

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 49 of 2011

Bachu @ Dhananjay Soren

-Vs-

State of West Bengal

For the Appellant : Mr. Kaushik Gupta, Adv.
Ms. Sreyashee Biswas, Adv.

For the State : Ms. Anasuya Sinha, Adv.
Mr. Pinak Kumar Mitra, Adv.

Heard on :10.12.2021

Judgment on :10.12.2021

Joymalya Bagchi, J. :-

Appellant was called upon to answer the following charge:

“That you, on or about the 4th day of July, 2004, corresponding to the 19th day of Asar 1411 B.S. at Sanyapara, P.S. Belda District Paschim Medinipur, committed rape on a woman, to wit, Puja @ Muni Soren, when she was under twelve years of age, and thereby committed an offence punishable under Section 376(2)(f) of the Indian Penal Code and within the cognizance of this court.”

Prosecution case was initiated on the basis of a written complaint lodged by P.W. 2, father of the victim girl, who was about 3½ years old at the time of the incident. On the basis of his complaint, first information report being Belda P. S. Case No. 80 of 2004 dated 5th July, 2004 under Section 376(2)(f) was registered for investigation. Charge-sheet was filed and charges, as aforesaid, was framed against the appellant. Appellant pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined seventeen witnesses and exhibited a number of documents. In conclusion of trial, learned Trial Judge, by impugned judgment and order dated 9th December, 2010 and 10th December, 2010 convicted the appellant for commission of offence punishable under Section 376(2)(f) of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life.

Mr. Gupta, appearing with Ms. Biswas on behalf of the appellant, submits that the victim girl had not been examined. None of the witnesses including parents of the victim girl stated that the allegation of rape was disclosed by her to them. Extra-judicial confession of the appellant is to be taken with a pinch of salt, as such fact is singularly absent in the first information report. Accordingly, they pray for acquittal of the appellant.

Ms. Sinha, appearing with Mr. Mitra on behalf of the State argues that evidence on record particularly that of the parents and other family members of the victim girl is corroborated by the neighbours as well as medical evidence. Minor victim had been taken away by the appellant and thereafter was found senseless with injuries in her private parts. Medical evidence also establishes a case of forcible intercourse of the minor. Appellant made extra-judicial confession admitting his guilt. Hence, appeal is liable to be dismissed.

P.W.2 is the father of the victim girl. He deposed victim was aged about 3 ½ years at the time of the incident. On the day of the incident around 7 p.m. appellant took away the victim girl with an offer of sweet meat. They did not return till 8/9 p.m. PW 1 started searching of the missing girl. Finally the girl was found in senseless condition. When the appellant was accosted, he confessed his guilt. Victim was taken to local doctors PW 9 and 10 who treated her. Thereafter, she was shifted to Nakurseni hospital and treated by PW 14 and at Midnapur Medical College and Hospital where she was treated by PW 16. He lodged written complaint which was scribed by Bankim Chandra Pahari, PW 1. He proved the written complaint Ext 1. He was extensively cross examined but his evidence remained unshaken. Pw 6 is the mother of the victim girl. She has

substantially corroborated the evidence of her husband PW 2. PW 5, grandmother and PW 3 grandfather by village courtesy of the victim have also corroborated the evidence of PW 2. Co-villagers namely PWs 4, 7 and 8 also supported the prosecution case.

From the evidence of the parents of the minor victim it is clear that the minor had been taken away by the appellant at 7 p.m. from the haria-bhati (country liquor shop). Thereafter, she was untraceable. Finally, she was found in senseless condition in the residence. Blood was oozing from her private parts.

Medical evidence has come on record corroborating the prosecution case. PW 9, a local quack doctor first examined the victim. He found nail injuries on the arms and legs of the minor. He applied medicine. Thereafter the victim was treated by PW 10, a homeopathy doctor. He found blood oozing from the vagina and nail marks on various parts of body. In view of the nature of injury, he referred the victim to a government hospital. PW 14 was the medical officer attached to the Nakurseni Christian hospital and treated the victim in the said hospital on 05.07.2004. On examination, he found blood stains in her genitalia. We noted rupture of hymen. He found scratch injuries on both upper limbs. Victim complained of pain during urination. He proved the medical report, Ext 6. The victim was subsequently referred to a superior Medical College and

Hospital and discharged. PW 14 proved the discharge certificate, Ext 7. PW 16 is the medical officer who examined the victim at Midnapur Medical College and Hospital. He found hymen was partially torn. He, however, did not note injuries in her private parts. He proved the medical report Ext 9. He proved the opinion of Dr. Apurba Karan Nandi (Ext 10/1) who opined it is possible victim was raped. From the medical evidence on record particularly the evidence of PW 10, 14 and the opinion of Dr. Apurba Karan Nandi it appears that the victim had been subjected to rape. The appellant had been last seen with the victim. Soon thereafter, the victim was found in a senseless condition with injuries. PW 10 who treated the victim found blood oozing from the private parts on 04.07.2004. On 05.07.2004, PW 14 who examined the victim at Nakurseni Christian hospital noted blood stains in her genitalia. The victim also complained of pain during urination. Although no obvious injury was noted by PW 16 at Midnapur Medical College and Hospital, Dr. Apurba Karan Nandi upon assessing the totality of circumstances opined it is most probable that the victim had been subjected to sexual intercourse. Victim is a 3½ years child. She was unable to narrate the unfortunate incident which resulted in her painful injury and bleeding from her private parts. As discussed earlier, appellant had been last seen with the victim prior to her being found

in senseless condition with injuries. Appellant upon confrontation, admitted his guilt before PW 2 and others. It has been argued that such admission of guilt is not reflected in the FIR. Even if, such admission is discounted as embellished, no explanation is forthcoming from the appellant with regard to circumstances in which the victim suffered bleeding injuries in her private parts which was caused due to sexual intercourse as per medical evidence. Hence, we are of the opinion that the aforesaid circumstances in the present case gives rise to the irresistible inference that it was the appellant who had ravished the victim resulting in bleeding injuries in her private parts.

Accordingly, I uphold the conviction recorded against the appellant.

Coming to the issue of sentence, I note though the offence is a heinous one perpetrated upon a minor victim, it is pertinent to note that the appellant does not have criminal antecedents. Appellant has already suffered incarceration for more than 13 years.

Balancing the aforesaid aggravating and mitigating factors, I consider it prudent to modify the maximum sentence of life imprisonment upon the appellant and I direct that the appellant shall suffer rigorous imprisonment for 14 years and to pay a fine of Rs. 5,000/- in default to suffer rigorous imprisonment for six months more.

With the aforesaid modification as to 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.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

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