

24.08.2021
Court No.42
Item No.5
SB

CRA 104 of 2017

Laxman Karmakar
Vs
The State of West Bengal & Anr.

Mr. Sujan Chatterjee, ... amicus curiae

Mr. S.G.Mukherjee, Ld. P.P.
Ms. Debjani Sahoo ... for the State

Mr. Sujan Chatterjee, learned advocate on record who had preferred this appeal on behalf of the appellant convict undergoing sentence is present and submits that his client had taken no objection from him.

It appears from the order sheet that one Mr. Kazi Safiullah with Mr. Prasanta Kumar Das, learned advocates had appeared for the appellant but without filing any Vokatnama and none has made any appearance on repeated call.

Pursuant to the order dated 17.08.2021, learned Registrar Administration (L & OM) has placed note with regard to the removal of defects in the exhibit list of the original case records in connection with the Sessions Case No. 132 of 2013 corresponding to Sessions Trial No. 4 (7)/2013. The report of Superintendent of Dum Dum Central Correctional Home dated 20.08.2021 which reflects that Laxman Karmakar son of Sudhir Karmakar was released from custody on 01.04.2021 after payment of fine as per the order dated 31.03.2021 of learned Additional District and Sessions Judge, 3rd Court, Barrackpore, North 24 Parganas which is

also in the docket to reveal that the fine amount of Rs.10,000/- was deposited. Thus, it appears that the appellant has served out the sentence.

On request of this Court, Mr. Sujan Chatterjee, learned advocate on record now present before this Court submits on the merit of the case, although, he has relinquished his responsibility for the appellant. However, as Amicus Curiae he is permitted to address the Court on merit.

By the impugned judgment the appellant was found guilty of the offence under Sections 376(2)(f)/511 of the Indian Penal Code and was convicted thereunder and was sentenced to undergo rigorous imprisonment for period of five years and also to pay a fine of Rs.10,000/-, in default, to simple imprisonment for another six months. The direction was also given for set off of pre-trial detention undergone by the appellant and that 75% of the fine if realised would be given to the victim girl as compensation under Section 357(1) of the Cr.P.C.

The appellant on being aggrieved by and dissatisfied with the impugned judgement preferred this appeal *inter alia* on the ground that the F.I.R. does not find corroboration by its maker and secondly that the impugned order of conviction and sentence is without appreciation of the evidence on record which has prejudiced the appellant. It is also submitted that the prosecution never produced the article seized during trial and the seizure witnesses were never confronted and that the prosecution case is highly improbable as the victim was not taken to any doctor from the period of 15.10.2012 to

29.10.2012 and the medical evidence adduced by the doctor (PW6) is in departure from the evidence of the victim girl.

I have considered the submission so made by the Amicus Curiae but on appraisal of evidence on record in totality, more particularly, the evidence of the victim girl (PW3) and her statement before the Additional Chief Judicial Magistrate, Barrackpore on 28.10.2012 recorded under Section 164 of Cr.P.C. taken together with the evidence of doctor (P.W.6), this Court is fully convinced that prosecution has been able to substantiate the charge leveled against the appellant-convict beyond reasonable shadow of doubt. Thus, having heard learned Amicus Curiae appearing for the appellant and Ms. Debjani Sahoo, learned Advocate for the State, this Court finds no ground in this appeal to interfere with the impugned judgment of conviction and sentence.

Since, the appellant has already served out the sentence and released thereof upon payment of fine amount, the criminal appeal being C.R.A. 104 of 2017 is hereby dismissed and disposed of with a direction to the learned Trial Court to remit 75% of the deposited fine amount to the victim girl.

Let the Lower Court Records together with a copy of this judgement be sent down to the learned Trial Court for information and necessary note in the Sessions Register and for doing the needful.

(Shivakant Prasad, J.)