.

CNR No. WBMD08-001307-2021

Hence, it is

ORDERED

That the accused **Basudeb @ Basu Mondal @ Bishwa Dev Mondal @ Bishwadeba Mondal, Mithun Das, Akash Mandal & Arun Mandal** are found guilty for the offence punishable under **Section 6, 14, 15 of POCSO Act** read with **Section 376 DA/506/34 of IPC** and **67 B of Information Technology Act, 2000** and all are **convicted** for the above offence in terms of **Section 235(2) Cr.P.C.**

The seized articles be disposed off in accordance with law, after expiration of appeal period. Meanwhile access on the same will remain limited in terms of Hon'ble Court, Appellate Side, Notification No. 3161-G dated 01.08.2023.

Since there is no scope to give benefit of the provision of Probation of Offenders Act and section 360 of the Cr.P.C and the four convicts are in Judicial Custody, they shall remain there in and be produced on **18.10.2023** for receiving sentence. Meanwhile the convicts be kept in segregation, with special care, till hearing on the point of sentence.

The convicts are made aware about the maximum punishment prescribed for the offence, for the commission of which they are convicted above.

Accordingly, convicts **Basudeb @ Basu Mondal @ Bishwa Dev Mondal @ Bishwadeba Mondal , Mithun Das, Akash Mandal & Arun Mandal** , be produced on **18.10.2023** for hearing on the point of sentence and further order.

Inform all concerned with the copy of the order.

Dictated & Corrected by me.

Judge, Special Court,
Lalbagh, Murshidabad

Judge, Special Court,
Lalbagh, Murshidabad

Sri Deepto Ghosh,
JO Code-WB00841.
Additional Sessions Judge,
1st Court, Lalbagh, Murshidabad

POCSO 56 OF 2021

18.10.2023

At 12-30 p.m

The case record is placed before me pursuant to the last order. All the four convicts are produced from J/C. Record is taken up for hearing on the point of sentence.

I have heard the convicts personally, on the point of sentence, in presence of his Ld. Advocate on record, representing the convicts and Ld. Special P.P.-in-Charge. , who appeared Online with the assistance of the mobile phone of his Junior Counsel the matter was heard in hybrid mode in the interest of justice and facilitate trial and conclusion of the same in due time.

The Court conversed with the Convicts personally one by one in Bengali, being his mother tongue, on the point of sentence.

Convict -Akash Mondal submits that:-

“ He has three unmarried sisters, aged parents, two elder brothers and one younger brother and he being a mason, is the only source of sustenance for his family. He is totally innocent. He prays for mercy.”

Convict -Arun Mondal submits that:-

“He has aged parents, wife, son, brother and unmarried sister to fend and he is the only bread winner of the family. He is totally innocent. He prays for mercy.”

Convict -Basudeb Mondal @ Basu Mondal @ Biswadeb Mondal @ Bishwadeba Mondal submits that:-

“He has three unmarried sisters, aged parents, to look after and he is the only source of sustenance for his family. He is totally innocent. He prays for mercy.”

Convict -Mithun Das submits that:-

“He has aged parents to look after. He prays for another chance for reformation. He prays for mercy.”

Learned Lawyers for the convicts, submit that their clients are young men, very recently embraced adulthood and except convict, there would be none, to look after their family and aged parents. They are law abiding citizen and transformed persons, while remaining so long in solitude. There is no previous conviction or any criminal antecedent against them and so the learned Court may release them on minimum punishment, considering their tender age and life ahead in order to render proper justice, allowing them to rehabilitate and reintegrate with the society.

Learned Special PP- in Charge, on the other hand submits that. no leniency be extended to the convict/CCL for the heinous offence committed by them, since it falls under the rarest situation, where the perpetrators should not be treated with any leniency in punishing the convicts, will have a telling effect on the society. Rather, as per Ld. Counsel, he deserves an exemplary punishment and placing reliance upon an epoch making authority - State of H.P vs. Shree Kant Shekhari reported in (2004)8 SCC 153 submitted that Apex Court has categorically observed in similar situation where a minor was raped at the instance of school teacher, having fiduciary capacity and control upon her that - in sexual violence, apart from being dehumanizing act, is an unlawful

intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity -it degrades and humiliates the victim and where the victim is a helpless innocent child or minor, it leaves behind a traumatic experience. He prayed for awarding the maximum punishment as prescribed for the offence punishable under all the Acts and placed reliance upon the authority of the Hon'ble Apex Court - Machhi Singh & ors vs. State of Punjab - AIR 1983 SC 957 and demanded capital punishment, citing the instance to be gravest case extreme culpability. Placing reliance on the permissive provision U/s 42 of the POCSO Act, 2012 Ld. Counsel for the Prosecution prays for capital punishment of the accused since commission of Section 6 of POCSO Act being graver and greater in degree than the offence U/s 376DA of IPC entailing capital punishment. The Ld. Counsel also placed reliance on an authority of the Hon'ble Court State of West Bengal Vs Pranab Roy- CRA 177 of 2018, contending that since the convict after perpetration of crime of ravishing the VG again uploaded the obscene video and made it viral and the same goes to suggest that they have little remorse and beyond reformation.

