

**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. 353 of 2006

**Amod Ali Gazi
-Vs-
State of West Bengal**

Amicus Curiae : Mr. Bitosak Banerjee

For the State : Mr. Swapan Banerjee
Ms. Purnima Ghosh

Heard on : 10.09.2020

Judgment on : 10.09.2020

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 30.03.2006 and 31.03.2006 passed by the learned Additional Sessions Judge, Fast Track Court No.2, Bashirhat, North 24 Parganas, in Sessions Case No. 31(5) of 2004/ Sessions Trial No. 9(8) of 2004 convicting the appellant for commission of offence punishable under Sections 363/366/376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for one month more for the offence punishable under Section 363 of the Indian Penal Code, to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for two months more for the offence punishable under Section 366 of the Indian Penal Code and to suffer rigorous imprisonment for

eight years and to pay a fine of Rs.3,000/-, in default, to suffer rigorous imprisonment for six months more for the offence punishable under Section 376 of the Indian Penal Code. All the sentences to run concurrently.

No one appears for the appellant. Mr. Banerjee is requested to assist the Court as Amicus Curiae.

Heard the Amicus Curiae and the learned lawyer for the State.

Victim and the star witness in the present case is P.W.2. She deposed that the appellant approached her on 08.05.2003 around 9 A.M. at her father's house. He promised to marry her off to a rich person. Accordingly, she left her house with the appellant. She was taken to Kolkata and kept in a relatives' house of the appellant. In that house she was forcibly ravished against her will repeatedly for 4/5 days. Thereafter the appellant took her to Canning where she met one of her relations, namely, Jamsed. She narrated the unfortunate incident to him and asked him to inform her father. Appellant kept her detained at Canning for 10/15 days. She was again raped by the appellant. Finally, she recovered on 12.08.2003 from the house of appellant at Boldepota in Canning. She made statement before Magistrate. She was 15 years old at that time of the incident. Upon recovery, she was examined by Dr. Banani Ghosh (P.W.6) who found the following injuries:-

- "1. Ruptured Hymen;
2. Mild vaginal abrasion fourcette."

Apart from the aforesaid medical evidence, version of the victim, P.W.2 is corroborated by her father, P.W.1. He deposed that he had lodged a missing diary when he found the victim missing. Subsequently, he came to know that the victim had been kidnapped by the appellant and lodged F.I.R. Police recovered the victim.

P.W.3, the mother of the victim and P.W.4 a neighbour corroborated the evidence of P.W.1. Hence, the evidence of P.W.2 regarding rape receives ample support not only from medical but also from the mouths of other witnesses.

It has been argued that the statement of P.W.2 suffers from various embellishments when compared to her earlier statement to police and Magistrate. I have assessed the evidence in the light of the aforesaid submission. Although there may be some variation with regard to reason why she had accompanied the appellant, crux of her evidence regarding forcible rape remains consistent in all the versions. Hence, the purported variations do not affect the substratum of the prosecution case.

In the light of the aforesaid discussion, the conviction and sentence imposed on the appellant is upheld.

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.

Accordingly, the appeal is dismissed.

I record my appreciation for the able assistance rendered by Ms. Khan 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.)