

**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. 731 of 2005

**Bapi Majumdar
Vs.
State of West Bengal**

Amicus curiae : Ms. Sukanya Bhattacharyya
Mr. M.F.A. Begg

For the State : Mr. Aniket Mitra

Heard on : 15.09.2020

Judgment on : 15.09.2020

Joymalya Bagchi, J. :

This appeal is directed against the judgment and order of conviction and sentence on the score of 376(2)(g) and 366 of the Indian Penal Code. Appellant has been sentenced to suffer rigorous imprisonment for ten years and pay a fine of Rs. 10,000/-, in default, to suffer rigorous imprisonment for six months for the offence punishable under Section 376(2)(g) of the Indian Penal Code and to suffer rigorous imprisonment for five years and pay a fine of Rs.2,000/-, in default, to

suffer rigorous imprisonment for three months for the offence punishable under Section 366 of the Indian Penal Code. Both the sentences are to run concurrently. Fine amount, if realised, shall be paid to the victim as compensation.

None appears on behalf of the appellant.

Ms. Sukanya Bhattacharyya is requested to assist the court as Amicus Curiae.

PW 2 is the victim girl. She deposed that she was 14-15 years at the time of incident. On the date of the incident the appellant along with Laltu and Santosh gagged her mouth and dragged her into a house under construction. Appellant Babi along with others committed rape on her. She identified accused persons in court. They took her to various places for 3-4 days. She met her uncle Baburam and narrated the entire incident to him. She also narrated the incident to her parents. She recorded the statement before the Magistrate. She was medically examined.

PW 5 examined the victim girl. He noticed tear in the hymen of the girl. In court, he explained that sexual intercourse may take place in various manners and, therefore, he had given opinion that he is incapable whether the victim was raped or was capable of sexual intercourse.

PW 11, radiologist, held ossification test of the victim and opined that the victim was between 16-17 years at the time of the incident. He proved his report, Exhibit-6.

Appellant examined himself along with his mother as defence witnesses. He produced a medical certificate to prove his age, Exhibit-A. It appears that the appellant was aged about 20 years at the time of the incident.

Having considered aforesaid evidence on record, I have no reason to disbelieve the clear, cogent and succinct version of the victim relating to gang rape. PW 7 examined the victim within 72 hours and found tear in her hymen corroborating a case of forcible sexual intercourse. Medical witness also explained away his apparently inconsistent opinion and stated that he had responded to a theoretical question. Sexual intercourse of a victim is to be determined in the factual matrix of each case.

In the light of the aforesaid discussion, I uphold the conviction and sentence of the appellant, as aforesaid.

The appeal is, accordingly, dismissed.

The period of detention, if any, undergone by the appellant during the period of investigation, enquiry and trial shall be set off against the substantive sentence, as aforesaid, in terms of Section 428 of the Code of Criminal Procedure.

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