

**Form No. J(1)**

**IN THE HIGH COURT AT CALCUTTA**  
CRIMINAL APPELLATE JURISDICTION  
APPELLATE SIDE

Present:

**The Hon'ble Justice Joymalya Bagchi**  
**&**  
**The Hon'ble Justice Suvra Ghosh**

**C.R.A. 567 of 2006**

**Nilu Santra**  
**-vs-**  
**The State of West Bengal**

For the Appellant : Mr. Sabir Ahmed (Amicus Curiae)

For the State : Mr. Saibal Bapuli  
Ms. S Santra

Heard on : 10.09.2020

Judgment on : 10.09.2020

**Joymalya Bagchi, J.:**

Appellant has been convicted for commission of offence punishable under Section 376 of the Indian Penal Code and sentenced to suffer imprisonment for 10 years and to pay fine of Rs.5,000/- in default, to suffer rigorous imprisonment for six months more.

Nobody appears for the appellant. Mr. Sabir Ahmed is requested to assist the Court as amicus curiae.

Heard the amicus curiae and the learned lawyer for the State.

PW 11 is the victim and the principal witness in the instant case. She deposed that she had gone to see a video show in front of her house along with the appellant. Her daughter Srabani Gharai, PW 17 had accompanied them. Thereafter, she returned home and her daughter went to sleep. She went outside to answer nature's call and found the appellant standing in front of the door. Appellant abused her and asked her to accompany him. She threatened the appellant that she would report him to his wife. Thereafter the appellant showed her a knife and threatened to kill her daughter. She begged the appellant for mercy. However, the appellant dragged her inside the house, tied her hands behind her back and committed rape on her. She called her daughter and asked her to bring help. Rita Biswas, P.W 1 a neighbour came to the spot. She narrated the incident to Rita. Local people assembled at the spot and the appellant was apprehended. He stated that he had sexual intercourse with her in lieu of money. Victim was taken to hospital where she was admitted for six days.

P.W.1, Rita Biswas lodged complaint with police station resulting in registration of FIR. Though she was declared hostile, she admitted her signature on the written complaint. Victim made statement before magistrate under section 164 Cr.P.C.

Other local witnesses, namely, P.Ws. 2 to 9 were also declared hostile and have not supported the prosecution case. But P.W.16,

daughter of the victim, corroborated her mother and stated the appellant had committed rape on her. She deposed that she had woken up at the time of incident, but due to fear she remained silent. PWs. 15 and 16 took the victim to the hospital.

The evidence of the mother and child is most natural and not only finds inter-se corroboration, but sustenance from the medical evidence on record, P.W.12, Dr. Debasish Bhattacharyya and P.W.20, Dr. T. K. Naskar who treated the victim at Burdwan hospital. P.W.20 found various injuries in her private parts. He proved his report (Exhibit 5). He opined victim had been raped. He further clarified that the victim had not told him that her vagina was cut by a knife. Further opinion with regard to the cause of injury was obtained from P.W.10, Dr. B. N. Kahali. Hence, medical evidence on record clearly establishes beyond doubt the brutal force with which the victim was raped resulting in severe injuries. Act of the appellant is a ghastly one.

It is trite law that the raped victim is akin to an injured witness. Her evidence is to be assessed with due care and sensitivity. In the present case the evidence of the victim with regard to the brutal rape receives corroboration not only from her daughter but also from medical evidence. Hence, lack of support from other witnesses is not fatal to the prosecution case.

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

The appeal is 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. Sabir Ahmed 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.)**

tkm/ardr