

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. 300 of 2019

Pradip Sarkar @ Pradip Das

@ Bolli @ Balti

-Vs-

State of West Bengal

For the Appellant : Mr. Sandipan Ganguly, Sr. Advocate.

For the State : Mr. Madhusudan Sur, Id. A.P.P.,
Mr. Anwar Hossain, Advocate,
Md. Kutubuddin.

Heard on : November 19, 2020.

Judgment on : November 19, 2020.

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 18.02.2017 and 21.02.2017 passed by learned Additional District and Sessions Judge, Fast Track Court-II, Sealdah in Sessions Trial Case No. 04(03)/2014 arising out of Sessions Case No.03(01) 2014 convicting the appellant for commission of offence punishable under Section 376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months more.

Prosecution case, as alleged against the appellant, is to the effect that the appellant is a friend of the son of the victim, an octogenarian lady. On the fateful

night of 16.7.2013 at about 12.30 a.m., he came to her residence and asked for water. Thereafter he told the victim to come outside and he would give her Rs.100/- which he owed to her son. The victim asked the appellant to hand over the money to her son. Thereafter he left the spot. After ten minutes, the appellant returned and broke into the room and committed rape on her. She suffered bleeding injuries. In the next morning, she narrated the incident to her neighbour. She was admitted in hospital and lodged first information report. Charge was framed under Section 376 of the Indian Penal Code against the appellant. Defence of the appellant was one of innocence and false implication. In the course of trial, prosecution examined 12 witnesses including the victim, P.W.3.

In conclusion of trial, the Trial Judge by the impugned judgement and order dated 18.02.2017 and 21.02.2017 convicted and sentenced the appellant, as aforesaid.

Mr. Sandipan Ganguly, learned Senior Advocate appearing for the appellant argued that the prosecution case suffers from patent improbabilities and/or absurdities. The genesis of the incident as well as the conduct of the victim is most unnatural. She did not raise hue and cry in the night when the incident occurred and waited till morning to disclose the heinous act to her neighbour (P.W. 6). P.W. 6, however, did not support the prosecution case. He further submitted that the bed-head ticket as well as the statement of the victim under Section 164 of the Code of Criminal Procedure has not been proved in accordance with law. F.S.L. report with regard to the vaginal swab was also not produced. He prayed for acquittal.

Mr. Madhusudan Sur, learned advocate appearing for the State submitted that the victim was an old lady and was stunned due to the brutal sexual

assault. As a result, she was unable to raise hue and cry immediately after the incident. On the next day he informed others and was admitted to hospital. Hence, the prosecution case is proved beyond doubt and the appeal is liable to be dismissed.

P.W. 3 is the victim and the prime witness. She has categorically narrated the incident in her deposition. She stated that the appellant was a friend of her son Sanjib and was well known to her. On 16.07.2013 at 12.30 hours he had come to her residence at 365D, Rail Quarter, Belgachia. He asked for water. She gave water to him. Thereafter, he left the room. After sometime he came back and asked her to come to the road for receiving rupees 100 on behalf of her son. P.W. 3 told the appellant that he might hand over the money to her son personally. Appellant left the spot. After ten minutes the appellant again came to the room. He shut out the lamp and forcibly committed rape on her. She suffered bleeding injuries. She was totally shattered and weak. On the next morning, she disclosed the incident to Jharna, P.W. 6 and one Vhagu. She was removed to the hospital. Police recorded her statement. They also seized her wearing apparels. She made a statement before the Magistrate. Evidence of P.W. 1 is corroborated by her son and daughter-in-law, P.W. 4 and 5 respectively. However, P.W. 6 Jharna has not supported the prosecution case was declared hostile.

P.W. 7, Dr. Rupali Modak examined the victim at the R.G. Kar Medical College and Hospital. Victim (P.W. 3) narrated the incident to P.W. 7. She did not notice any injury on the external genitalia and thigh. She, however, noticed blood stains on her sari and saya which were preserved. She proved the medical report.

P.W. 11 is the employee at R.G. Kar Medical College and Hospital who proved the bed-head ticket, Exhibit 2 series.

P.W. 12 is the investigating officer of the case.

I have analysed the evidence of P.W. 3, the victim. It appears that the appellant was known to the victim as a friend of her son. Taking advantage of his position he had come to her residence and raped her. Version of P.W. 3 is corroborated by P.W. 4 and P.W. 5, her son and daughter-in-law respectively, to whom she had narrated the incident.

P.W. 6, a neighbour, to whom the victim had also disclosed the incident was declared hostile. However, she has been extensively cross-examined with regard to her previous statement to police which divulges her prevaricating stance. Hence, I have strong reasons to believe that P.W. 6 had been won over and I find no justification to discard the convincing version of P.W. 3, the prosecutrix due to absence of corroboration of such untrustworthy witness.

Furthermore, P.W.3 had been admitted in hospital and medically treated for a couple of days. Such fact evident from the deposition of the doctor, P.W.7 and her relations (P.W. 4 and 5). P.W.11 proved the bed-head ticket, Exhibit 12 series. Bed-head ticket (Exhibit 12 series) had been admitted without objection. Hence, I am unable to accede to the contention of the learned senior counsel that the said documentary evidence cannot be looked into. Even if the contents of the exhibited documents are not taken into consideration, there are ample oral evidence on record to prove that the victim had been admitted and treated at R.G. Kar Medical College and Hospital for three days after the incident.

It is also relevant to note that P.W.7 found sari and saya of the victim stained with blood. In the backdrop of such clinching evidence, non-production of FSL report of the vaginal swab is of little significance.

Hence, I am inclined to hold that the prosecution has been able to prove its case beyond doubt. Conviction of the appellant is accordingly upheld.

Coming to the issue of sentence, I note that the appellant has been awarded the maximum sentence of life imprisonment. No doubt, the offence was perpetrated on a defence less octogenarian lady. However, there is no material on record that the appellant has criminal antecedents. Balancing the aggravating and extenuating circumstances, I am of the opinion interest of justice would be served ameliorating the maximum sentence imposed on the appellant to some extent.

Accordingly, I direct the appellant shall suffer rigorous imprisonment for ten years and shall pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months more.

With the aforesaid modification on the score of sentence, the appeal is disposed of.

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.

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.)