

2021 SCC OnLine Cal 3063

In the High Court of Calcutta
(BEFORE BIBEK CHAUDHURI, J.)

Prabir Bhuiyan

Versus

State of West Bengal

CRA 517 of 2017

Decided on December 16, 2021, [Heard on : December 09, 2021]

Advocates who appeared in this case:

For the appellant : Mr. Abhijit Basu, Adv., Mr. J.N. Pal, Adv., Mr. Arghya Kamal Das, Adv.

For the Respondent/de facto complainant : Mr. Sukanta Chakraborty, Adv., Mr. Zuber Ahmed, Adv., Mr. Anindya Halder, Adv.

For the State : Mr. Ranabir Roy Chowdhury, Adv., Mr. Mirza Firoj Ahmed Begg, Adv.
The Judgment of the Court was delivered by

BIBEK CHAUDHURI, J.:— Sexual perversity is not only a personal disease, but also a social menace. The act itself is not merely a solitary harrowing experience of the victim. The trauma and the ensuing stigmatization pervades every aspect of her social life. The effect of trauma and insecurity in the mind of the victim are more pervading when she is sexually harassed and assaulted by her stepfather.

2. The defacto complainant lost her first husband in an accident. While she was staying with her two children, the elder one, a girl child and younger one is a boy, she had an acquaintance with one Prabir Bhuiya, the appellant herein. In course of time the appellant and the defacto complainant developed a love relations his and she married to the appellant for the second time. After marriage she started staying with the appellant with her children from her first marriage.

3. Sometimes during Durga Puja days in 2014 her daughter told her that during midnight when everybody was sleeping the appellant touched several sensitive parts of her body inappropriately. Hearing this a hot altercation ensued between the defacto complainant and the appellant and during such altercation she was severely beaten by the appellant. However, the matter was solved when the appellant had sought for apology. On 29th November, 2014 the defacto complainant noticed that her husband was sleeping on the adjacent room where her daughter used to sleep by the side of her daughter keeping his hand on her body. She asked her daughter about the incident when she told that she wanted to sleep with her mother but the appellant forcibly seized her and resisted her from going to the bed of her mother. Over the said incident there was quarrel between the defacto complainant and her husband for a week. Again on 6th December, 2014 the appellant knocked at the door of the room of the daughter of the defacto complainant where she was sleeping. The daughter of the defacto complainant used to sleep in the said adjacent room closing the door from the inside on being directed by the defacto complainant. He also called the daughter of the defacto complainant over phone repeatedly. Then he tried to take the mobile phone of his wife from below of her pillow. When she resisted the appellant assaulted her severely. Defacto complainant raised hue and cry and hearing her cry the daughter of the defacto complainant opened the door and came out of her room. The appellant was about to proceed towards her. The defacto complainant somehow entered into the room of her daughter and closed the door from inside.

4. On the basis of the said complaint police registered Uttar Para P.S. Case No. 426

of 2014 dated 7th December, 2014 under Section 7 and 12 of the POCSO Act and took up the case for investigation.

5. On completion of investigation police submitted charge-sheet against the appellant before the learned Special Judge under POCSO Act, Hooghly. The learned Special Judge on perusal of the charge-sheet and other related documents frame charged against the appellant under Section 354 and Section 325 of the Penal Code, 1860 and Section 8 of the Protection of Children From Sexual Offences Act. As the accused pleaded not guilty, trial of the case commenced.

6. During trial, prosecution examined seven witnesses. Amongst them PW1 is the daughter of the defacto complainant. PW2 is the learned Judicial Magistrate, 3rd Court at Srirampur who recorded the statement of the victim girl and the defacto complainant under Section 164 of the Code of Criminal Procedure. PW3 is the defacto complainant and PW6 and PW7 are the Police Officers. PW4 Debasish Pal and PW5 Sailen Pal are the residents of 20 B.B. Street, Bhadrakali. They were cited as witnesses on behalf of the prosecution but during their evidence they did not support the prosecution case and were declared hostile.

7. The learned Special Judge under POCSO Act convicted the appellant for committing offence under Section 8 of the POCSO Act and sentenced to suffer imprisonment for five years with fine and default clause.

8. The said judgment and order of conviction and sentence dated 7th July, 2017 is under challenge in the instant appeal.

9. At the very beginning of the hearing of the instant appeal a question arose if the defacto complainant or the victim is a necessary party to an appeal under Section 374 from conviction. The above question is conclusively decided by the Division Bench of this Court proceeded over by the Hon'ble Chief Justice Thottathil B. Radhakrishnan (as his Lordship then was) in CRA 228 of 2020 with CRA 26 of 2021 in the judgment dated 6th April, 2021.

