

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 124 of 2019

Sakshi Gopal Das

-vs.-

The State of West Bengal & Anr.

For the Appellant no.1 : Mr. Dipanjan Chatterjee,
Ms. Sonali Das,
Ms. Puja Kar

For the State : Ms. Faria Hossain,
Mr. Anand Kesari,

Heard on : 12.07.2022, 25.07.2022 & 29.07.2022.

Judgment on : 11.08.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 21.12.2018 and 24.12.2018 passed by the Learned Additional District & Sessions Judge, Ranaghat, Nadia in Sessions Trial No. 3(06)2010 corresponding to Sessions Case No. 31(02)/2009 arising out of Ranaghat Police Station Case No.274 of 2008 dated 01.09.08 under Section 376(f) of the Indian Penal Code

The genesis of the case relates to a complaint lodged by PW2 (hereinafter referred to as 'the complainant') with the Inspector-in-charge, Ranaghat Police Station. The complainant claimed that Sakshi Gopal Das was a neighbour in Beltala, Nasra and that he used to come to the complainant's paternal house, and that on 30.08.2008 said Sakshi Gopal Das (accused/appellant) came to their house and invited them to puja. On the said date when the complainant along with her daughter went to the house of the accused/appellant on the occasion of 'Sani Puja' and stayed there in the night. On 31.08.2008 at about 1.30 pm at noon her minor daughter '**X**' aged about 7 years 11 months was missing and reasonable search did not yield any result. However, after sometime she found her daughter stepping down from the upstairs room of the appellant/accused and told her that the accused had taken her upstairs to tell her story. Thereafter, her minor daughter '**X**' complained of pain and irritation at her private parts and when she asked her, '**X**' narrated that the accused had taken her upstairs, striped down her pant and inserted his penis into her vagina and also threatened her not to divulge to anyone or he would kill her. On hearing such fact the complainant checked the child PW3 and found that there was blood and semen spotted at her sexual organ. She alleged that the accused/appellant committed rape upon her minor daughter by using her simplicity. Accordingly, she prayed for taking steps against the accused.

Police authorities on receipt of information registered the aforesaid case and after completion of investigation submitted charge-sheet under Section 376(f) of the Indian Penal Code. The case was committed to the Court of

Sessions and finally the records were transmitted to the learned Additional District and Sessions Judge, Ranaghat, Nadia. After compliance with supply of copies relied upon by the prosecution the learned trial Court framed charges under Section 376(2)(f) of the Indian Penal Code.

The prosecution in order to prove its case relied upon PW1, Bimal Kundu, landlord of the complainant; PW2, Complainant '**Y**' and mother of the victim girl; PW3. '**X**', victim girl; PW4, Munmun Bose is the cousin elder sister of PW2; PW5 '**Z**', father of the victim girl; PW6, Tilak Basu, acquaintance of the complainant's family; PW7, Dr. Amit Mukherjee, doctor who treated the victim girl; PW8, Mili Dey, younger sister of PW2; PW9, ASI Indrajit Mondal who received the written complaint in the police station and PW10, Nihar Ranjan Sarkar, Investigating Officer of the case.

Prosecution also relied upon 7 documents being Ext.1/1, written complaint; Ext.2, statement of the victim girl under Section 164 of the Code of Criminal Procedure; Ext.3 is the Medical Report of the victim; Ext.4, Formal FIR; Ext.5 is the rough sketch map with index; Ext.6, seizure list and Ext.7, Medical Report of the accused.

PW1, Bimal Kundu is the landlord of the residence of the premises where the complainant, victim resided. He deposed before the Court that on 30.08.2008 the complainant and her daughter had been to the house of the accused being invited on the occasion of 'Sani Puja'. On 31.08.2008 they returned and after coming back the girl was crying in the evening and hearing

such cry he went upstairs and asked her mother why she was weeping, in reply the complainant told her that the accused had taken the victim to the first floor and had ravished her. Hearing this he rang up the accused and his wife picked up the phone. The wife of the accused Sakshi Gopal thereafter came to their house and asked them not to divulge such things to any persons and the problem would be solved by giving money.

PW2, is the complainant and mother of the victim girl. She deposed that the incident took place on 31st August, 2008 when they went to the house of the accused being invited on the occasion of 'Sani Puja'. They stayed at night in his house and on 31st August, 2008 the incident occurred at about 1.00/1.30 pm with her daughter who is 7 years 11 months old. She narrated the incident and stated that the accused took her daughter upstairs on the pretext of telling a ghost story, thereafter he took off her inner garments inside the room and also took off his own garments and inserted his penis on her private part. Her daughter reiterated the incident on the very date as she was in restless condition and suffering from pain after returning to residence. The witness also deposed that she had also checked the victim and found blood and semen at her private part. The said pant which the victim girl was wearing was seized by the police authorities. The witness identified the accused in Court.

PW3, 'X' is the victim girl, who stated that her mother lodged a complaint against the accused in respect of the incident which took place five years ago when she had been to the house of the accused on being invited in

the occasion of 'Sani Puja'. She narrated that the accused took her to an upstairs room for telling a story and thereafter he represented that in order to hear a ghost story it is necessary to shut the doors and windows. He then lay the victim girl on the bed and took off her pants and inserted a stick (kathi) on her private part. After such insertion she started screaming when the accused left her. Thereafter, she went downstairs. Police had taken her for medical examination and she was taken to Magistrate in Court where she gave statement regarding the incident. Her statement under Section 164 of the Code of Criminal Procedure was shown and marked as Ext.2. She also identified the accused in Court.

