

Form No. J(1)

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Krishna Rao

C.R.A. 127 of 2019

***Sohan Singh Yadav @ Banti @ Laltu
-Vs-
State of West Bengal***

For the Appellant : Mr. Amitabha Karmakar, Adv.
Mr. Arup Kr. Bhowmick, Adv.

For the State : Mr. Abhra Mukherjee, Adv.
Mr. Dipankar Mahato, Adv.

Heard on : 01.12.2021

Judgment on : 01.12.2021

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 10.10.2018 and 11.10.2018 passed by the learned Additional Sessions Judge, First Track Court, Haldia in S.T. no. 1/2017 arising out of Sessions Case No.07(11)/2016 convicting the appellant for commission of offence punishable under Section 376 of the Indian

Penal Code and sentencing him to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for six months more.

The case depicts a sordid incident of penetrative sexual assault on a septuagenarian lady with hearing impairment. On the night of 16.6.2016 while all other family members had gone out to celebrate Manasa Puja, it is alleged that the appellant entered the room of the victim (PW 9) and forcibly committed rape on her. In the early morning of 17.6.2016 when the family members returned from the celebrations, they found the victim lying with bleeding injury. She narrated the incident to her son-in-law, Subhash Chandra Kotal and others implicating the appellant. Subhash Chandra Kotal (PW 1) lodged complaint resulting in registration of Case No. 258 of 2016 dated 16.6.2016 under section 376 IPC. Victim was admitted to hospital with injuries in her private parts and treated. With the help of interpreter (PW 10), her statement was recorded before the police and Magistrate. In conclusion of investigation, charge-sheet was filed. Charges were framed under Sections 376/506 of the Indian Penal Code and the appellant pleaded not guilty and claimed to be tried. In course of trial prosecution examined 12 witnesses (including the victim lady). The defence of the appellant was one of innocence and false implication. In conclusion of trial, learned trial judge by the

impugned judgment and order convicted and sentenced the appellant, as aforesaid.

Mr. Karmakar, learned Counsel appearing for the appellant argues that the evidence of the victim with regard to rape suffers from various contradictions and does not inspire confidence. Opinion of doctor (PW 7) is not conclusive with regard to rape. He further submits that the appellant had been falsely implicated by PW 1 son-in-law of the victim in order to grab his land. Hence, the conviction is liable to be set aside.

On the other hand, Mr. Mukherjee, learned Counsel appearing for the State submits that the evidence of the victim lady is corroborated by other independent witnesses. PW 7, doctor found injury on her private part of the victim. Possibility of such injury due to fall is most improbable as there are no other marks of injury on the body of the victim. Thus, the appeal is liable to be dismissed.

P.W. 9 is a septuagenarian lady who suffered from hearing impairment. In the course of investigation she had been examined with the help of an interpreter, PW 10. However, for reasons best known to the prosecution, assistance of the interpreter was not taken while recording her deposition in court. Be that as it may, trial judge has recorded the victim's deposition wherein she unequivocally stated that on the fateful night the appellant had entered her house and

committed rape upon her. He had also demanded money. She cried out in pain. The appellant had also been identified by the victim in court. In cross examination, the victim denied the suggestion that she had suffered injury due to fall. Evidence of the victim is corroborated by her son in law, PW 1 who is also the informant in the case. PW 1 deposed all of them had gone to celebrate Manasa Puja and the victim was alone in the house. On returning from the celebration they found the victim in bleeding condition and the victim narrated the incident to them. He lodged written complaint, Ext 1. He has also signed on the seizure list. The victim was admitted in hospital. Statement of the victim was recorded with the aid of interpreter. In cross examination, he has squarely denied suggestion that the appellant was falsely implicated in order to snatch land belonging to him.

PW 3 is the second wife of the husband of the victim and PW 5 is her son. Both of them have corroborated the evidence of the victim with regard to sexual assault by the appellant. PW 2 is a neighbor and independent witness. She had also gone to attend the Manasa celebration. She came to the house of the victim on the next day and the victim narrated the incident to her.

From the aforesaid evidence on record it appears that the victim had narrated the incident of rape upon her by the appellant at the earliest opportunity to her relations including the neighbour, PW2.

Apart from the said corroboration, evidence of PW 7, doctor shows that the victim suffered injury on the lower portion of vagina with bleeding and required surgical intervention. Relying on the opinion of the doctor that there was uncertainty whether the victim had been raped or not as such injury may be caused due to trauma or accident, it is argued that the prosecution case has not been proved. Evidence of a medical expert is in the nature of opinion evidence and cannot override the clear and unequivocal version of a rape victim. It is trite law that the evidence of a rape victim is to be treated at par with that of an injured witness. PW 7 found injury on the lower portion of the vagina with bleeding which corroborates the allegation of sexual assault resulting in bleeding injury as narrated by the victim. Possibility of such injury being caused due to fall is in the realm of conjecture and appears to be most improbable as the victim, an old lady, did not consistent and corroborated version of the victim, PW 7 and suffer any other injury on her body which would have ordinarily occurred in the event of a fall.

Thus, I am of the opinion that the prosecution case is proved beyond reasonable doubt.

Conviction and sentence recorded against the appellant is accordingly upheld.

The appeal is, accordingly, dismissed.

The period of detention suffered by appellant during investigation, enquiry or trial shall be set off under Section 428 of the Code of Criminal Procedure.

Copy of the judgment along with LCR be sent down to the trial court at once for necessary compliance.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree

(Krishna Rao, J.)

(Joymalya Bagchi, J.)

Tkm/PA