Let the case record be put up today at **3.30** pm for awarding Sentence in the case.

Typed by me.

Deepto Ghosh
Judge, Special Court,
Lalbagh, Murshidabad

Deepto Ghosh
Judge, Special Court,
Lalbagh, Murshidabad

Later

at 3.30 P.M

Now while taking up the record for awarding sentence, this Court takes the privilege to advance the discussion with this quote -

"Rape is one of the most terrible crimes on earth and it happens every few minutes. The problem with groups who deal with rape is that they try to educate women about how to defend themselves. What really needs to be done is teaching men not to rape. Go to the source and start there."

- Kurt Cobain

It goes without saying that, concept of JUSTICE is supreme. It is prior to liberty (JUSTITIA Est LIBERATE Prior). Law and Judges are its two limbs. May you be ever so high, the law shall be above you. Upanishad's mandate reminds us that Law is the King of Kings, far more powerful than king. Nothing can be mightier than law by whose strength weak may prevail over the strong. No one is beggar before the Law. The sole aim of Law is approximation of justice. A judge is looked upon as an embodiment of justice. He is known second to almighty. The society which keeps him in high esteem and crowns him with distinct sobriety expects him to live upto its cherished expectations. The last bulwark of a State is its Courts of Justice.

In the word of Honourable JUSTICE KRISHNA IYER - " **Every saint has a past, every sinner has a future** "

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There can be a State, without army but the public confidence in the authority of the State cannot remain, if there are no Courts of Justice, so to run the rule of law with the rule of life. The Court of Justice work with self generated centrifugal force owing to the faith of the people. The stream of administration of justice which is a sacred one like river Ganges emanates from the Constitution which unlike other rivers flowing from the same source has in itself the potentiality of cleansing mechanism no allowing pollution to overcome it, leading to strengthen the rule of law. Anything which erodes the faith of the people in the rule of law may be not only fatal to the system but may also be dangerous obstruction of justice requiring proper treatment so as to maintain the majesty of law.

I have carefully gone through and considered the submission of the convicts or for the matter of their respective Ld. Counsels.

The evidence on record showed that the convicts did not allow the victim girl, here in, a minor child of tender age, to enjoy the fruits of the life, given to her by the almighty, with the dream a young girl to get the love and affection and protection of the society, being the cynosure of her family with all attention, got ruined by some dastardly acts of the convicts. The convicts, coming under the garb of friend, developing amorous relation, gaining position of trust, preferred to put the little damsel, to test the dark

side of this cruel world, by gratifying their libido and sexual urge, while having carnal knowledge of her again preferred to share the same, with the world at large, with their hand held mobile, by masking their real wicked face, while appearing in the disguise of friend, with sinisterous design in mind and then themselves becoming the Ravana - transformed them from protector to violator- and performed acts which are deliberate, diabolical, premeditated, cold-blooded, devilish and dastardly.

Now, coming to the point on sentencing issues, there are five distinct goals or philosophies of sentencing :- (1) the punishment should be proportional to the severity of the offence and the offender's culpability, (2) preventing the general public from committing the crime in the future, (3) preventing the offender from committing the same crime again, (4) protecting the society for a period of time by removing the offender from the community and (5) changing the offender's behaviour through treatment or corrective measures to prevent him from committing future crime, ensuring his rehabilitation and social reintegration and they are all to serve three penology goals- a) reformation b) denunciation by the community or retribution ; and c) deterrence ;

However, the sentencing policy, has been expatiated by the Hon'ble Apex Court in Bajendra Singh vs. State of Madhya Pradesh reported in **AIR 2012 SC 1552** - in the following fashion-

...The law enunciated by this Court in its recent judgements, as already noticed, adds and elaborates the principles that were stated in the case of Bachan Singh and thereafter, in the case of Machhi Singh. The aforesaid judgements, primarily dissect these principles into two different compartments- one being

‘aggravating circumstances’ while the other being the ‘mitigating circumstances’. The Court would consider the cumulative effect of both these aspects normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under the heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court contemplated under Section 354(3) of Cr.p.c.

