

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 38 of 2009

Lakhan Uria

-Vs-

The State of West Bengal

For the Appellant : Mr. Partha Sarathi Bhattacharyya, Adv.

For the State : Mr. Parthapratim Das, Adv.
Mr. Pratick Bose, Adv.

Heard on : 25.04.2022

Judgment on : 25.04.2022

Joymalya Bagchi, J. :-

An inebriated man in a frenzy of sexual perversion outraged the modesty of the mother of a five-month old child and thereafter raped the minor. Due to severe injuries the minor ultimately expired. While the child was struggling for life, mother of the child (PW6) lodged complaint at the police station resulting in registration of Birpara Police Station Case No.57/2005 dated 08.06.2005 under Sections 354/376 IPC against the appellant. Upon the death of the child, Section 304(II) IPC was added. In course of investigation, appellant was arrested and charge-sheet was filed against him. Charges were framed under Sections 354/363/376(2)(f)/304 of the Indian Penal Code. In course of trial, prosecution examined 17

witnesses to prove its case. Defence of the appellant was one of innocence and false implication. In conclusion of trial, the learned trial Judge by the impugned judgment and order dated 20.12.2007 and 24.12.2007 convicted the appellant for commission of offences punishable under Sections 354/363/376(2)(f)/304(II) IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs. 2,000/-, in default, to suffer rigorous imprisonment for two months more for the offence punishable under Section 376(2)(f) IPC; to suffer rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for one month more for the offence punishable under Section 304(II) IPC and to suffer rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for one month more for the offence punishable under Section 363 IPC. No separate sentence was imposed for the offence punishable under Section 354 IPC. All the sentences were directed to run concurrently.

Mr. Partha Sarathi Bhattacharyya, learned advocate appearing for the appellant submits the incident occurred on 05.06.2005 but the victim was taken to hospital after three days i.e. on 08.06.2005 and FIR was lodged on that day. No evidence is forthcoming how the victim was treated between 05.06.2005 and 08.06.2005 although the mother/de-facto complainant (PW6) claimed that she was busy with the medical treatment of her child. Mr. Bhattacharyya also argues there is no direct evidence that the appellant had committed rape. On the other hand, evidence is forthcoming he was inebriated and referring to the opinion of PW15, he

argued the appellant who was drunk was incapable of committing sexual intercourse. It is also argued PWs.9 & 11 have not identified the appellant in court and the security guard (PW2) did not support the prosecution case. In view of the aforesaid lacunae in the prosecution case, he submitted the appellant may be entitled to an order of acquittal.

Mr. Parthapratim Das, learned advocate appearing for the State submits mother of the child (PW6) deposed the appellant had snatched away the child from her lap. Thereafter, the child was recovered by PW13 from the appellant who was in an inebriated condition. Child had injuries in her private parts. Doctors who treated the child stated she had been subjected to forcible sexual intercourse. She ultimately succumbed to her injuries on 10.06.2005. Delay in lodging First Information Report has been duly explained. Prosecution case is proved beyond doubt. Appeal is liable to be dismissed.

PW6 is the mother of the deceased child. She deposed on 05.06.2005 around 7:00 P.M. she was proceeding with the child in her lap through Dimdima tea garden. Appellant followed her. He kicked her in the abdomen and outraged her modesty but she resisted. At that time he forcibly took away the child and rushed towards the bushes. He committed rape on the child. She searched for her daughter in the night but failed to trace her. On the next morning, her *Dadu* handed over the child to her. She was bleeding from her private parts. She and her husband went to Birpara Police Station. Thereafter, they brought the child to Birpara hospital and finally to North Bengal Medical College and Hospital. Her

child died in the hospital. She lodged complaint which was scribed by PW10.

In cross-examination, she stated she was a temporary worker in the tea garden. Her husband was suffering from mental ailments one year prior to the incident. She had gone to the Dimdima Tea Estate to search for her husband. She was returning from the tea estate when the incident occurred. She found her husband at Birpara market and informed him about the incident.

PW7 is the husband of PW6. He stated he heard the incident from his wife. His daughter was treated at Birpara medical centre and thereafter at North Bengal Medical College and Hospital. He was a signatory to the inquest report.

In cross-examination, he stated he had gone to *kabiraj* at Tulsipara three days prior to the incident. He had met his wife at Birpara Chowpathi.

PWs.9, 11, 13 & 14 are the neighbours of PW6 and used to stay in the workers' quarters of the tea garden.

