

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. 115 of 2018
CRAN 1 of 2018 (Old CRAN No. 2622 of 2018)

Ruhiya Soren
-Vs-
The State of West Bengal

For the Appellant	:	Mr. Kallol Mondal, Adv. Mr. Krishan Ray, Adv. Mr. Souvik Das, Adv.
For the State	:	Mr. Saswata Gopal Mukherjee, Id. P.P. Mr. Partha Pratim Das, Adv. Ms. Amita Gaur, Adv.
Heard on	:	20.04.2022
Judgment on	:	20.04.2022

Joymalya Bagchi, J. :-

The present case portrays the unfortunate trauma suffered by a minor student in a boarding school who was subjected to brutal sexual predation by her teacher, the appellant herein.

Factual matrix of the case is as follows :-

Minor victim aged around 13 years was a student of a boarding school. She resided in the Ashram attached to the school. During Durga puja of 2007, she visited her home. 3-4 days after she returned to the

Ashram, appellant took her to his room and raped her. Couple of days later, she was subjected to similar sexual assault. On 26th December, 2007, appellant again tried to rape the victim. This was witnessed by a cousin of the victim (P.W.7). She informed the matter to the Principal while the victim narrated the same to the cook. On 29th December, 2007, father of the victim (P.W.6) came to the Ashram to meet his daughter. Principal informed him about the incident. He also heard the incident from his daughter. Thereafter, he lodged complaint on 30th December, 2007 with the local police station resulting in registration of Nayagram Police Station Case No. 32 of 2007 dated 30.12.2007 under Section 376 of the Indian Penal Code. In course of investigation, the victim was medically treated. Appellant was arrested and charge-sheet was filed. Charge was framed under Section 376 IPC. Appellant pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 12 witnesses including the victim (P.W.1). Upon analysis of the evidence on record, learned trial Judge by the impugned judgement and order dated 30th January, 2018 and 31st January, 2018 convicted the appellant for commission of offence punishable under Section 376 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs. 60,000/-, in default, to suffer rigorous imprisonment for one year more with a further direction that 80% of the fine, if recovered, shall be given to the victim as compensation.

Mr. Kallol Mondal, learned Advocate appearing for the appellant submits the victim (P.W.1) has not been supported even by her father (P.W.6) and cousin (P.W.7). She had refused to make statement before the Magistrate under Section 164 of the Code of Criminal Procedure. These circumstances improbabilise the version of the victim in Court and shows the appellant was falsely implicated in the instant case. Neither the Headmaster of the school nor the cook has been examined. He further submits specific dates of occurrence have not been established and the charge framed against the appellant is a vague one. Hence, the appellant is entitled to an order of acquittal.

Mr. Partha Pratim Das, learned Advocate appearing for the State submits that the victim was aged around 13 years. Appellant was a teacher of a boarding school where the victim used to reside. He had overwhelming control over the minor and repeatedly subjected her to sexual intercourse. Minor was medically examined and from the report it appears she was habituated to sexual intercourse. Medical evidence corroborates prosecution case of rape of the minor victim. Non-examination of other witnesses do not affect the unfolding of the prosecution case. Hence, the appeal is liable to be dismissed.

The case involves rape of a minor in a boarding school by her own teacher. Circumstances surrounding the offence would show overwhelming control and dominion of the predator over the minor victim who appears to come from impoverished section of society. These aspects

must be borne in mind when one assesses the evidence of the minor (P.W.1). From her evidence it appears she was residing in the Ashram attached to the boarding school. Incident occurred after Durga Puja of 2007. She was sleeping in her room. Appellant, who was a teacher of the school, came to the room and took her to his room and raped her. 2-3 days later, she was again subjected to similar sexual assault. Her cousin who also resided in the Ashram found her in the bed of the appellant. She became ill and her father was called to the Ashram. She narrated the incident to her father who lodged complaint at the police station. She was medically examined by the Doctor.