Keeping in mind the said philosophies and keeping in mind the gravity of the offence, I do not think it proper to invoke the provision of S.360 Cr.P.C. in this situation.

Protection of society and deterring the criminal is the avowed object of law and that can only be secured by imposing appropriate sentence.

Finding providence in the observation of the Hon'ble Apex Court, it will apt to quote relevant portion of the epoch making authority and hereunder salient extract is quoted - Siriya v. State of M.P., reported in (2008) 8 SCC 72 : (2008) 3 SCC (Cri) 422 : 2008 SCC OnLine SC 864 at page 75

“7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence.

Therefore, law as a cornerstone of the edifice of 'order' should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: 'State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society.' Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

*8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.* [(1991) 3 SCC 471 : 1991 SCC (Cri) 724]*

9. Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as

the basis of punishment and create cases of apparent injustice that are serious and widespread.

11. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle McGautha v. State of California [28 L Ed 2d 711 : 402 US 183 (1970)] that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of the crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.”

These aspects were highlighted in Shailesh Jasvantbhai v. State of Gujarat [(2006) 2 SCC 359 : (2006) 1 SCC (Cri) 499] (SCC pp. 361-63, paras 7-9 & 11) and State of Karnataka v. Raju [(2007) 11 SCC 490 : (2008) 1 SCC (Cri) 787 : AIR 2007 SC 3225]

14. In this case, the accused's lustful acts have indelible scar not only physically but also emotionally on the victim. No sympathy or leniency is called for.

Section 354(3) of the Cr.P.C provides that when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of

death, the **special reasons** for such sentence. (Emphasis given).

In Mohd. Mannan v. State of Bihar, (2019) 16 SCC 584, it was laid down by the Hon'ble Supreme Court that Section 235(2) CrPC is not a mere formality. It is obligatory on the part of the trial Judge to hear the accused on the question of sentence and deal with it. Sentencing is an important stage in the process of administration of criminal justice— as important as the adjudication of guilt—and it should not be consigned to a subsidiary position as if it were a matter of not much consequence. It should be a matter of some anxiety to the court to impose an appropriate punishment on the criminal and sentencing should, therefore, receive serious attention of the court. The reason is that a proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances—extenuating or aggravating—of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender the possibility of return of the offender to a normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These are factors which have to be taken into account by the court in deciding upon the appropriate sentence, and, therefore, the legislature felt that, for this purpose, a separate stage should be provided after conviction when the

court can hear the accused in regard to these factors bearing on sentence and then pass proper sentence on the accused.

On the touch stone of above and on the principles enunciated by Hon'ble Supreme Court for awarding sentence. Categorically in Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2012) 4 SCC 37, the aggravating circumstances (crime test) and the mitigating circumstances (criminal test) have been laid down as follows:

As far weighing the mitigating circumstances [Criminal test] in respect of the convicts are concerned-

- A) The young age of the accused persons are relevant consideration though not a determining factors by itself.
- B) The family condition of the accused, number of dependency and impairment of the total family depending upon him, in his absence is an important factor.
- C) The antecedents of the convict having no past criminal record is the one of the mitigating circumstances.
- D) The chance of the convict of not indulging in commission of crime again and the probability of the convict being reformed and rehabilitated.

Whereas the aggravating circumstance [Crime test] are concerned, here the

- a) The offence relating to heinous crime, like murder, rape, armed dacoity, kidnapping etc by the accused with a prior record of conviction for capital felony or offence committed by the person having a substantial history of serious assaults and criminal convictions.
- b) The offence was committed while the offender was engaged in the commission of another serious offence.
- c) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

- d) The offence of murder was committed for ransom or for monetary benefits or hired killing.
- e) The offence was committed outrageously for want only, while involving inhumane treatment and torture to the victim.
- f) The offence was committed by a person while in lawful custody.
- g) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another . For instance, murder of a person who has acted in lawful discharge or his duty U/s 43 of the Cr.P.C.
- h) When crime is enormous in proportion like making an attempt of murder or the entire family or members of a particular community.
- i) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father / uncle and is inflicted with the crime by such a trusted person.
- j) When murder is committed for a motive which evidences total depravity and meanness.
- k) When there is a cold blooded murder without provocation.
- l) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Taking a cue, from the observation of the Hon'ble Apex Court, here too the victim had been the subject of lust by her lover and his friends, when the innocent poor child was totally unaware of catastrophe which had befallen, on her. I cannot overlook the pain and suffering of the victim, while she was humiliated and brutally treated in the hands of the convicts, ravished her to satisfy their savage lust and went to another extent in exhibiting the same to world at large - their brutality and barbarism - and as such the mitigating circumstances are found less so far as the convicts are concerned, though the aggravating circumstances are many.

