

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 46 of 2013

Chhotolal Majhi

-Vs-

State of West Bengal & Anr.

For the Appellant : Mr. Navnil De, Adv.

For the State : Ms. Sreyashee Biswas, Adv.

Heard on : 01.07.2022

Judgment on : 01.07.2022

Joymalya Bagchi, J. :-

Appeal is directed against the judgment and order dated 27.09.2012 and 28.09.2012 passed by the learned Additional District & Sessions Judge, Fast Track Court No. 4, Raghunathpur, Dist. : Purulia, in Sessions Trial Case No. 36 of 2011 arising out of Sessions Case No. 31 of 2011 convicting the appellant for commission of offence punishable under Section 376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years and to pay fine of

Rs.10,000/-, in default to suffer further rigorous imprisonment for one year more.

Prosecution case as alleged against the appellant is to the effect that the victim (P.W. 4) had gone to her daughter's residence at Bichhed Para (Inanpur). On 31.08.2010 at 1.00 P.M. she went to bathe at Bindaidih Bandh. At that time appellant came to the spot, dragged her to a nearby bush and raped her. He also assaulted her with fists and blows. Thereafter he snatched away a pair of city gold ear rings, silver necklace and gold nose ring and fled. While leaving the place in a hurry, the appellant left behind his trouser and pair of slippers. Daughter of the victim (P.W. 2) and others arrived at the spot and took her to Harmadih Public Health Centre for treatment. Victim (P.W. 4) lodged written complaint at Neturia Police Station resulting in registration of Neturia Police Station Case No. 73 of 2010 dated 02.09.2010 under Sections 376/323/379 of the Indian Penal Code.

In course of investigation appellant was arrested and charge sheet was filed against him.

Charge was framed under Section 376 of the Indian Penal Code against the appellant. Appellant pleaded not guilty and claim to be tried.

In the course of trial, prosecution examined 11 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. In conclusion of trial, learned trial

Judge by the impugned judgment and order convicted and sentenced the appellant, as aforesaid.

At the time of admission of appeal, this Court was pleased to issue a rule for enhancement of sentence of the appellant. Appeal and the rule for enhancement of sentence are being heard analogously.

Mr. De, learned Counsel appearing for the appellant submits prosecution case suffers from various contradictions and/or inconsistencies. There is no mention of time of occurrence in the charge framed against the appellant. There is delay in lodging F.I.R. Incident of rape is alleged to have occurred near a public pond which was used by local people for the purpose of bathing. This wholly improbabilises the prosecution case. Name of the appellant was not disclosed before the medical officer. No injury was found in the private parts of the victim. Hence, the appellant is entitled to the benefit of the doubt.

Ms. Biswas, learned Counsel appearing for the State submits evidence of the victim (P.W. 4) is corroborated by her daughter (P.W. 2) as well as other witnesses viz. P.Ws. 1, 8 and 9. They came to the spot soon after the incident and saw the appellant fleeing away from the spot. His trouser and slippers were recovered from the place of occurrence. Injuries were noted on the body of the victim which corroborates the allegation of forcible rape on her. Hence, the appeal is liable to be dismissed.

Mr. De has contended charge in the instant case is defective. Time of occurrence is not stated in the charge. We are unable to accept such contention. Error or omission in the charge does not affect the conviction unless the same has prejudiced the accused or occasioned failure of justice.

From the evidence on record, it appears victim (P.W. 4) unequivocally stated the incident occurred at 1:00 p.m. in the afternoon when she had gone to Bindaidih Bandh to bathe. Such fact had also been put to the appellant during his cross-examination under section 313 Cr.P.C. Under such circumstances, omission to state the time of occurrence in the charge has not prejudiced the appellant nor has it occasioned any failure of justice.

Victim (P.W. 4) deposed the appellant had dragged her to a nearby jungle and ravished her forcibly. She pleaded before the appellant but he did not relent. He assaulted her with fists and blows. He also snatched away her necklace and gold rings. Her daughter and others came to the spot and rescued her. She was taken to Harmadih Public Heath Centre and therefrom to Raghunathpur S.D. Hospital. She lodged F.I.R. which was drafted by Basudeb Bouri (P.W. 3). She also made statement before the learned Magistrate. She was extensively cross-examined but her version remained unshaken.