PW4, Munmun Bose, stated that she is cousin sister of PW2 and acquainted with her daughter who is the victim girl. She narrated the incident as she heard from PW2. She is also the scribe of the written complaint. She identified the written complaint which was drafted according to the instruction of PW2, the same was marked as Ext.1/1. The signature of the witness also identified which was marked as Ext. 1/2.

PW5, 'Z', is the father of PW3 and husband of PW2. This witness narrated the incident as he had heard from PW2 and the facts narrated by him align to the deposition made by the victim girl before the Court. The witness identified the accused in Court.

PW6, Tilak Basu, is acquaintance of the complainant's family. He deposed that 5/6 years ago the complainant informed him over phone that she

had suffered great loss. She was consoled by him and thereafter he had been to her house and came to know that the accused had taken the victim girl to upstairs room and inserted a stick in her vagina. He identified the accused in Court.

PW7 is the doctor who treated the victim girl. He identified the medical report which was marked as Ext.3. It was narrated by the doctor that the medical report reflects the history which was as complained by the victim girl that Sakshi Gopal Das took her one day to upstairs in a room and after that he took off her panty down and inserted a kathi after that she cried and came out.

PW8, Milli De (Dutta) is the younger sister of PW2. The witness narrated the incident in same manner as PW3.

PW9, Indrajit Mondal, ASI of Police who was posted at the relevant point of time at Ranaghat Police Station, who received the written complaint with an endorsement. The said endorsement of the witness on the written complaint was marked as Ext.1/3.

PW10, Nihar Ranjan Sarkar is the Investigating Officer of the Case.

Two documents which are very vital for the adjudication of the present case is the statement of the victim girl under Section 164 of the Code of Criminal Procedure before the learned Judicial Magistrate, wherein the victim girl narrated that the accused whom she referred as 'Dadu' took her to the upstairs room and closed the room by representing that he would narrate a

ghost story. He further stated that since it was a ghost story all the doors and windows should be closed so that sound cannot pass through the rooms. After that she was laid on the bed at the edge of the cot where the accused stood and took off her pant then he inserted a stick to a part of her body from where her toilet passes. He thereafter threatened her for not divulging the fact to anybody and he asked after inserting the stick whether she felt good or not. When she stepped down her mother asked her what she was doing when she replied that she was listening to a story and she could not tell the truth to her mother as 'Dadu' was peeping from above. After returning to house she narrated the incident to her mother who informed her father and thereafter to the police authorities.

Another document which requires emphasis is the statement before the doctor wherein it has been recorded that the victim girl complained that 'Dadu' (Sakshi Gopal Das) took her yesterday to upstairs after that he put her panty down and put a kathi after that she cried and came out.

I have assessed the statement of the victim girl which has been consistent throughout without any exaggeration or minor discrepancies. There may be an exaggeration in the statement of the mother of the victim girl regarding the actual occurrence of sexual assault but so far as the victim girl is concerned she has been consistent regarding the manner of sexual assault and has consistently stated that the accused had inserted a stick (kathi) in her vagina.

Having regard to the principles of law in cases of sexual harassment and molestation regarding the appreciation of evidence in the background of sole testimony of the prosecutrix before arriving at a conclusion, I am of the opinion that rest of the evidence in this case is redundant. The deposition of the victim girl before the Court, her statement before the Judicial Magistrate under Section 164 of Code of Criminal Procedure - Ext.2 and her statement before the Medical Officer when she was taken for treatment Ext.3 have been throughout consistent and inspires confidence to arrive at a finding. Thus, the order of conviction and finding of guilt arrived at by the learned trial Court under Section 354 of the Indian Penal Code do not called for any interference.

For taking benefit of Section 360 of the Code of Criminal Procedure/Probation of Offenders Act Mr. Dipanjan Chatterjee learned Advocate appearing on behalf of the appellant relied upon a judgment of a Coordinate Bench in Sandip Chitrakar @ Barka -Vs. - State of West Bengal & Anr. in CRR 1619 of 2007. The appellant relied upon the aforesaid judgment to emphasize that in a case under Section 354 of Indian Penal Code a Co-ordinate Bench has been pleased to hold after affirming the order of conviction that as the petitioner/accused was not a habitual offender or is involved in some other offence benefit of the aforesaid provision are to be extended. The factual background that the incident took place over collection of water from a common water tap and the incident being very common in the city of Kolkata where people are involved in altercation, quarrel, jostling and free fighting amongst themselves to collect water weighed with the Court and it was held

that the petitioner having committed the first offence he should be kept under the custody of Probation Officer under the provisions of the Probation of Offences Act, 1958.

Thus while arriving at its conclusion the Co-ordinate Bench took into account the nature of the offence committed including the effect of the offence in the society. In the present case the accused/appellant acted with a design i.e. he allured the victim girl by representing that he would tell a ghost story under the said garb the victim child was taken upstairs and by a fake representation closed the doors and windows of the room, thereafter, he committed the offence by stripping of her undergarment and inserting a stick (kathi) in the vagina. There is a complete factual difference between the case so cited and relied upon and the present case. The offence committed by the appellant in the present case is bound to have a deterrent effect in the society considering his age and the age of the victim child. Consequently the provisions of the Probation of Offenders Act, 1958 are not applicable to the present case.

Accordingly, CRA 124 of 2019 is dismissed.

Pending Applications, if any, are consequently disposed of.

Department is directed to send back the Lower Court Records and communicate this judgment, so that effective steps are taken by the learned trial Court.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)