

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

**C.R.R. 1411 of 2000
(Via Video Conference)**

***Sk. Asmat Ali Alias Asmat Ali
versus
The State of West Bengal***

For the Petitioner : Mr. Tapas Kumar Ghosh,
Mr. Tanmoy Chowdhury.

For the State : Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan.

Heard On : 15-06-2021 .

Judgement On : 16-06-2021 .

Tirthankar Ghosh, J. :

The present revisional application has been preferred against the judgment and order dated 16th May, 2000 passed by the learned Sessions Judge, Birbhum in Criminal Appeal No. 20 of 1999 thereby confirming the order of conviction and sentence dated 31.08.1999 passed in Sessions Case No. 78/95 (Suri) corresponding to Sessions Case No. 9/95 (Bolpur) whereby the learned Assistant Sessions Judge,

Bolpur, Birbhum sentenced the petitioner to undergo rigorous imprisonment for one year for the offence punishable under Section 354 of the Indian Penal Code and rigorous imprisonment for six months for the offence punishable under Section 448 of the Indian Penal Code.

I have perused the judgements delivered both by the learned Assistant Sessions Judge, Bolpur, Birbhum being the trial court and the learned Sessions Judge, Birbhum being the appellate court. On perusal of the judgments of both the courts, I find that the trial court as well as the appellate court was convinced that no offence under Sections 376/511 of the Indian Penal Code has been made out from the evidence which was adduced on behalf of the prosecution. I have found that the learned trial court has recorded in its judgment that there was a relationship between the alleged victim who happens to be a married lady with the present petitioner who was accused in the case. The only issue of the learned trial court for not believing such plea was that the accused did not prove such factum beyond reasonable doubt. I find that the learned appellate court ignored the observations and findings made by the learned trial court and proceeded to affirm the order of conviction and sentence. It is settled principle of law that defence need not prove its case beyond reasonable doubt and the same may be by way of preponderance of probability. As the very fact that both the courts below have, *prima facie*, been satisfied with the plea, but were wanting much

more evidence from the defence in order to prove its case, I am of the view that the said issue cannot be ignored at all in the background of the fact that both the courts below have disbelieved the prosecution evidence, more particularly the veracity of the witnesses so far as it relates to the alleged commission of an attempt to commit rape upon the victim. What weighed with the learned courts below were that the accused was found holding the hand of the victim.

Needless to state that the facts of the case reflect that both the victim and the accused were major and the manner in which the evidence has been deposed before the court do not rule out the possibility of consent. In such circumstances, it was incumbent upon the learned trial court as well as the appellate court to assess the evidence in the light of the facts whether an offence for commission of attempt to rape has been made out as both the victim and the petitioner being major were able to understand the consequence of their act.

Having scrutinised the evidence recorded by the learned trial court as well as the learned appellate court, I am of the view that there is manifest error in appreciating the facts as narrated before the court and as has been appreciated by the learned courts below while arriving at their conclusion of guilt so far as the charges against the accused/petitioner is concerned.

In view of the above, I am of the opinion that interference is called for so far as the finding of guilt as well as the sentence which has been imposed by the learned trial court and affirmed by the learned appellate court is concerned. Accordingly, the judgment and order dated 16th May, 2000 passed by the learned Sessions Judge, Birbhum in Criminal Appeal No. 20 of 1999 thereby confirming the order of conviction and sentence dated 31.08.1999 in Sessions Case No. 78/95 (Suri) corresponding to Sessions Case No. 9/95 (Bolpur) passed by the learned Assistant Sessions Judge, Bolpur, Birbhum is hereby set aside.

The petitioner is acquitted of the charges, consequently he is discharged from the bail bonds in connection with the instant case.

With the aforesaid observations, CRR 1411 of 2000 is allowed.

Lower court records, if any, be sent down to the learned court below.

Department is directed to communicate this order to the concerned courts below.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities

(TIRTHANKAR GHOSH, J.)