

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRA 161 of 2017

**Tarakeswar Singh
-Versus-
The State of West Bengal & Anr.**

**For the appellant : Mr. Asis Bhattacharya,
Mr. Biswajit Mitra,**

**For the State : Mr. Saswata Gopal Mukherjee,
Ms. Sayanti Santra**

Heard & Judgement on : 21.01.2021.

The instant appeal is directed against the judgment and order of conviction and sentence dated 3rd February, 2017 passed by the learned Additional Sessions Judge, 2nd Court, Sealdah, South 24-Parganas in Sessions Trial No. 8 (3) 2012/ Sessions Case No. 10 (7)2011 whereby the appellant was held guilty for committing offence under Section 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 30,000/- in default, to suffer simple imprisonment for three months.

Prosecution case, in brief is that on 2nd June, 2009 one Smt. Joyati Debi made a statement before the Police Officer attached to Beniapukur Police Station stating, *inter alia*, that her younger

daughter, aged about 15 years at the relevant point of time used to visit the adjacent house owned by the appellant. She performed certain household works in the said house and they used to provide some food to her.

The name of the owner of the said house is Tarakeswar Singh to whom the younger daughter of the informant (hereinafter called as the victim girl) used to call "Barobaba". It was further stated by the de facto complainant that her said daughter was suffering from fever for last one and half months prior to lodging the complaint. She also stopped going to the house of the said Tarakeswar Singh. When her mother asked her as to why she stopped going to the house of Tarakeswar, she informed her that the said Tarakeswar Babu scolded her on certain disputes over purchase of "Singara" from a local shop. As the victim girl was suffering from fever she was medically treated by a local Doctor. Subsequently, she was brought to National Medical College and Hospital for medical treatment. At that time she disclosed to her mother for the first time that about one and half months ago when she last visited the house of Tarakeswar Singh, the accused in the absence of his wife abused her and attempted to insert penis in her vagina. He tried to commit such act on number of occasions. The victim girl cried out in pain but Tarakeswar frightened her saying that if she would state the incident to anybody, the accused will commit further

harm to the victim girl. Informant inform the incident to local people, namely, Manju Sarkar and Rina Mahapatra.

On the basis of the aforesaid complaint police registered Beniapukur Police Station Case No.235 of 2009 dated 2nd June, 2009 under Section 376/511 of the Indian Penal Code and took up the case for investigation.

On completion of investigation, police submitted charge-sheet against accused Tarakeswar Singh under Section 376 of the Indian Penal Code.

The accused duly appeared before the learned Trial Judge to face trial. On his plea of innocence to the charge framed against him under Section 376 of the Indian Penal Code on 6th November, 2013, trial of the case commenced.

It is found from the lower court records that prosecution examined 11 witnesses to bring home the charge against the appellant.

The accused also examined himself as D.W.1.

On conclusion of trial, the learned Additional Sessions Judge, 2nd Court at Sealdah held the appellant guilty for committing offence under Section 376 of the Indian Penal Code and accordingly convicted and sentenced him to suffer imprisonment and also to pay fine. Details of sentence has already been recorded hereinabove.

The appellant has preferred the instant appeal assailing the said judgment and order of conviction and sentence passed by the learned Trial Judge on 4th February, 2017.

Learned Advocate for the appellant submits that the victim girl was examined during trial of the case as P.W.2. In her evidence she stated that while she was working in the house of the accused, he used to take her to an empty room every day and opened her garments, molested her and pressed his private part into her private part and tried to insert it inside her private part. Occasionally, he inserted his penis into the private part of the victim girl. She raised protest but the accused person used to threaten her saying that he would make her pregnant. Such incident continued for many days. However, she could not disclose the incident out of fear to anybody.

Learned Advocate for the appellant specially draws my attention to the evidence of the victim girl where she stated that she became pregnant as a result of being ravished the appellant. She also stated that when she was medically treated, she came to know that she was pregnant. However, prosecution has failed to produce any document in support of the prosecution case that the victim girl became pregnant as a result of repeated sexual abuse committed by the accused upon her.

