

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 266 of 2019

Arun Kumar Mondal

-Vs-

State of West Bengal

For the Appellant : Mr. Satadru Lahiri
Mr. Safdar Azam
Mr. Syed Wasim Faruque

For the State : Mr. Saibal Bapuli, learned APP
Mr. Bibaswan Bhattacharya

Heard on : 07.09.2022

Judgment on: 07.09.2022

Joymalya Bagchi, J. :-

A “Me too” moment occurred in a village school when one of the victims (PW 2), a student of Class-II reported to her mother that one of the teachers of the school had on 17.09.2015 subjected her to penetrative sexual assault by inserting his finger in her private parts. Her mother took her to a local medical shop and bought medicines to

treat her discomfort. As the school was closed for a couple of days, on 21.09.2015 the child was taken to the school when she identified the appellant, a teacher of the school, as the offender. She was taken to Labpur Sub Divisional Hospital and treated. When the matter was discussed amongst the villagers six other minor children, all of whom were students of the school, came out with similar versions of sexual assault by the said teacher. Written complaint was lodged by the PW 3 (mother of PW 2) resulting in registration of Labpur Police Station Case No. 224 of 2015 dated 21.09.2015 under Section 4 of the POCSO Act.

In the course of investigation statements of the victims were recorded under Section 164 of the Code of Criminal Procedure. Appellant was arrested and charge-sheet was filed.

Charge was framed under Section 4 of the POCSO Act against the appellant. Prosecution examined 20 witnesses including the victims and their mothers.

Defence of the appellant was one of innocence and false implication. It was his specific defence that the victims belong to the Kora Community. They used to demand fake Birth Certificates and on 16.09.2015 there was an altercation over demand of additional subscription regarding Boga Panchami Puja. Out of grudge he was physically assaulted and falsely implicated in the case. His wife lodged F.I.R. which was exhibited as "Exbt.-A".

Upon consideration of the evidence on record including the defence evidence learned trial Judge by the impugned judgment and order dated 07.03.2019 and 08.03.2019 convicted the appellant for commission of offence punishable under Section 4 of the POCSO Act and sentenced him to suffer rigorous imprisonment for ten years with a fine of Rs.10,000/-, in default to suffer rigorous imprisonment for three months more.

Mr. Lahiri, learned Counsel appearing for the appellant has assailed the conviction of the appellant on various grounds. He submits prosecution case is a manufactured one. Incident occurred on the day of Biswakarma Puja i.e. on 17.09.2015 which was a school holiday. Incident of rape of PW 2 could not have occurred on that day. Other victims did not report the incident of penetrative sexual assault earlier. Their deposition is bereft of material particulars and does not specify the dates when they were sexually assaulted. Conviction ought not to be recorded on such vague and generic evidence. No injuries were found on the victims. Evidence has come on record, there was dispute over demand of subscription for Boga Panchami. The appellant was physically assaulted and falsely implicated in the case. Apart from victims and their parents, no other school children belonging to another community viz. Santhal Community was examined. He further submitted natural guardians/mothers of the victims used to work in the school as part of the mid-day meal service. None of the victims

reported the incident to them. Statements of the victims recorded under Section 164 of the Code of Criminal Procedure have not been exhibited in accordance with law. Accordingly, appellant is entitled to an order of acquittal.

Mr. Bhattacharya, learned Counsel for the State submits appellant was a teacher in the school. All the victims were school going children. As their teacher appellant had overwhelming control over them. Due to fear and shame, none of the families of other victims apart from PW 2 came out with the incident. Thereafter, other victims also came out with similar incidents of penetrative sexual assault and FIR came to be registered. Nothing is placed on record to show there was enmity between Kora and Santhal Communities. Assault of the appellant was by the enraged parents who came to know of his misdeeds. The prosecution case is proved beyond doubt. Appeal is liable to be dismissed.

PW2 is one of the victims. She was a student of Class-II. She stated appellant was her teacher. Appellant took her upstairs in the school and inserted his finger in her private parts. She made statement before the learned Magistrate. She remained unshaken during her cross-examination.