10. It is held in the aforesaid judgment that the victim is not a necessary party to a criminal appeal from conviction for offences against women or child punishable under the provision of IPC or POCSO Act or any other penal provision which will apply in relation to offence affecting human body against any "woman" and or "child". No such appeal would be defective in the absence of impleadment of victim.

11. It is submitted by Mr. Basu, learned Advocate for the appellant that in the instant case apart from the victim girl and her mother being the defacto complainant nobody supported the prosecution case. The evidence of both the victim girl and her mother (PW3) is full of material contradictions and their evidence cannot be relied upon in order to hold the appellant guilty under Section 8 of the POCSO Act. In order to substantiate his argument, learned Advocate for the appellant refers in detail the evidence of PW1, PW3 and PW7 who is the Investigating Officer of this case.

12. PW1, the victim of the alleged incident stated in her evidence that at the relevant period of occurrence she used to reside at premises No. 20 BB Street, Hindmotor with her mother, younger brother and stepfather Prabir Bhuia, appellant herein. Initially the appellant was very cordial to her and she used to behave well with her but after registration of marriage between the appellant and her mother, attitude of the appellant towards her gradually started changing. The appellant on different pleas used to touch various parts of her body including breast, face and other parts. She did not like such attitude of the appellant. One day in the month of August, she and her brother were sleeping in the room with her parents. Sometimes in the midnight she felt that someone was touching her body. She woke up from sleep and saw that her father was about to touch her breast. She removed his hand and got up from the bed. Her mother and brother were in deep sleep at that time. Subsequently also, he touched various parts of her body and asked her not to tell such fact to her

mother. When she found that all such inappropriate act and behaviour of her stepfather was continuing, she disclosed the incident to her mother. A quarrel broke out between them and her mother instructed her to sleep in another room closing the door. On the immersion day of Durga Puja of 2014 the appellant assaulted the defacto complainant over the said issue and there was furious quarrel between them. Since then the victim started to sleep in her room opening the door. On 29th November, 2014 at midnight she suddenly woke up from her sleep and found her stepfather sleeping beside her. He hugged her like a side pillow and touched her hip. She tried to leave the bed to go to her mother but the appellant restrained her by pressing her against bed. Then she raised an alarm which attracted her mother. She rushed to her room and there was a quarrel between mother and the appellant. Her mother again instructed her to sleep in her room closing the door from inside and not to open the door until she was called by her mother over phone.

13. In her statement recorded under Section 164 of the Code of Criminal Procedure she stated that her stepfather used to touch different parts of the body in inappropriate and indecent manner since quite some days before Puja Vacation. She informed the matter to her mother and the appellant stopped touching her indecently for some time. However, one day at midnight she suddenly woke up from sleep and found her stepfather lying beside her and keeping one hand on her back. She tried to leave and go to her mother but the appellant forced her to lie down by his side. In the mean time her mother came to the room, made her free from the clutches of the appellant. Her mother instructed her to sleep in her room closing the door and not to open the door before receiving call from her mother. Some days after at night, she woke up from her sleep and saw that her stepfather was assaulting her mother severely. Her mother somehow saved herself and took shelter in her room. Then the appellant called her over phone repeatedly but she did not open the door.

14. It is submitted by the learned Advocate for the appellant that in her statement recorded under Section 164 of the Code of Criminal Procedure the victim stated that since sometime before the Puja holidays her stepfather used to touch her inappropriately at various places of her body and when she informed the matter to her mother, it was discontinued for few days. In her evidence recorded on 29th September, 2015 the victim girl stated on oath that initially her stepfather used to behave with her in proper manner. However after registration of marriage between the appellant and her mother there was a change in behaviour of his stepfather. The appellant on different pleas used to touch the various parts of her body including breast, face and other parts she did not like such specific act of the accused.

