

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. 60 of 2013

Sakim Ali

-Vs-

State of West Bengal

Amicus Curiae : Mr. Sumanta Ganguly, Advocate.

For the State : Mr. Saswata Gopal Mukherjee, Ld. APP,
Mr. Partha Pratim Das, Advocate,
Ms. Manasi Roy, Advocate.

Heard on : February 16, 2022.

Judgment on : February 16, 2022.

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 19th December, 2012 and 20th December, 2012 passed by the learned Additional District & Sessions Judge, Fast Track 6th Court, Malda in connection with Sessions Case No.156 of 2012 (Sessions Trial Case No.38 of 2012) convicting the appellant for commission of offences punishable under sections 376 and 506 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 3,000/- in default to suffer simple imprisonment for six months more for the offence punishable under Section 376 of the Indian Penal Code and to

suffer rigorous imprisonment for one year and also to pay a fine of Rs.1000/- in default to suffer simple imprisonment for two months more for the offence under Section 506 of the Indian Penal Code, both the sentences to run concurrently.

Prosecution case, as against the appellant is to the effect that on 28.12.2011 around 9.00 p.m. when the victim came out of her room to answer nature's call, the appellant dragged her to a 'arahar' field and forcibly committed rape on her by showing a hansua. Victim returned home and reported the matter to others. She claimed she lodged written complaint with the local police station on the next day but no steps were taken. She even reported the matter to the Superintendent of Police. Finally, on 21.01.2012 she filed petition before the Magistrate and pursuant to direction of the Magistrate, Manikchak Police Station Case No. 41 of 2012 dated 21.02.2012 under Sections 341/376/506 of the Indian Penal Code was registered for investigation. In course of investigation, victim was medically examined by P.W. 6 at Malda Hospital. She made statement before Magistrate. Appellant was arrested and charge-sheet was filed. Charges were framed under Sections 376/506/341 of the Indian Penal Code.

In course of trial, prosecution examined seven witnesses to prove the charge. Defence of the appellant was one of innocence and false implication. During his examination under Section 313 of the Code of Criminal Procedure, appellant stated that his grandfather had transferred five bighas of land to his father. Out of grudge, the victim falsely implicated

him in the case. He, however, did not examine any defence witness. In conclusion of trial, the trial Judge by the impugned judgment and order dated 19th December, 2012 and 20th December, 2012 convicted and sentenced the appellant, as aforesaid. However, by the selfsame judgment and order, the appellant was acquitted of the charge under Section 341 of the Indian Penal Code.

Nobody appeared for the appellant. Mr. Sumanta Ganguly, learned Advocate is requested to appear as amicus curiae and assist this Court in disposing of the appeal. He submits there is inordinate delay in lodging first information report. Explanation with regard to delay is improbable and does not inspire confidence. Written complaint said to be lodged with the local police station on the next day has not been produced in Court. Investigating Officer, P.W. 7 states no written complaint was filed by the lady. Allegation of forcible rape also is shrouded in mystery. Victim (P.W.1) alleged her wearing apparels were torn and she had suffered injuries on her body. She had been medically treated at Manikchak Hospital. Neither the torn apparels nor record of her medical treatment is produced in Court. There is departure in her deposition of the victim vis-à-vis her statement in the first information report. While in first information report, she alleged she kept mum on the night of occurrence and disclosed the incident to her relations on the next day, in Court she stated that she raised hue and cry at night and disclosed the incident to local people. Disclosure of incident to P.Ws. 2 and 3 on the very night is, therefore, at variance with the prosecution case made out in the first information report. Motive to commit

as disclosed in her statement before Magistrate is not proved in Court. Hence, he prayed for acquittal of the appellant.

Mr. Das, learned Advocate appearing for the State submits that the victim had been raped by the appellant who was her husband's cousin. It is further contended that the victim disclosed the incident to local villagers and relations immediately after the occurrence. Her husband was residing at Gujrat and the delay was due to inaction on the part of the police authorities. Hence, the appeal is liable to be dismissed.

Ordinarily in a case of rape, delay in lodging the first information report would not erode the credibility of a victim of sexual assault. A victim of sexual assault suffers from severe trauma both physical and psychological. Even today, socially a charge of rape imputes stigma on a victim resulting in secondary victimization. These aspects must be borne in mind while one assesses the circumstances leading to delay in lodging the first information report. However, if the explanation with regard to the delay as held out by a victim suffers from absurdity or patent improbability a different picture may emerge.

I have examined the evidence of P.W. 1 in order to assess whether in the facts of the case a delay of about a month in lodging complaint affects the intrinsic truth of the prosecution case or not.