PW13 (Ranjit Lakra) deposed at 8:00 P.M. he had seen the appellant moving down the road with a crying baby. He was in a drunken condition. Appellant was detained and he disclosed his identity. He stated that the baby was his child and that the mother had fled away. Thereafter, he fled away from the spot. The baby was taken care of by the wife of PW13 i.e. PW9. In the morning, baby was handed over to PW6.

PW9 (Chinta Lakra), wife of PW13 has corroborated his version. She however, could not identify the appellant in court.

PW14 (Bishnu Lakra), another neighbour has corroborated PW13. He identified the appellant in court.

PW11 (Smt. Sumitra Lakra) while corroborating the circumstances of recovery of the child could not identify the appellant in court.

PW8 (Ranjit Kujur) is an employee attached to the bungalow of the Assistant Manager of the tea estate. He deposed he had seen a drunken man carrying a baby in his arms. The baby was restless and in serious condition. He identified the appellant in court as the man who was carrying the child. He informed the matter to another person who recovered the child from the inebriated man.

These witnesses have proved the recovery of the child in serious condition from the appellant.

PW16 (Dr. Sudipta Halder) is the Doctor who treated the victim at Birpara State General Hospital. He found the following injuries :-

“Laceration of the posterior vaginal wall, perennial muscle including anal sphincter (complete perennial tear). Mother” was complaining of stool coming out from the vagina.”

He opined the injuries were suggestive of forcible sexual intercourse. The prognosis of the child was uncertain. He referred the child to North Bengal Medical College and Hospital for better treatment. He proved the medical report, Exhibit 14. He also deposed Dr. Nilay Mandal had treated the child at the Emergency Department of the Hospital. He proved the emergency ticket, Exhibit 15.

PW3 (Dr. Nilay Mandal) had found the following injuries on the victim :-

“1. Abrasion in inner aspect of labia, 2. Abrasion and laceration in perennial region.”

He proved his report, Exhibit 4.

PW15 (Dr. Shyamal Kr. Lahiri) held post mortem over the body of the victim. He deposed the child had been admitted to North Bengal Medical College and Hospital and was treated by one Dr. Sudipta Halder. He proved the findings in the report of Dr. Halder (Exhibit 13) as follows:-

“External injury over posterior part of genitalia. The vagina is torn. There are slough tissue and purulent discharge and stood was seen coming out from os.”

He opined there was complete perennial tear. He proved the post mortem report wherein he noted the following injuries :-

“No.1. Evidence of gross laceration of vulva fossa navicularis and posterior fourchette, introitus hymen extending to posterior vaginal wall and further extending to perineum and making a lacerated wound in the perineum about 1½” X ½” X muscle. The injuries show sign of vital reaction.”

He opined death was due to the injuries noted above ante mortem and resulting from forcible sexual intercourse.

PW1 (Dr. Debjit Paul) examined the appellant at Alipurduar S. D. Hospital. He opined on clinical examination it appears that the appellant was capable of sexual intercourse. He proved his report, Ext.1.

PW17 (Dhruba Prodhan) is the investigating officer. He received written complaint and drew up the first information report. He recorded further statement of PW6. The child was sent to Birpara Hospital with ASI, M. K. Dutta. He visited the place of occurrence and prepared rough sketch map. He arrested the appellant. The appellant was subjected to medical examination. He collected the post mortem report of the deceased. He collected medical papers relating to the treatment of the deceased. He filed charge sheet.

From the evidence of the mother of the child (PW6), it appears in the evening of 05.06.2005 she had gone to Dimdima tea estate in search of her husband. Her husband suffered from mental ailments and was missing from the house. While returning, the appellant followed her. He assaulted her and outraged her modesty. When she resisted, appellant snatched away the child and ran away. She searched for the child but could not trace her out. On the next day, she recovered the child from the residence of a neighbour whom she referred to as *Dadu* (PW13). Thereafter she met her husband at Birpara Chowpathi and informed him of the unfortunate incident.

PW7, husband of PW6 and the father of the child has corroborated PW6. He stated three days prior to the incident, he had gone to a *Kabiraj* in Tulsipara. Subsequently, he met his wife at Birpara Chowpathi. She informed him about the incident. On 08.06.2005, they went to Birpara Police Station. Then they took the child to Birpara Hospital and thereafter to North Bengal Medical College and Hospital where the child ultimately

expired on 10.06.2005. In the meantime, on 08.06.2005 first information report came to be registered by PW6.