15. The learned Advocate for the appellant next refers to the evidence of PW7 who is the Investigating Officer of the case. From his cross examination it is ascertained that the victim girl did not state her that after registration of marriage with her mother there was a change in the behaviour of the appellant. In course of evidence, the Investigating Officer stated that the victim girl did not state before him that one day in the month of August, 2014 when she was sleeping with her brother in the room of her parents she felt that somebody was touching her body and she woke up and found that the appellant was about to touch her breast but she removed his hand and got up from the bed. She also did not state to the Investigating Officer that even afterwards he used to touch the various parts of her body and asked her not to tell such incidents to her mother. However she disclosed the incident to her mother and as per her instruction she started sleeping in her room closing the door. She also did not state to the I.O. that on 29th November, 2014 in the midnight she suddenly woke up from her sleep and found her father was sleeping beside her and he hugged her like a side pillow touching her hip. She also did not state the said fact to the learned Judicial Magistrate who recorded her statement under Section 164 of the Code of Criminal Procedure.

16. Thus, according to the learned Counsel for the appellant the victim went on gradually developing her case to implicate the accused/appellant in an offence under the POCSO Act. Such exaggeration, embellishment and development of the prosecution case during the evidence amounts to material contradiction and the learned trial judge failed to consider such contradictions to discard the evidence of PW1.

17. It is further submitted by the learned Advocate for the appellant that in the FIR the defacto complainant stated that during Durga Puja days her daughter told her that sometimes at midnight the appellant touched several sensitive parts of her body in order to arouse his sexual lust. The second incident allegedly took place on 29th November, 2014. On that date at night the defacto complainant found her husband lying by the side of her daughter in her room. Her daughter also told her that the appellant touched numerous parts of her body. Last incident allegedly happened on 6th December, 2014 at night when the appellant knocked repeatedly at the door of the defacto complainant's daughter's room. He also took away her mobile phone lying under her pillow to call the victim. The defacto complainant resisted her from making any phone call to her daughter from her mobile phone. At this the appellant physically assaulted the defacto complainant. The defacto complainant then took shelter in the room of her daughter and closed the door from inside. In her evidence in chief, the victim girl stated that on the immersion day of Durga Puja of 2014 her father assaulted her mother during a quarrel which broke out between them as he touched various parts of her body. With regard to the incident dated 29th November, 2014 it was stated by the victim that she suddenly woke up from sleep at midnight and found that his father was sleeping beside her. He hugged her like the side pillow and touched her hip. She tried to call her mother but the appellant restrained her by pressing her on the bed. She raised alarm which attracted her mother and then quarrel between them and the appellant left the room. She was absolutely silent with regard to the incident which allegedly took place on 6th December, 2014.

18. It is argued by the learned Advocate for the appellant that the victim girl tried to give sexual colour to the incident dated 29th November, 2014. A father can lovingly touch the back of his daughter. He can sleep beside his daughter. He also can hug her. All these are instances of paternal love and affection shown by the appellant to the daughter of the defacto complainant.

19. It is submitted by the learned Advocate for the appellant that in spite of the contradictions, if the evidence of the victim and her mother is believed, the only allegation against the accused is that he touched the victim who is her stepfather and patted on her back. As per *Webster's Dictionary* the word "back" means rear part of human body, especially from the neck to the end of the spine. If a father pats the back of his child, he cannot be held to be guilty for committing offence under Section 8 of the POCSO Act.

20. In a criminal trial, the previous statement of a witness can be used by the accused for the limited purpose mentioned in Section 162 of the Code of Criminal Procedure as provided for in Section 145 of the Evidence Act. Therefore, on a reading of Section 162 of the Code of Criminal Procedure bearing in mind the object of the said section and Section 145 of the Evidence Act, it is clear that an accused in a criminal trial has the right to make use of the previous statements of a witness including the statements recorded by the investigating agency during the course of investigation for the purpose of establishing a contradiction in the evidence of a witness or to discredit the witness. A former statement, though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be contradicted would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any

former statement of the witness, but it cautions that if it intended to “contradict” the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code of Criminal Procedure also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the code) for the only limited purpose, i.e., to “contradict” the witness. It will not be out of place to mention that discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of human conduct would be that while narrating the particular incident, there may occur minor discrepancies, such discrepancies may render credential to the depositions. Parrot like statements are disfavoured 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 the environment in which such witness was making the statement.

21. In the instant case the statement of the victim girl in all stages of investigation and trial was consistent on one aspect that the appellant being his stepfather used to touch inappropriately different parts of her body. The mother of the defacto complainant in the FIR stated that the appellant used to touch sensitive parts of her body. The victim in her evidence stated that the appellant tried to touch her breast and other parts of the body. There may be some discrepancy with regard to description of the parts of body where she had experienced indecent touch of the appellant, but she is consistent in her evidence that the appellant touched her body inappropriately and on another occasion he surreptitiously slept by the side of the victim and touched her back inappropriately.

