

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Suvra Ghosh

C.R.A. 101 of 2006
With
C.R.A.N.1 of 2006
(Old C.R.A.N.No.1841 of 2006)

Sanjay Roy @ Madhu
-Vs-
State of West Bengal

Amicus Curiae : Mr. Sanjoy Bardhan.

For the State : Mr. Prasun Kr. Datta.
Ld. A.P.P.

Heard on : 10th September, 2020.

Judgment on : 10th September, 2020.

Joymalya Bagchi, J. :-

The appellant has been convicted for the offences punishable under Section 448 of the Indian Penal Code and Section 376 of the Indian Penal Code. He has been sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- in default simple imprisonment for 6 months for the offence punishable under Section 376 of the Indian Penal Code. No separate sentence was imposed punishable under Section 448 of the Indian Penal Code.

Nobody appears for the appellant. We are informed that the appellant has undergone the sentence in question.

Hence, the appellant is relevant so far as the legality of conviction is concerned.

Mr. Sanjoy Bardhan, learned Advocate is requested to assist the Court as amicus curiae.

We have considered the evidence on record particularly that of the victim girl, P.W.2. She deposed that on the fateful day i.e. 1st Aswin at about 11 a.m., she was in the house. Appellant came to the house and committed rape on her. She raised hue and cry. Bokul Sarkar, P.W.5 (uncle by village courtesy) came to the spot and apprehended the appellant. Her father Ali Mohammad (P.W.1) sought a village salish which, however, did not materialise. Accordingly, first information report was lodged. The victim was medically treated. Her statement was also recorded before the Magistrate, ext.1.

P.W.1, Ali Mohammad, father of the victim and the de-facto complainant has corroborated her version. He has proved the first information report in question.

P.W.5, Bokul Sarkar also corroborated the evidence of P.W.2, the victim. He deposed he apprehended the appellant red handed at the spot. Evidence of Bokul Sarkar, P.W.5 is corroborated by P.W.3, Gouranga Roy, P.W.4, Mofaidul Islam, P.W.6, Nur Alam Sarkar and P.W.7, Rabiul Haque.

P.W.11, Dr. Archanesh Roy Chowdhury held ossification test of the victim and opined that the victim was between 15 and 16 ½ years.

From the trend of cross-examination of prosecution witnesses particularly P.W.2, it appears that the defence of the appellant was that the version of forcible rape is improbable. It was contended the victim had not been raped as P.W.13,

Dr. Nitai Mukherjee who examined her did not find any injury on her body or private parts. Hymen was also intact.

I have given anxious consideration to such defence of the appellant. Evidence of the victim girl with regard to forcible sexual assault is corroborated by all the other witnesses particularly P.W.5 who arrived at the spot immediately after the incident and apprehended the appellant.

Medical examination of the victim was conducted four days after the incident. In view of the aforesaid circumstance, it is likely the medical expert did not find any injury due to lapse of time. That apart, absence of injury by itself is no ground to disbelieve a plausible version of a rape victim particularly when it receives corroboration from other quarters. It is trite law mere penetration is sufficient to prove the offence of rape. Hence, the rupture of hymen is not a *sine qua non* to prove the offence of rape.

In the light of the aforesaid discussion, I am inclined to uphold the conviction and sentence imposed on the appellant.

The appeal is accordingly dismissed.

In view of the above, application being CRAN 1 of 2006 (Old CRAN No.1841 of 2006) is also disposed of.

Fine amount, if paid, shall be remitted to the victim as compensation under Section 357 of the Indian Penal Code.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon him in terms of 428 of the Code of Criminal Procedure.

I record my appreciation for the able assistance rendered by Mr. Sanjoy Bardhan, learned Advocate, as amicus curiae in disposing of the appeal.

Copy of the judgement along with Lower Court Records be sent down to the trial court at once for necessary compliance.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties, as expeditiously as possible on compliance of all necessary formalities.

I agree.

(Suvra Ghosh, J.)

(Joymalya Bagchi, J.)