

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. 523 of 2005

Ramjan Mollah @ Raju

-Vs-

State of West Bengal

Amicus Curiae : Mr. Aniket Mitra.

For the State : Ms. Sukanya Bhattacharya,
Mr. Mirza Firoj Ahmed Begg.

Heard on : 15th September, 2020.

Judgment on : 15th September, 2020.

Joymalya Bagchi, J. :-

The appellant has challenged his conviction and sentence in respect of offence punishable under Section 376(2)(f) of the Indian Penal Code.

Nobody appears for the appellant.

Mr. Aniket Mitra, learned Advocate is requested to assist the Court as amicus curiae.

Prosecution case is to the effect that the victim girl, P.W.11, aged about 8 years had been taken away by the appellant on the pretext of giving her lozenges while she was playing in a bamboo grove near her residence. Appellant took her to a cow shed and committed rape on her. She narrated the incident to her grand mother, P.W.3. Her father, P.W.10 lodged first information report. She was treated at Chanditala Hospital where P.W.9 found a bruise mark around the vagina and injury in the labia minora. In the course of investigation, she was medically examined by P.W.12 who also found injuries in her private parts.

I have examined the evidence of P.W.11 who unequivocally stated that the appellant had taken her away while she was playing in the bamboo grove and after taking her to a deserted cowshed had committed rape on her. Blood started oozing out of her private parts. She returned home and informed her mother and grand mother. She was taken to a nearby hospital where she was medically treated. She made a statement before the Magistrate under Section 164 of the Code of Criminal Procedure. She also stated that she was examined by a Doctor at Serampore Hospital. Evidence of the victim is corroborated by her mother and grand mother i.e. P.W.2 and P.W.3 respectively. Other relations including P.W.10, her father and the de-facto complainant also corroborated her version. Medical evidence of P.W.9 and P.W.12 show that the victim had been subjected to penetrative sexual assault. Age of the victim has been established through the evidence of P.W.4, Headmaster of Naity South Primary School where she studied and P.W.5, Prodhan of Naity Gram Panchayet. They proved the documents with regard to date of birth, Exts.2 and 4.

P.W.8, a Radiologist held ossification examination of the victim and opined that she was aged between 6 to 9 years, Ext.7.

From the aforesaid evidence, the prosecution case has been proved beyond reasonable doubt.

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

The appeal is, accordingly, dismissed.

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 section 428 of the Code of Criminal Procedure.

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

Copy of the judgment 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.)