22. Long argument was made by the learned Advocate for the appellant to impress upon this Court that father's touch of his daughter does not amount to sexual harassment. It is not for the court to impose its opinion at the time of appreciation of evidence of a case of sexual abuse. The court must always be alive to consider the incident of sexual act from victim's perspective. Every child in inheres an inept cognitive capacity, which is revised, reoriented and bolstered by acquired socio-cultural influences, familial sermons and scholastic education to discern a touch of love or affection from a vile act of indecency or abuse. The victim is the best judge of the incident. If she states that she was subjected to inappropriate touch by her stepfather, the court shall have to accept her feeling. In order to apprise the cases under the POCSO Act the robustness of masculine judicial system must give way to the feminine feeling of the embodiment of lady Justice.

23. Thus, though there are minor discrepancies in the evidence of the victim such discrepancies cannot be held to be material contradictions affect the credit of the witness. The evidence of the victim was corroborated by her mother, defacto complainant. The victim stated in most clear terms that her stepfather used to touch her different parts of body inappropriately. This Court has no reason to disbelieve the evidence of the victim and her mother.

24. The fact that even after the incident the appellant took the victim to various schools for collecting admission forms for class XI does not matter most because the victim was allowed to go with the appellant being accompanied by her brother. This is the most unfortunate part of the story when a little brother was engaged in the act of policing to prevent their stepfather from committing any indecent act upon the victim.

25. Now, it is for the court to decide as to whether the specific act of accused amounts to an offence of sexual assault within the meaning of Section 7 of the POCSO Act. Section 7 defines sexual assault in the following words:—

“Whoever, with sexual intent touches the vagina, penis, anus or breast of the

child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

26. In the instant appeal it is important to consider the meaning of the words "thus can any other act with sexual intent which involves physical contact without penetration". It is already observed here-in-before that whether a specific act amounts to an offence of sexual assault or not, is a question of fact to be determined from victim's point of view. A girl attaining the age of 15-16 years only understands whether any touch on her body is appropriate or inappropriate act. She can only understand whether a person touches her with sexual intent or not. In the instant case the victim girl more than once stated that her stepfather touched different parts of her body inappropriately. On one occasion, during her sleep she woke up and found that her stepfather was trying to touch her breast and she removed the hand of the appellant.

27. The appellant denied the allegations made against him by the victim girl. On the other hand he tried to prove that the mother of the victim girl, i.e., the defacto complainant is a lady of questionable character. On close scrutiny of the entire evidence on record this court is of the view that the prosecution was able to establish the charge against the accused/appellant beyond any shadow of reasonable doubt.

28. When foundational fact in an offence under the POCSO Act is proved, burden of proofing the contrary shifts upon the accused which he failed to discharge under Section 29 of the POCSO Act. At the same time it is open for the court to raise presumption of culpable mental state of the appellant while committing such offence.

29. For the reasons stated above this Court does not find any infirmity in the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, 2nd Court at Hooghly in ST (SPL) No. 17/15 and SC (Spl.) No. 109/14 (CIS No. 214/14).

30. Mr. Sukanta Chatterjee, learned Advocate for the defacto complainant submits that Sub-Section (8) of Section 33 of the POCSO Act empowers Special Court to pass an order directing payment of compensation to the child for any physical or mental trauma experienced by her or for immediate rehabilitation of such child in appropriate cases. In the impugned judgment the learned trial judge directed to pay the find amount imposed upon the appellant towards her compensation. According to Mr. Chatterjee, the said amount of Rs. 5000/- if at all released and paid to the victim, the said amount is not proportionate to the mental trauma which the victim suffered in the hand of the accused.

31. It is needless to say that the Special Court is empowered to pass an order of compensation in appropriate cases. Compensation is paid to a victim who have suffered loss or injury as a result of the crime and requires rehabilitation. In the instant case the victim did not suffer any physical injury for which enhanced compensation is required to be paid. She also does not require any compensation for rehabilitation. Therefore, I do not find any reason to pass an order of enhanced compensation in favour of the victim.

32. So far as the conviction and sentence under Section 323 of the Penal Code, 1860, the learned Advocate for the appellant has not made any submission, whatsoever. From the evidence of the defacto complainant and the victim it is clear that the defacto complainant was subjected to physical assault by the appellant on various occasions.