In my view standing behind the scene, the victim girl is also the justice-seeker. To give a solace to the ignominy the victim girl has already suffered, the court must use the

sword of law. Here I am again influenced by the observation of the Hon'ble Apex Court in State of Madhya Pradesh vs. Surendra Singh - reported in AIR 2015 SC 3980 where in the Hon'ble Summit Court cautioned the trial Court not to indulge in undue and misplaced sympathy by imposing inadequate sentence which would do more harm to the justice delivery system to undermine the public confidence in the efficacy of law.

Here again taking the privilege to advance the discussion with this quote -

**" I must be cruel only to be kind ,
Thus bad begins, and worse remains
behind "**

- WILLIAM SHAKESPEARE - HAMLET .

Reiterating, again that it is the duty of every Court to award proper sentence, having regard to the nature of the offence and the manner in which it was executed or committed, the sentencing Courts, are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of offence, keeping in view also the rights of the victim of the crime but also the society at large while considering appropriate sentence, expected a forethought that a meagre sentence may run counter productive in the long run and against interest of the society so that it does not shock its conscience and as such striking a proper balance is the order of the day. However On appreciation of the materials, this Court is convinced that this case cannot be categorized as a 'rarest of rare cases' on the principles enunciated by the Hon'ble Apex

Court in several of its authorities as (R-R Test), So, capital punishment is not warranted here and life imprisonment will sub-serve the cause of justice.

Considering all the aspects while abiding by the canon of prudence & circumspection and keeping in mind the guiding principle of the Hon'ble Apex Court as stated above this Court awards the following sentence to the convicts.

Accordingly, it is

ORDERED

that the convicts -

(i) **Basudeb @ Basu Mondal @ Bishwa Dev Mondal @ Bishwadeba Mondal, Mithun Das, Akash Mandal & Arun Mandal** all be sentenced to suffer **Rigorous Imprisonment for life, which shall mean imprisonment for the remainder of their natural life** and to pay fine of **Rs.50,000/-,(Rupees fifty Thousand)** each, in default of payment of fine, to suffer further **Rigorous Imprisonment for one (01) year**, more for commission of the offence punishable under **Section 6** of the **POCSO Act** ;

(ii) **Basudeb @ Basu Mondal @ Bishwa Dev Mondal @ Bishwadeba Mondal, Mithun Das, Akash Mandal & Arun Mandal** all be sentenced to suffer **Rigorous Imprisonment for life, which shall mean imprisonment for the remainder of their natural life** and to pay fine of **Rs.50,000/-,(Rupees fifty Thousand)** each, in default of payment of fine, to suffer further **Rigorous Imprisonment for one (01) year**, more for commission of the offence punishable under **Section 376DA** of the **Indian Penal Code** ;

iii) **Basudeb @ Basu Mondal @ Bishwa Dev Mondal @ Bishwadeba Mondal, Mithun Das, Akash Mandal & Arun**

CNR No. WBMD08-001307-2021

Mandal all be sentenced to suffer Rigorous Imprisonment for 2 (two) years and to pay fine of Rs.20,000/-,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months more, for commission of the offence punishable under Section 506/34 of the Indian Penal Code ;

iv) Basudeb @ Basu Mondal @ Bishwa Dev Mondal @ Bishwadeba Mondal, Mithun Das, Akash Mandal & Arun Mandal all be sentenced to suffer Rigorous Imprisonment for 5 (five) years and to pay fine of Rs.20,000/-,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 14 of the POCSO Act ;

v) Basudeb @ Basu Mondal @ Bishwa Dev Mondal @ Bishwadeba Mondal, Mithun Das, Akash Mandal & Arun Mandal all be sentenced to suffer Rigorous Imprisonment for 3 (three) years and to pay fine of Rs.20,000/-,(Rupees Twenty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 15 of the POCSO Act ;&

vi) Basudeb @ Basu Mondal @ Bishwa Dev Mondal @ Bishwadeba Mondal, Mithun Das, Akash Mandal & Arun Mandal all be sentenced to suffer Rigorous Imprisonment for 2 (two) years and to pay fine of Rs.60,000/-,(Rupees Sixty Thousand) each, in default of payment of fine, to suffer further Rigorous Imprisonment for 2 (two) months, more for commission of the offence punishable under Section 67B of the Information Technology Act, 2000.