P.W. 4, victim, is corroborated by her daughter, Kalpana Badyakar (P.W. 2), his vasur, Sadhan Badyakar (P.W. 8) and local villagers, Jiten Bouri (P.W. 1) and Bapi Bouri (P.W. 9).

Kalpana Badyakar (P.W. 2) stated her mother (P.W. 4) had gone to bathe in the Bindaidih Bandh. As her mother did not return, she (P.W. 2) went out to make enquiry. She found her mother lying in the Bandh. Her mother disclosed she had been raped by the appellant. Trouser and slippers of the appellant were lying beside her mother. Witnesses, namely, P.Ws. 1, 8 and 9 came to the spot. All of them saw the appellant fleeing away from the spot. They also saw trouser and slippers of the appellant were lying at the spot. Victim narrated the incident to them.

Dr. Falguni Goswami (P.W. 10) treated the victim at Harmadih Public Health Centre. He found six abrasion marks on the left side of her neck, one abrasion mark on the right side of her neck, one abrasion mark on her right elbow and an abrasion mark over her right side hip. He prepared medical report marked as Exbt.-5.

In cross-examination, he stated he did not see any sign of sexual assault on the victim.

PW 5 treated the victim at Raghunathpur S.D hospital. He found abrasion with scab on neck, elbow, left shoulder and buttock. No injury was noted in the external genitalia.

PW 11, Sudhansu Banerjee is the investigating officer of the case. He received written complaint from the victim, PW 4. He drew up formal FIR. He visited the place of occurrence and drew up rough sketch map. He examined witnesses. He seized wearing apparels of the victim. He also seized trouser and plastic slippers which were found at the place of occurrence. He arrested the appellant. He forwarded the victim to record her statement under section 164 Cr.P.C. He submitted charge sheet.

From the evidence on record, I note version of rape by the victim is corroborated by other witnesses and attending circumstances.

PW 2, daughter of the victim came to the spot soon after the incident. She was followed by her bhasur Sadhan Badyakar (PW 8) and local villagers, PWs 1 and 9. All of them saw the appellant fleeing away. His trouser and slippers were lying at the spot. The victim narrated the incident of rape to them.

In view of the aforesaid corroborative evidence on record, I find little substance in the submission of Mr. De that the name of the victim had not transpired before PW 10 at PHC.

Delay in lodging FIR has also been duly explained. The victim had suffered extensive wounds on various parts of her body. She was initially treated at Harmadih PHC and thereafter at Raghunathpur hospital. Due to her treatment, there was two days' delay in lodging FIR which appears to be fully explained.

It is also argued incident of rape in the afternoon near a public pond which is used by local villagers is improbable. Such plea was rebuffed by the victim herself. During cross-examination, she categorically stated she was bathing alone in the pond and appellant was standing in the bank. Hence, there was no other person at the pond when the appellant dragged the victim to a nearby bush and raped her.

It has been strenuously argued that the treating doctors did not find medico-legal evidence of rape. Presence of injuries in private parts is not a sine qua non to prove the offence of rape. Such injuries may occur in the event the victim offers stiff resistance to the act of rape. Victim was an elderly lady and had been over powered by the appellant. She was dragged to a bush and raped. When she protested, she was physically assaulted. Signs of dragging as well as assault are evident through abrasions on her right hip and other parts of body. As victim was an elderly lady who was over powered by the appellant and was unable to resist, absence of injuries in her private parts do not militate against the credibility of her version regarding rape.

In view of the foresaid discussion, I am of the opinion prosecution case has been proved beyond reasonable doubt.

Coming to the issue of sentence, I note the offence of rape on an elderly lady is a reprehensible act. However, appellant does not have

criminal antecedents. Balancing the aggravating and mitigating factors, I am of the opinion no case of enhancement of sentence is made out.

Sentence imposed on the appellant is, thus, affirmed.

The appeal is, accordingly, dismissed. In view of disposal of the appeal, connected applications, if any, also stand disposed of.

Rule is discharged.

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

Bail Bond of the appellant is cancelled and he is directed to forthwith surrender and serve out the remainder of the sentence, failing which the trial Court shall issue appropriate processes to execute the sentence in accordance with law.

Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

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

I agree.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)