33. Thus, considering entire facts and circumstances of the case, I do not find any reason to interfere with the findings made by the learned trial judge in the instant appeal.

34. The appeal is therefore dismissed on contest.

35. The judgment and order of conviction and sentence is affirmed.

36. Before I part with I am constrained to state a very disturbing feature on record which is inconsistent with the statute and series of judgments delivered by the Hon'ble Supreme Court. Sub-Section (7) of Section 37 of the POCSO Act states:—

"The Special Court was ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the special court may permit such disclosure if in its opinion such disclosure is in the interest of child."

37. In *Nipun Saxena v. Union of India* reported in (2019) 2 SCC 703 the Hon'ble Supreme Court observed as hereunder in Paragraph 9 to 12.

"9. Sub-section (1) of Section 228A, provides that any person who makes known the name and identity of a person who is an alleged victim of an offence falling under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E commits a criminal offence and shall be punishable for a term which may extend to two years.

10. What is however, permitted under subsection (2) of Section 228-A IPC is making known the identity of the victim by printing or publication under certain circumstances described therein. Any person, who publishes any matter in relation to the proceedings before a Court with respect to such an offence, without the permission of the Court, commits an offence. The Explanation however provides that printing or publication of the judgment of the High Courts or the Supreme Court will not amount to any offence within the meaning of the IPC.

11. Neither the IPC nor the CrPC define the phrase 'identity of any person'. Section 228-A IPC clearly prohibits the printing or publishing "the name or any matter which may make known the identity of the person". It is obvious that not only the publication of the name of the victim is prohibited but also the disclosure of any other matter which may make known the identity of such victim. We are clearly of the view that the phrase "matter which may make known the identity of the person" does not solely mean that only the name of the victim should not be disclosed but it also means that the identity of the victim should not be discernible from any matter published in the media. The intention of the law makers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harassment in the future.

12. A victim of rape will face hostile discrimination and social ostracisation in society. Such victim will find it difficult to get a job, will find it difficult to get married and will also find it difficult to get integrated in society like a normal human being. Our criminal jurisprudence does not provide for an adequate witness protection programme and, therefore, the need is much greater to protect the victim and hide her identity. In this regard, we may make reference to some ways and means where the identity is disclosed without naming the victim. In one case, which made the headlines recently, though the name of the victim was not given, it was stated that she had topped the State Board Examination and the name of the State was given. It would not require rocket science to find out and establish her identity. In another instance, footage is shown on the electronic media where the face of the victim is blurred but the faces of her relatives, her neighbours, the name of the village etc. is clearly visible. This also amounts to disclosing the identity of the victim. We, therefore, hold that no person can print or publish the name of the victim or disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large."

38. The finally in Paragraph 50.1 the Hon'ble Supreme Court was pleased to direct-

"No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the

victim being identified and which should make her identity known to the public at large."

39. In *Lalit Yadav v. State of Chhattisgarh* : (2018) 7 SCC 499, the Hon'ble Supreme Court held as follows:—

2. *We, however, notice from the judgments of both, the trial court and the High Court that the victim in the present case who was examined as PW2 has been named all through. Such a course is not consistent with Section 228-A IPC though the explanation makes an exception in favour of the judgments of the superior court. Nonetheless, every attempt should be made by all the courts not to disclose the identity of the victim in terms of said Section 228-A IPC. It has been so laid down by this Court in State of Punjab v. Ramdev Singh.*

3. *While dismissing the present matter, we direct the Registry of the High Court to place the record of the appeal in the High Court before the learned Judge for causing appropriate changes in the record including passing appropriate practice directions so that the trial courts in the State comply with the mandate and spirit of Section 228- A IPC.*

40. Subsequently in *Ravishankar Alias Baba Vishwakarma v. State of Madhya Pradesh* reported in (2019) 9 SCC 689, the Hon'ble Supreme Court was pleased to hold that the mandate of not disclosing identities of the victims of sexual offences should be followed by all courts including the Supreme Court. Keeping in view the social object of preventing social victimization or ostracisms of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of High Court or lower Court, the name of the victim should not be indicated. We have chosen to describe her as 'victim' in the judgment.

41. Section 33(7) of the POCSO Act not only directs the Special Court to ensure that the identity of the child is not disclosed in print electronic, social media etc. but also at any time during the course of investigation or trial. Thus, it is the duty of the Special Court under the POCSO Act to see that the name of the victim is never disclosed in course of investigation and if the same is disclosed, it is his statutory duty to stop such disclosure.

