

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

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

**CRA 252 of 2009
With
CRAN 2 of 2011 (Old No. CRAN 145 of 2011)**

Rajesh Mallick
-vs.-
State of West Bengal & Ors.

For the Appellant : Mr. Sukumar Ghosh, Adv.
Mrs. Moumita Ghosh, Adv.

For the State of West Bengal : Mr. Binoy Kumar Panda, Adv.
Mrs. Puspita Saha, Adv.

Heard On : 13.12.2021

Judgment on : 13.12.2021

Rabindranath Samanta, J:-

1. This appeal arises out of the judgment and the order of conviction and sentence passed by the Learned Additional Sessions Judge, Fast Track, 3rd Court, Burdwan in Sessions Trial No. 12 of 2008 arising out of Sessions Case No. 3 of 2008 whereby the appellant Rajesh Mallick was convicted for commission of the offence punishable under Sections 376/417 of Indian Penal Code (in short I.P.C.) and sentenced to suffer rigorous imprisonment for seven

years and to pay a fine of Rs. 1,000/-, in default, to suffer rigorous imprisonment for a further period of one month.

2. The prosecution case, in brief, may be stated as under:-

The victim girl, then aged about 17 years, is the elder daughter of the informant Tanjila Bibi of village Mutra, P.S – Memari. The victim girl developed a love affair with the appellant Rajesh Mallick, a resident of the informant's village. Giving promise to marry her, the accused sexually exploited her several times. Out of sexual co-habitation between them, the victim girl became pregnant. The parents of the victim girl went to the house of the appellant with the victim girl and apprised them of the incident. They requested them to give the appellant in marriage with the victim girl. But, they flatly refused to give their son Rajesh Mallick in marriage with her. They drove the victim girl and her parents out of their house abusing them in filthy languages.

3. Getting no other alternative for redressal of their grievances, the informant lodged a written complaint at Memari Police Station narrating the episode as above. On the basis of the written complaint lodged by her one Memari P.S. case no.7 of 2006 dated 07.02.2006 under Sections 376/417, I.P.C. was registered against the appellant for investigation.
4. During the course of investigation the investigating officer arrested the appellant and forwarded him to Court. On prayer of the I.O. the statement of the victim girl was recorded under Section 164 Cr.P.C. by a learned Judicial Magistrate. She was medically examined by a doctor. The I.O. recorded the statements of the available witnesses under Section 161 of the Code of Criminal Procedure. Besides, the I.O. made arrangement for medical examination on the person of the appellant. After completion of the investigation the investigating officer submitted charge-sheet against the appellant under Sections 376/417 I.P.C.

5. Charge under Sections 376/417, I.P.C. was framed against the appellant who pleaded not guilty to the charge and claimed to be tried. Hence, the trial commenced.
6. To bring home the charge the prosecution examined as many as fifteen witnesses including the victim girl and the attending doctor. Some documents upon which the prosecution has placed reliance have been marked as Exhibits 1 to 6. No witness has been examined on the part of the appellant.
7. On consideration of the oral and documentary evidence as adduced by the prosecution, the Learned Trial Judge by the judgment as impugned held that the appellant (hereinafter be referred to as the accused) guilty for commission of the offence punishable under Sections 376/417, I.P.C. and awarded the sentence as above.
8. Being aggrieved by and dissatisfied with the aforesaid judgment and the order of conviction and sentence the appellant has preferred the instant appeal.
9. The appellant assails the impugned judgment on the grounds that the Learned Trial Judge recorded the findings and conviction without proper appreciation of evidence and applying his judicial mind. As such the judgment suffers from illegality and irregularity and the judgment and the order of conviction is liable to be set aside.
10. Mr. Sukumar Ghosh, Learned counsel appearing for the accused submits that the Learned Trial Judge failed to appreciate that sexual co-habitation, if any took place between the victim girl and the accused was consensual. Learned Lawyer argues that the prosecution evidence do not discuss that the accused had sexual co-habitation with the victim girl forcibly and against her will. On this score, Learned Lawyer submits that the judgment and the order of conviction and sentence passed by the Learned Trial Judge is not sustainable.