P.W. 1, Minara Bibi who is the victim in the present case deposed that she had been forcibly raped on 28.12.2011 at about 9.00 p.m. while she had gone out to answer nature's call. Appellant had dragged her to a nearby 'arahar' field and upon showing hansua forcibly committed rape on

her. She raised alarm. The appellant threatened her not to shout and not to disclose the incident to anybody lest he would kill her children. P.W. 1 returned home and disclosed the incident to the local people. On the next day, she lodged written complaint with the police station but no action was taken. Finally, three weeks later she lodged complaint in Court and upon direction by the Court, F.I.R. was registered. Although P.W. 1 claimed that she had kept a copy of the written complaint lodged by her at the police station, the copy was not produced in court. On the other hand, investigating officer of the case (P.W. 7) contradicted P.W. 1 and stated neither written complaint had been filed before the local police station nor before Superintendent of Police, Malda. Thus, factual foundation explaining the delay due to inaction on the part of police authorities in taking steps on the written complaint of P.W. 1 does not appear to have been established.

In this backdrop, Mr. Das argued that the husband of the victim was working in Gujrat and, therefore, there was delay in lodging F.I.R. This is a new case made out in the appellate stage. P.W. 1 never claimed there was delay in lodging F.I.R. due to absence of her husband. On the other hand, she claimed on the next day she had gone to the police station and reported the matter in writing with the police station but the police did not act on such complaint. Moreover, P.W. 1 had approached the court on 21.01.2012 though her husband (P.W. 4) returned from work much later, that is one and half month after the incident. Hence, absence of her

husband by no stretch of imagination can be considered as a justification for the delay in setting the law in motion.

In this backdrop, it is strenuously urged that the victim had divulged the incident on the very night to P.Ws. 2 and 3. Therefore, delay in lodging F.I.R. would not affect the truth of her version.

P.W. 2, Hezabul Haque is a neighbour who stated on the night of the occurrence, he heard hue and cry and came to the residence of P.W. 1 who narrated the incident to him.

P.W. 3, Miraj who is a relation of the husband of the victim also deposed in similar lines.

However, their depositions are at variance with the case made out in the F.I.R. lodged by P.W. 1. In the F.I.R., P.W. 1 stated after the incident she returned home and kept quiet. Only on the next day she divulged the incident to the inmates of the house. In Court, P.W. 1 gave a different version and claimed she had raised hue and cry in the night of the incident and informed the matter to local villagers including P.W. 2. Thus, the manner and circumstances in which the alleged incident was reported to others is based on shaky foundation. In the F.I.R. it is claimed that the incident was reported to the inmates of her family on the next day. If that were so, it is unclear how P.W. 2 heard the incident from P.W. 1 on the very night of the incident. Furthermore, in deposition P.W. 1 does not state that she stated the incident to P.W. 3 on the fateful night or thereafter. Hence, I am of the opinion, disclosure of the incident on the very night to

P.Ws. 2 and 3 is afterthought which is at variance with the prosecution case made out in the F.I.R.

Even with regard to the manner in which the alleged incident occurred I note there are various loose ends which casts serious doubt with regard to its truthfulness. P.W. 1 claimed she had been forcibly raped by the appellant in an 'arahar' field. Appellant had torn her wearing apparels and she had suffered injuries on her person. She further claimed that she was treated at Manikchak Hospital. Torn apparels of the victim had not been produced in Court. More importantly, although she claimed she suffered bodily injuries and was treated at Manikchak Hospital, no medical papers to corroborate her version is proved by the prosecution. In her statement recorded under section 164 Cr.P.C, P.W. 1 claimed that the appellant had asked her to give false evidence but as she refused, he had committed the crime. No evidence with regard to such motive was produced and P.W. 1 is significantly silent in this regard during her deposition in Court. These infirmities in the deposition of P.W. 1 cast serious doubt with regard to the credibility of the prosecution version of forcible rape.

On the other hand, evidence has come on record that the appellant is a cousin of the husband of the victim, P.W. 1. In his examination under section 313 Cr.P.C he stated there was a dispute between them because five bighas' of land was gifted to his father by his grandfather. Though no defence evidence was laid in this regard, I am of the opinion when intrinsic truth of the prosecution case suffers a severe jolt due to unexplained and

inordinate delay of about a month in lodging F.I.R. and other infirmities, I am of the view, it may be unsafe to ignore the said infirmities in the aforesaid factual backdrop and record an order of conviction.

Hence, I am inclined to extend the benefit of doubt in favour of the appellant. Conviction and sentence of the appellant is accordingly, set aside.

Appellant Sakim Ali shall be forthwith released from custody, if not wanted in any other case, upon executing a bond to the satisfaction of the trial Court for a period of six months in terms of section 437A of the Code of Criminal Procedure.

The appeal is, accordingly, allowed.

I record my appreciation for the able assistance of Mr. Ganguly, learned advocate as amicus curiae in disposing of the appeal.

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 appellant within a week from the date of putting in the requisites.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)