42. Unfortunately enough the name of the victim is disclosed by the defacto complainant in the written complaint. In the formal FIR her name is recorded in the relevant column where brief fact of the case is recorded by the Police Officer. During investigation her name is often recorded in her statements under Section 161 of the Code of Criminal Procedure and even under Section 164 of the Code recoded by the learned Judicial Magistrate. All such documents are supplied to the accused in compliance of Section 207 of the Code of Criminal Procedure. During trial victim's name is recorded on the deposition sheet. She is asked to put her signature on her deposition after the same being recorded. The copies of the said statements received by the accused in compliance of Section 207 of the Code of Criminal Procedure are transferred from hand to hand to the learned Advocate for the accused the law clerks and others. The name of the victim is also recorded by the Medical Officer in his Medical Examination Report. During trial the witnesses including the parents of the child unknowingly state the name of the victim and the trial court records such deposition without adhering to the dictum of Section 33(7) of the POCSO Act. While recording the evidence of the victim, her name is recorded on the deposition sheet and her signature or LTI is taken thereon. The certified copies of all such evidence is available not only to the accused but also to others on filing of an application and payment of requisite fees. Therefore, in spite of statutory protections and several guidelines of the Hon'ble Supreme Court, victim's name is not kept concealed. Finally all the documents, copies of evidence and exhibits are collated in the paper book of criminal appeal and while preparing such paper book the name of the victim is made

public to the employees of the court, the learned Advocates for the parties and Others

43. Therefore, in addition to solemn guidelines of the Hon'ble Supreme Court in the aforementioned cases, this Court is of the view that the following guidelines are to be issued for effective compliance of Section 33(7) of the POCSO Act:—

- i. The Officer-in-Charge of every police station shall ensure that in the written complaint the name of the victim girl shall not be stated. The victim girl shall be identified by her age, her father's name and other particulars sufficient to identify the victim during investigation without disclosing her name.
- ii. In the formal FIR and charge-sheet the name of victim girl shall not be stated by the Investigating Officer. On the other hand, she shall be described as "victim".
- iii. In the column of witnesses in the charge-sheet the victim girl shall not be referred to by her name but as "victim".
- iv. In her statement recorded under Section 161 of the Code of Criminal Procedure, the Investigating Officer shall not record the name of the victim. The said statement shall be referred to as "statement of the victim".
- v. Similarly, while recording the statement of the victim under Section 164 of the Code of Criminal Procedure, the learned Judicial Magistrate shall not record her name. On the other hand she shall record the statement as "the statement of the victim".
- vi. In order to identify the victim, she shall take help of the parents of the victim. He shall also endorse such identification of the victim by her parents at the top of the statement of the victim recorded under Section 164 of the Code of Criminal Procedure.
- vii. The Judicial Magistrate shall obtain the signature or LTI of the victim on a separate page after her statement is read over and explained to the victim by him. The signature of the victim along with the certificate of the learned Magistrate in separate page shall be kept separately in a sealed cover and the learned Special Judge shall be entitled to open the said sealed envelop, if necessary during trial.
- viii. In the deposition sheet of the victim girl, the learned Special Judge shall not record the name of the victim. He/she shall be identified as "victim" in the deposition sheet.
- ix. The signature of the victim witness in her deposition shall be taken by the learned Special Judge in a separate sheet and the said sheet of paper with signature and certificate by the learned Special Judge shall be kept in the record in sealed envelop. The Appellate Court shall open the envelop case of the identity of the victim girl being made an issue.
- x. In the judgment the name of the victim girl shall never be stated or recorded by the learned Special Judge.
- xi. The Medical Officer shall not record the name of the victim girl in the Medical Examination Document. On the other hand, the victim girl shall be identified as the "victim" in Medical Examination Report. Similarly, in forensic report victim's identity by taking her name is prohibited.

44. A copy of this judgment containing the above guidelines be sent to the Director General of Police, Government of West Bengal, Commissioner of Police, Calcutta and other Commissionerate in the State of West Bengal, Secretary to the Government of West Bengal, Department of Health and Family Welfare, Secretary Department of Women and Child Welfare, government of West Bengal, learned Sessions Judges in the State of West Bengal, Learned Special Judges under the POCSO Act for their information, compliance and adherence of the above guidelines forthwith.

45. The learned Registrar (Judicial Service), High Court Appellate Side Calcutta

shall circulate the copies of this decision to the above named authorities at the earliest.

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