11. Per contra, Mr. Binoy Kumar Panda, Learned Lawyer submits that in a case like the present one the evidence of the prosecutrix is most important. If the evidence of the prosecutrix inspires confidence, the Court can record conviction on the solitary evidence of the prosecutrix. However, the Court may as a matter of prudence look for corroboration of such evidence by the medical evidence. Learned Lawyer submits that in the instant case the evidence of the prosecutrix i.e., the victim girl and the medical evidence, if read conjointly, unerringly reveal that the accused sexually exploited the victim girl giving a false promise to marry her. On this score, Learned Lawyer submits that the judgment and the order of conviction and sentence as passed by the Learned Trial Judge is quite justified and no room is left for this Court to interfere with the judgment.
12. Since, the instant appeal is the First Appeal before this Court, I have meticulously scrutinized the ocular as well as documentary evidence as produced by the prosecution.
13. Amongst the witnesses P.W. 1 Tanjila Bibi is the informant, P.W. 2 is the victim girl, P.W. 3 Mamin Mallick is the father of the victim girl and P.W. 13 Dr. Biswanath Kahali is the attending doctor who examined the victim girl.
14. It appears from the evidence of P.W. 1 Tanjila Bibi and P.W. 8 Sudipta Nayek that P.W. 1 with the help of P.W. 8 scribed the FIR and after putting her thumb impression on the written complaint she lodged the FIR at Memari Police Station. P.W. 1 in her evidence states that a love affair between her daughter and the accused developed. She came to know from her daughter that giving promise to marry her the accused sexually ravished her several times and ultimately she conceived. But, the accused refused to marry her.
15. The prosecutrix i.e., the victim girl (P.W. 2) in her evidence states that she had a love affair with the accused. The accused used to visit their house. She went out of their house with the

accused. The accused promised her to marry and giving such promise he co-habited with her several times for about three months. She became pregnant. While her parents went to the parents of the accused and told them to give her in marriage with the accused, they flatly refused to do so. P.W. 3, the father of the victim girl, in his evidence narrates the same episode as revealed by his wife and the victim girl.

16. Dr. Biswanath Kahali, P.W. 13 who medically examined the victim girl has opined as under:-

1. She is well accustomed, habituated and experienced in sexual intercourse in ordinary course of nature;
2. She is pregnant for about 20 weeks;
3. There is no mark of injury, violence, disease, deformity, foreign body, foreign pubic hair noted above her body or external genitalia.

17. The Learned Trial Judge mainly on consideration of the evidence of the prosecutrix and the medical evidence has recorded the findings of guilt of the accused.

18. In the decision in the case of ***State of Himachal Pradesh Vs Gyan Chand*** reported in ***(2001) 6 SCC 71***, the Hon'ble Apex Court has held that conviction can be based on the sole testimony by the prosecutrix, provided it is natural, trustworthy and worth being relied upon. As a matter of prudence, while evaluating the evidence of the prosecutrix, the court must remain alive to the fact that in a case of rape or sexual offence no self-respecting woman would come forward in a court just to make a humiliating statement against her honour. After meticulous assessment and appreciation of the evidence as adduced by the prosecution, I find that the evidence of the prosecutrix and the medical evidence in this regard establish the factum without any shadow of doubt that the accused giving a false promise to marry the victim girl sexually ravished and exploited her and as a result of which she conceived. It appears

from the evidence on record that the victim girl has given birth to a child.

19. Therefore, I concur with the findings recorded by the Learned Trial Judge that the accused is guilty of commission of offence punishable under Sections 376/417, I.P.C. I find no justification to interfere with the findings recorded by the Learned Trial Judge.
20. That being so, the judgment and the order of conviction and sentence does not call for any interference by this Court.
21. In the result, the appeal merits dismissal and accordingly, the appeal is dismissed. Connected application, if any, stands disposed of.
22. No order as to costs.
23. The judgment and the order of conviction and sentence passed by the Learned Additional Sessions Judge, Fast Track , 3rd Court, Burdwan in Sessions Trial No. 12 of 2008 arising out of Sessions Case No. 3 of 2008 is hereby confirmed.
24. From a report received from the Superintendent, Alipore Central Correctional Home, it appears that the convict Raju Mallick has served out the entire sentence awarded to him by the Learned Trial Judge. Therefore, it doesnot require to pass any further direction upon the convict to serve out any part of the sentence.
25. Send down the L.C.R. along with a copy of this judgment to the Learned Court below for information.

(*Rabindranath Samanta, J.*)