In order to substantiate his argument further, learned Advocate for the appellant takes me to the medical examination report conducted and prepared by Dr.Molly Banerjee (P.W.3) which was marked as Exht.1 during trial of the case.

It is pointed out by the learned Counsel for the appellant that the Doctor who conducted medico-legal examination of the victim girl found old

healed tear at 6'O clock position of the victim. According to the learned Advocate for the appellant, the victim was habituated in sexual intercourse. Presence of old, healed rapture of hymen suggests that the victim was not abused in recent past. Therefore, allegation against the present appellant of committing rape upon her does not arise at all.

He next takes me to the evidence of P.W.1 who is the mother of the victim girl and the informant of the case. In her evidence she stated that Arati disclosed the incident for the first time to her when she was being taken to hospital by her for her medical treatment. It is also stated by her that she was suffering from fever, vomiting and loose motion for about one and half months prior to the date when she was taken to hospital. On the way to hospital the victim for the first time disclosed the incident to her mother. She also stated on oath that she narrated the incident to two other women, named, Maya and Mangali. The said Mangali @ Manju Sarkar was examined by the prosecution as P.W.5. No witness, named Maya was examined during trial of the case.

From the evidence of P.W.5, it is ascertained that the victim girl became seriously ill about six years prior to date of her examination-in-chief. P.W.5 accompanied the victim girl and her mother to hospital. The victim girl was admitted to hospital. Subsequently, the mother of the victim girl told P.W.5 that her daughter was raped by the accused and for this reason, she was admitted to hospital.

The learned Advocate for the appellant has also pointed out that one Rina Mahapatra was examined as P.W.8. However, P.W.1 did not tell about presence of Rina Mahapatra at any point of time. Therefore, her evidence cannot be considered.

Thus, it is submitted by the learned Advocate for the appellant that the victim girl did not state the incident to anybody, even to her mother immediately after the occurrence. Secondly, it was claimed by the victim girl that she became pregnant as a result of sexual abuse and due to her untimely pregnancy, she was admitted to hospital. The medical examination report does not support the allegation of pregnancy of the victim girl at the relevant point of time. There is absolutely no evidence that she was either aborted or gave birth to a child. On the other hand, it is ascertained from the bed head ticket (Exhbt.6 series) that at the relevant point of time, the victim girl suffering from fever and dry cough. She was discharged from the hospital after 16 days of her admission.

It is further submitted by the learned Advocate for the appellant that the accused used to stay in a two room flat. In one room the accused stays with his wife, in another room his married son, son's wife and his grand-son used to live at the relevant point of time. There is no other room in the house of the appellant. Therefore, it is absolutely a cock and bull story that the victim girl was taken to an empty room for a considerable period of time and the accused used to molest her and ravish her sexually.

Last but not the least, the learned Advocate for the appellant draws my attention to the relevant portion of the evidence of P.W.5, Manju Sarkar, who in her cross-examination candidly admitted that the appellant is a reputed person of the locality. He was a teacher and homeopathic doctor. He used to treat the people of the locality.

According to the learned Advocate for the appellant, the appellant was falsely implicated in a case under Section 376 of the Indian Penal Code as there was a dispute between him and the mother of the victim girl over payment of money for the work done by the victim girl in his house. He concludes submitting that when the medical evidence does not support the ocular testimony of the victim girl, the accused is entitled to be acquitted and the impugned order of conviction and sentence should be set aside.

The learned P.P.-in-Charge, on the other hand, has supported the judgment passed by the learned Trial Judge. It is submitted by the learned P.P.-in-Charge that the victim girl narrated the incident on oath before the trial Court. His evidence in chief was tested in cross-examination but she withstood the acid test of cross-examination made by the learned Counsel for the defence and there is no contradiction in the evidence of the victim girl. Her evidence also corroborates her statement made before the learned Judicial Magistrate under Section 164 of the Code of Criminal Procedure.