CNR No. WBMD08-001307-2021

All the sentence to the convicts Basudeb @ Basu Mondal @ Bishwa Dev Mondal @ Bishwadeba Mondal, Mithun Das, Akash Mandal & Arun Mandal shall run concurrently;

The period of incarceration, already undergone by the convicts, during the course of investigation, inquiry or trial shall be set off in terms of Section 428 Cr.P.C. against the term of imprisonment under Section 428 Cr.P.C. (not being the imprisonment in default of payment of fine) as imposed above ;

The fine amount if realized, be handed down to the defacto complainant for the treatment & rehabilitation of her victim daughter ;

Abiding by the canon of law set by the Hon'ble Apex Court in **Nipun Saxena vs. Union of India** W.P. (C) No. 565 of 2012 read with direction of Hon'ble Court in **Bijoy @ Guddu Das vs. State of West Bengal** in CRA No. 663 of 2016 and banking on the principles of law, for awarding compensation at the conclusion of the trial in terms of Section 33 (8) of **POCSO Act** and Rule 9(2) of **POCSO Rules, 2020** read with Section 357A of **Crpc**, considering the physical and mental trauma, and scar suffered for the life by VG, with the loss and injury she suffered, as a result of the offence perpetrated upon her, at the instance of the convicts, I recommend a further and final compensation amount of **Rs. 3,00,000/- (three lakhs)** only, be also awarded to the victim girl (VG), which as per West Bengal Victim Compensation Scheme, 2017 and to be defrayed at the instance of District Legal Services Authority, Murshidabad, after observing all due formalities in favour of the victim girl and the said compensation is over and above the interim compensation of **Rs.1,00,000/- (one lakh)** already granted vide order no. 46 dated 22.08.2023 ;

Let a copy of this Judgement be forwarded to both, the District Magistrate, Murshidabad under section 365 Cr.P.C., along with a mail/ soft copy to his official e-mail id. and to the Secretary DLSA, Murshidabad for due intimation of the same to the victim of the case as defined under Section 2 (wa) of the Crpc in compliance with solemn direction of the Hon'ble High Court Calcutta passed on **29.03.22** in connection with **CRA 266** of **2020** and also for defrayal of the compensation to the victim girl ;

In view of the amended provisions of Rules 192A & 192B of the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985, and in compliance of the direction of Hon'ble Court in Unknown vs. State of West Bengal in **CRA No. 64** of **2014** dated **20.07.2017** the convict/ CCL is informed, in Bengali language about his right to prefer an appeal against the aforesaid judgment of conviction and sentence and his right to avail legal aid from the District Legal Services Authority, Murshidabad and State Legal Services Authorities, West Bengal under the Legal Services Authorities Act, 1987 to which they declined to prefer any appeal with the aid and assistance of legal aid counsel as they are already under legal guidance of his private Counsel. However let a copy of this Judgement and order of sentence be also forwarded to the Secretary, Calcutta High Court, Legal Services Committee as per the mandate of Hon'ble High Court at Calcutta passed in **CRA no. 36 of 2011** in the case of Malati Sardar vs. State of West Bengal;

A copy of this judgment be supplied to the convicts free of costs, with promptitude, in terms of Section 363(1) and (2) of the Code of Criminal Procedure, i.e. one each, forthwith immediately after pronouncement of the judgement and a

certified copy, on the application of the convicts, without delay, free of cost.

Let a copy of this Judgment be also sent to the Superintendent of Police, District Murshidabad and Superintendent, Berhampore Central Correctional Home, as per provisions of law, along with a mail/ soft copy, to their official e-mail id, for information and record with a direction to transmit the same, as per Correctional Home Rules & Regulations in the event the convicts are transferred to any other Correctional Home for record.

The Superintendent, Berhampore Central Correctional Home is directed to provide the convicts with all possible assistance, if so required, so that he may get legal aid, in preferring appeal, if he subsequently choose to do so, through legal aid assistance.

The Judge-In-charge, Civil Copying Department, Lalbagh is requested to cause supply 3 (three) certified copy of this Judgment and final order, with top priority without fail.

Issue Jail warrant, against the convicts to serve out the sentence.

Let the judgment be kept with the record as part of it. Case alamats be disposed of after expiration of appeal period. Meanwhile access on the same will remain limited in terms of Hon'ble Court, Appellate Side, Notification No. 3161-G dated 01.08.2023.

Dictated & Corrected

by me.

Judge, Special Court,
Lalbagh, Murshidabad.

Judge, Special Court,
Lalbagh, Murshidabad.