Her parents were examined as PWs. 1 and 3. PW 1 is her mother and de-facto complainant. She stated that the incident occurred in the month of Bhadra. Her daughter expressed unwillingness to go to

the school. When she confronted her, she narrated the incident to her. PW 1 took the victim to Labpur BPHC for medical treatment. She lodged complaint.

PW3, father of the victim, corroborated the aforesaid version.

Referring to the cross-examination of PW1(mother of the victim no. 1), Mr. Lahiri contends school was closed on the day of Biswakarma Puja i.e. on 17.9.2015.

I have assessed the evidence of PW 1 in the light of the aforesaid submission. PW 1 stated that the incident occurred on Biswakarma Puja and school was closed on the previous day for Baga Panchami. Even if one assumes that the school was closed for Biswakarma Puja, it is common knowledge that children and teaching personnel come to the school for celebrations. Thus, presence of PW 2 at the school on 17.9.2015 cannot be said to be wholly improbable. On the other hand, version of PW 2 finds corroboration from the depositions of other victims namely PWs 4, 6, 8, 10, 13 and 14. All the children were students in the school. They have unequivocally stated that the appellant had subjected them similar acts of penetrative sexual assault.

Learned counsel for the defence counsel argues that the evidence of the minor victims are vague and they do not refer to the date of assault. While appreciating the evidence of minor victims of sexual assault, it is important to bear in mind their tender age and

their relationship with the accused. Victims are school going children studying in Class-II. Appellant was their school master and had continuous access to them during school hours. Taking advantage of such situation, the appellant had committed acts of penetrative sexual assault on them. In this backdrop it is not possible for the victim to state the exact dates on which they were sexually exploited. Their versions must be seen in the backdrop of the depositions of their parents namely PWs 5, 7, 9, 11 and 15. They are the mothers of the aforesaid victims. These witnesses stated that their daughters were sexually assaulted by the teacher in the month of Bhadra i.e August 2015. Out of shame and fear they kept mum till PW 1, mother of PW 2 brought out the matter for public discussion in the Samity. At the Samity, a decision was taken to report the matter to the police and the matter came to be reported. All the families of the victims are members of Scheduled Tribe. They are illiterate or semi-literate people and look up with reverence to the educated gentry particularly school teachers. In view of the superior status of the appellant, a school teacher in the village community, families of the victims could not muster courage to report the matter either to the school administration or the police earlier. This conduct by no means would improbabilises the truthfulness of the prosecution case. On the other hand, it demonstrates the overwhelming and supervening impact of the

appellant as an educated school teacher over the families of the minor victims.

Judged from this backdrop it is clear why the minor victims in spite of being violated in the school kept mum and did not inform the matter either to the headmaster or to their mothers who may have been present as members of the midday meal teams. Only in the comfort and security of their homes could the children narrate the incident to their parents. Even then, out of fear and shame their parents kept mum until PW 1 brought up the matter in the Mohila Samity, as aforesaid.

Finally, it is argued that the appellant is a victim of false implication. Defence counsel referred to the cross-examination of PW 9, mother of one of the victims, who stated there was dispute over demand of extra subscription. Evidence had also come on record that the appellant had been assaulted by family members of the victim after the incident. Appellant exhibited the FIR registered by his wife (Ext A) in that regard.

I am unable to subscribe to this submission of the appellant also. Assault on the appellant after the incident was nothing but an expression of outrage towards the abominable act of the appellant. Being enraged the parents of the victims appear to have assaulted the appellant. The other allegations in the FIR lodged by wife of the appellant Ext A namely, demand of fake certificate by family members of the children is an afterthought and not borne out from the evidence

on record. There may have been some dispute over demand of subscription during Baga Panchami but such issue cannot be a ground to implicate the appellant in a case of serial sexual assault on seven minor students. It is highly improbable that the parents of seven minor children would conjointly agree to falsely implicate the appellant in connection with a dispute over demand of subscription in Baga Panchami.

In the light of the aforesaid discussion, I hold that the conviction and sentence of the appellant does not call for interference.

Appeal is accordingly dismissed.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)