Medico-legal examination of the victim was held on 2nd July, 2009. The Medical Officer who examined the victim girl (P.W.3) submitted her report stating, *inter alia*, that there was a old heal tear in the hymen of the victim girl at 6'0 clock position. This finding led the medical officer to opine that there is nothing to suggest that the victim girl is not subjected to forceful sexual intercourse. She however, also opined that the further opinion can be gathered after receipt of the chemical examiner's report. It is also noted by P.W.3 that there is nothing to suggest that she has not habituated to sexual intercourse.

The case of the prosecution is that the appellant used to commit sexual intercourse repeatedly for days together and on some occasions, he was successful in inserting his private parts inside the private parts of the victim girl. Therefore, the opinion of the Medical Officer that she was habituated to sexual intercourse is absolutely logical conclusion and must be treated to be trustworthy.

When the medical examination report matches with the ocular testimony of the victim girl in a case under Section 376 of the Indian Penal Code, Court can safely rely on such evidence and no further corroboration is necessary.

It is now settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of the victim in an

offence of rape is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the victim is not a requirement of law but a guidance of prudence under given circumstances. The victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence. Decisions of the Hon'ble Supreme Court in **State of Himachal Pradesh vs. Asha Ram** reported in **2006 SC 381** and **Om Prakash vs. State of Uttar Pradesh** reported in **1998 (6) SCC 1** may be relied on in support of the above observation.

It will also not be out of place to record that the victim could have disclosed the incident to her parents immediately after the guidance. The victim at the relevant point of time was a girl of 15/16 years. The accused, on the other hand was aged about 57/58 at the relevant point of time he was a teacher, used to practice homeopathy and treat poor people of the locality medically. The victim on the

other hand belongs to a family of the poorest of the poor. Her mother used to run the family working as maid servant. The victim used to perform household work in the house of the accused in return for some food. Thus the accused obviously had some undue influence over the victim taking advantage of his fiduciary relation over the victim, he committed such offence.

It is true that no medical evidence comes up to show that the victim became pregnant as a result the specific act allegedly committed by the appellant. However, if the F.I.R. is closely perused it would be found that the de facto-complainant did not allege that the victim girl became pregnant after she was ravished by the appellant. On the other hand, she clearly stated in the F.I.R. that the victim girl was medically treated for fever first by a local Doctor and then at National Medical College and Hospital where she was admitted for sixteen days.

It is pertinent to note that the bed head ticket of the victim girl was collected by the Investigating Officer and it was marked exhibit without any objection from defence. In the discharge certificate it is recorded that the victim was suffering from enteric fever. On careful perusal of the said bed head ticket it is ascertained that her last menstruation was held about seven days prior to date of her

admission. Having menstruation immediately before admission in the hospital ruled out the possibility of pregnancy of the victim girl. Exhibit-6 series further shows that the Associate Professor, Department of Medicine wrote letter to the visiting surgeon, Department of Gynecology and Obstetrics that during her treatment she stated that she had repeated episodes of seriously molestation about three months prior to her admission by a neighbour. The Gynecologist examined her and found that she was not pregnant. It was stated by the victim girl that she became pregnant by the appellant. It is very natural for a girl of about 15/16 years suffering from fever and vomiting having sexual abuse about three months prior to suffering from fever to apprehend that she became pregnant as a result of the act perpetrated upon her by the accused. She was more apprehensive because of the fact that from her statement under Section 164(1) of the Code of Criminal Procedure it is ascertained that the accused used to threaten her that if she tried to disclose the incident to anybody he would make her pregnant.

From the evidence of P.W. 6, Dr. Amitava Das it is found that he opined that there is nothing to suggest that the appellant is incapable to perform sexual intercourse in ordinary course of nature. The said medical opinion was marked as exhibit 2 during trial of the case.

On careful consideration of entire evidence-on-record, I do not find any reason to interfere with the finding arrived at by the Learned Additional Sessions Judge, 2nd Court at Sealdah. The appellant taking advantage of poverty of the victim girl and his authority to dominate over the said minor girl committed such heinous offence. Therefore, I am also not inclined to reduce the sentence passed by the Learned Trial Judge. In view of the above discussion, the appeal be and the same is dismissed on contest, however, without cost.

(BIBEK CHAUDHURI, J.)

**BR/Mithun/Srimanta
A. R. (Court)**