

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRA 627 of 2017

SRI CHANDI CHARAN GHOSH
Vs.
STATE OF WEST BENGAL

For the Appellant	:	Mr.Ranajay Chatterjee
For the State	:	Mr. Saswata Gopal Mukherjee, Ld. P.P. Mr. Imran Ali Ms. Debjani Sahu
Heard on:	:	5 th MARCH 2021
Judgment on :	:	5 th MARCH 2021

The Court:

This appeal is directed against a judgement and order of conviction dated 11.09.2017 and sentence dated 13.09.2017 passed by the learned Judge, Special (POCSO Act) , 2nd Court, Bankura in Special Case No. 14/16, S.T. No. 03(09) 16, thereby convicting the appellant and sentencing him to suffer rigorous imprisonment for two years and also to pay fine of Rs. 5,000/-, in default to suffer further rigorous imprisonment for one year for committing the offence punishable under Section 354A of the Penal Code and rigorous imprisonment for four years along with a fine

of Rs.5,000/-, in default to suffer rigorous imprisonment for one year for committing the offence punishable under Section 8 of the POCSO Act, both the sentences having to run concurrently.

It is germane to mention that from the report dated 12.02.2021 of the Superintendent, Midnapore Central Correctional Home, as filed by the State, it appears that the appellant would serve out the sentence on 07.03.2021, if the fine is paid and on 07.03.2023, if the fine is not paid. The learned counsel for the appellant submits that the appellant would like to and would be in a position to pay the fine.

Learned counsel appearing on behalf of the appellant had earlier submitted that the appellant would like to withdraw the appeal as he was going to serve out the sentence soon. Since a criminal appeal has to be taken to its logical conclusion and cannot be disposed of as withdrawn, the same is taken up for hearing today.

It appears from the records that on 02.05.2016, PW4, the father of the victim girl lodged an F.I.R. under Section 354A of the Penal Code and Section 8 of the POCSO Act against the appellant. It was alleged that on 1.5.2016 his minor daughter aged about twelve years was drinking water by taking out a bottle under a mango tree beside a river, on her way back from tuition. At that time the appellant suddenly caught hold her two hands from behind and sexually harassed her by touching her breast and cheek. When his daughter started crying, he left her and

fled away. After completion of investigation charge sheet was submitted by P.W. 11, the investigating officer.

On 13.09.2016 charges were framed under Section 354A of the Penal Code and Section 8 of the POCSO Act. The appellant pleaded innocence and claimed to be tried.

During trial, the prosecution examining as many as eleven witnesses to establishes his case. The appellant's case was that of innocence as would be evident from the trend of cross-examination of witnesses and from the examination of the accused under Section 313 of the Code.

From a careful perusal of the evidence, it appears that P.W. 1 was the doctor who examined the twelve years victim girl. No injury was found on her person during examination on 03.05.2016. However, the patient was admitted with a history of sexual assault.

PW 2 was the private tutor of the victim girl. He deposes that on the fateful day she came for tuition to his place and left the house at about 10.30 AM. Later on, the victim girl reported the incident to him.

PW 3 was the mother of the victim girl. After incident the minor victim girl reported it to her. In fact, they went to the house of the accused, but he was found absent.

PW 4 is the father of the victim girl. He supported the F.I.R.

PW 5 was the twelve years old victim girl. She corroborated her statement given earlier under Section 164 of the Code and identified the accused, who known to him, in the Court room.

PW 6 was a co-villager of the victim and was informed about the incident by the father of the victim girl.

PW 7 was also a neighbour of the victim. He heard the incident from the victim girl herself.

PW 8 was a relative of the victim girl to whom she confided about the incident.

PW 9 was the police officer who recorded formal F.I.R.

PW 10 was a staff nurse at the hospital where the victim girl was taken for medical examination. She signed on the medical report.

PW 11 was the Investigating Officer of the case. During investigation, he had the victim and the accused medically examined and had the statement of the victim girl recorded under Section 164 of the Code. The medical examination report of the accused was marked as Exhibit 8 and the medical report of the victim girl was marked as Exhibit 9.

The learned counsel appearing on behalf of the appellant submits as follows. PWs 1 to 4 and 6 to 8 who had deposed regarding the incident were not the eye witnesses to the incident. No independent witness was available. In the absence of any corroboration by independent witnesses, it would be unsafe to rely on the sole testimony of the victim girl.

Moreover, the medical report does not support any case of sexual assault or molestation.

Learned counsel appearing on behalf of the State submits as follows. From the evidence of the victim girl, which corroborates her statement made before the learned Magistrate, it is amply clear that the prosecution has been able to prove its case beyond reasonable doubt. Immediately after the incident, the victim confided the facts to her parents and others. Although no injury was found on her person, the history of sexual assault was reported to the medical staff.

I have heard the submissions of the learned counsels appearing on behalf of the appellant and the State and have perused the impugned judgement and order of conviction and sentence, the petition of appeal, the evidence and the other materials on record.

It appears that immediately after the incident the minor victim reported the facts to her parents. Accordingly, the version given by the de facto complainant is fully supported by the victim herself. In fact, the victim corroborated her statement made before the learned Magistrate. She could not be shaken during cross examination.

The victim's teacher also corroborated her going to attend his class.

As such, I find no reason to disbelieve the testimony of the victim girl.

The documents regarding the minority of the victim have already come in evidence.

The prosecution case does not involve inflicting of any injury on the victim. Therefore, it is quite obvious that medical report would not reflect any infliction of any injury to the victim. However, the documents record the history of sexual assault.

In view of the cogent evidence adduced by the minor victim girl herself, corroborated by the circumstantial evidence adduced by other witnesses, I do not find any merit in the appeal. Accordingly, the same is dismissed and the impugned judgment and order of conviction and sentence is upheld.

A copy of the Judgment and order along with the lower court records be sent forthwith to the learned trial court by a special messenger.

The concerned authorities shall act on a copy of this order downloaded from the official website of the High Court.

Urgent photostat certified copy of this judgment may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)