Mr. Bhattacharyya argued there is delay of three days in lodging first information report. Although PW6 claimed she was busy with medical treatment of the child, it appears the child was treated in hospital only on 08.06.2005. Hence, her explanation with regard to delay is not convincing. PW6 was a temporary worker in the tea garden. Her husband (PW7) suffered from mental instability and was missing from the residence when the incident occurred. The couple appears to come from marginal and impoverished section of society. Condition of P.W.6 was further precarious due to mental instability of her husband and his absence from the house when the incident occurred. She met her husband 1-2 days after the occurrence. In the meantime, it appears medical assistance to the child was given at the residence in an informal way. Only after her husband came home, did PW6 made arrangements for taking the child to hospital. On the same day, first information report was registered.

In this background, I am of the opinion delay in lodging the first information report does not spring from an attempt to falsely implicate the appellant but due to the dire socio economic constraints of a hapless woman whose husband was suffering from mental instability. Hence, I am of the opinion delay in institutionalised treatment of the child and lodging First Information Report is clearly understandable and does not create a dent in the truthfulness of the prosecution case.

Evidence of PW6 finds corroboration from independent sources. PW8, an employee in the bungalow of the assistant manager of the tea garden saw the appellant in an inebriated condition carrying the child. He noted the child was in serious condition and restless. He informed another person in the tea garden who intervened and took over the child. PW13 was the said person who had taken the child from the appellant. He deposed appellant was in an inebriated condition and was carrying the child who was in restless condition. On interrogation, the appellant gave false explanation that the child was his and the mother had ran away. PW13 took over the child and the appellant fled the spot. His evidence is corroborated by another neighbour (PW14) who identified the appellant. PW9, (wife of PW13) took care of the child for the night. On the next day, the child was handed over to her mother (P.W.6). PW11, another woman of the neighbourhood has corroborated her version.

It is argued PWs.9 and 11 have not identified the appellant in court. Failure of PWs.9 & 11 to identify the appellant in Court does not affect the prosecution case. They are women and may not have been present when the child was taken away from the appellant on the road. They heard about the incident from the men folk and thereafter PW9 took care of the injured child till her mother came to this spot. Their evidence is most natural, truthful and corroborates the prosecution case in all material particulars.

PWs.3, 15 & 16 are the medical officers. PW3 (Dr. Nilay Mandal) was in the emergency department of the Birpara Hospital and examined the

child. He found injuries in her private parts and suspected she had been subjected to sexual intercourse. PW16 also examined the child at the said hospital and noted the grievous injuries in her private parts. He referred her to North Bengal Medical College and Hospital. Dr. Halder (not examined) treated the child at North Bengal College and Hospital. His report has been proved by PW15, another doctor of the said hospital, who was aware of his handwriting. Unfortunately, the child died on 10.06.2005. PW15 held post mortem examination of the victim and found extensive injuries in her private parts. He opined death was due to the injuries ante mortem and result of forcible sexual intercourse. Medical opinion of the aforesaid witnesses unequivocally supports the prosecution case of forcible sexual intercourse on a five-month old child by the appellant who had kidnapped her in an inebriated state and subjected her to brutal sexual assault.

Finally, Mr. Bhattacharyya, argued the appellant was in an inebriated condition and may not have been able to commit sexual intercourse. In this regard, he referred to the cross-examination of PW15 who stated third stage drunkenness would result in loss of control over the body and the subject would be incapable of doing sexual intercourse. Evidence on record shows appellant was inebriated. However, he had full control over his body and had ran away from the spot after handing over the child. His state of drunkenness, therefore, had not definitely reached third stage of complete loss of control over the body which would disable him from committing rape. On the contrary, the appellant upon arrest was

examined by PW1 who on clinical examination opined he was capable of sexual intercourse.

In the light of the aforesaid evidence on record, I am of the opinion prosecution case is proved beyond reasonable doubt. Conviction and sentence of the appellant is upheld.

Appeal is accordingly dismissed.

Though no report is placed on record, we are informed at the Bar the appellant is on parole. Parole of the appellant is forthwith cancelled and he is directed to surrender before the trial court to serve out the remainder of the sentence. In the event he fails to do so, appropriate processes shall be issued by the trial court for his apprehension and execution of sentence in accordance with law.

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.

Lower court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)