

**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. 111 of 2006

**Hamid Shekh @ Hanif Shekh & Anr.
-Vs-
State of West Bengal**

Amicus Curiae : Mr. Aniket Mitra

For the State : Mr. Sanjoy Bardhan

Heard on : 15.09.2020

Judgment on: 15.09.2020

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 20.12.2015 passed by the learned Additional Sessions Judge, Fast Track Court No.2, Bashirhat, North 24 Parganas, in Sessions Trial No. 2(2)00 arising out of Sessions Case No. 23(6)98 arising out convicting the appellants under section 376 read with section 34 of the Indian Penal Code and sentencing each of them to suffer rigorous imprisonment for ten years and to pay a fine of Rs.2,000/- each, in default, to suffer rigorous imprisonment for one year more.

Nobody appears for the appellants.

Mr. Mitra is requested to assist the Court as Amicus Curiae.

Mr. Bardhan appears for the State.

Prosecution case as alleged against the appellants is to the effect that the victim, P.W3 used to work as a nurse in South-end Polyclinic at Kolkata. On 31st January, 1994 while coming to work she met with an accident and suffered injuries. She, however proceeded to her place of work. At 10.20 P.M., on her way home she reached Laksmikantapur railway station. From the said railway station she found Motaleb, a van rickshaw puller but he refused to permit her to board his van. Hence, she was compelled to board the van of Hamid Sheikh, son of Sk. Sohan, appellant No.1. On the way two persons also boarded to the van of Hamid. At Sardarpara two persons and van driver, Hamid Sheikh raped her. She was medically treated in the village.

P.W.3 narrated the aforesaid version in Court.

She was extensively cross-examined but remained unshaken. She identified appellant no.2 in Court as well as during test identification parade.

P.W.5 medically examined her and found a tear in her hymen. He opined that she was capable of sexual intercourse but could not definitely opine whether she was raped or not.

The evidence of P.W.3 is clear, cogent and inspires confidence. She remained unshaken in cross-examination. It is trite law that a rape victim is akin to an injured witness and her version, if reliable, is sufficient to bring home conviction.

In the light of the aforesaid discussion, I am of the view that the conviction and sentence imposed on the appellants requires to be upheld.

Accordingly, the appeal is dismissed.

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

I record my appreciation for the able assistance rendered by Mr. Mitra as amicus curiae in disposing of the appeal.

Copy of the judgment along with L.C.R. be sent down to the trial court at once.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Suvra Ghosh, J.)

(Joymalya Bagchi, J.)