In cross-examination, she stated the names of the teachers as well as the Headmaster. She also disclosed the name of the cook in the Ashram. She stated the teachers used to stay in one room while the inmates occupied another room. On the dates of the incident, there was no other teacher in the room.

Learned Advocate appearing for the appellant submits the evidence of the minor victim does not disclose the specific dates on which she had been ravished. Charge framed in the instant case also is bereft of such material particulars.

For the purpose of better appreciation of such argument, charge framed in the case is set out as follows;

“First- That you on or about after Durga Puja 2007 and in between 26/12/07 at village – Bhaluktara, P.S. Nayagram, committed rape on Laxmi Hansda and that you thereby committed an offence punishable under

Section 376 of the I.P.C. and within the cognizance of this Court.”

From the charge it appears that the incident is alleged to have occurred after Durga puja 2007 till 26th December, 2007. P.W.1 has stated she had been raped repeatedly between Durga puja 2007 and 30th December, 2007 when first information report came to be lodged. From the narration of the victim it appears that she had been raped repeatedly by her teacher during the aforesaid period. She is a 13 year old girl and was subjected to brutal sexual assault on a number of occasions. It may not be possible for the victim owing to her immature age to specify the exact dates on which she had been sexually exploited by her teacher. Nonetheless, she had indicated the trauma begun soon after Durga puja 2007 and after a couple of days she was again raped. It is true P.W.1 is silent with regard to another attempt of rape in December, 2007 as disclosed in the FIR. However, her deposition in Court unequivocally depicts repeated sexual assault upon her by the appellant between Durga puja 2007 and 26th December, 2007 as set out in the charge. It is nobody's case that the appellant did not have access to the minor during the period set out in the aforesaid charge.

When the minor is subjected to repeated sexual assaults by a person who has control and dominion over her during the period as set out in the charge, I am of the view the charge levelled against the accused cannot be said in the facts of the case as vague or that it had in any manner prejudiced him in his defence.

Mr. Mondal also argues the minor (P.W.1) had not been corroborated even by her relations viz., father (P.W.6) and cousin (P.W.7).

I have considered the aforesaid submission in the backdrop of the peculiar circumstances of the present case. Socio-economic condition of the family of the minor appears to be very weak. Her father used to reside at a different place and she was kept in an Ashram attached to the school. Taking advantage of the helpless condition, the appellant, a teacher of the school, sexually predated upon her on a number of times. Out of fear, minor remained mum till she became sick and her father was called to Ashram. Till then, her father was oblivious of such sexual torture perpetrated upon the minor. He came to know of the event when he visited the Ashram in December, 2007. These circumstances show the helpless condition of the family of the minor, who in all probability owing to the superior status of the appellant, were unable to divulge the facts fearlessly in Court. These circumstances explain away the hesitance of the father (P.W.6) and the prevarication of the cousin (P.W.7), another inmate of the self-same Ashram, who turned hostile during trial.

P.W.7, cousin of the victim, was cross-examined with regard to her previous statement to police which shows she had made statement during investigation corroborating the version of the minor victim (P.W.1). Fear of reprisal may have also prevailed in the mind of the minor which prompted her not to make statement before the Magistrate under Section 164 Cr.P.C. However, in course of trial, she mustered courage

and came out with the ugly facts of sexual assault by her teacher which is corroborated by the medical evidence on record.

P.W.9, Dr. Gour Mohan Jana, examined the minor after a couple of months from the date when the incident begun i.e. on 31st December, 2007. Though due to delayed examination he did not find external injuries, but he noted the hymen was torn and the vaginal outlet was capable of admitting two fingers. These medico-legal findings support the version of the minor (P.W.1) that she had been subjected to repeated sexual intercourse at the behest of the appellant. Hypothetical possibilities of tearing of hymen by cycling etc. have little relevance as circumstantial evidence do not give credence to such alternate hypothesis.

Finally, it may be noted the appellant was the teacher of the minor child. She had no reason to falsely implicate him for such heinous crime. During his examination under Section 313 Cr. P. C. appellant appears to have conjured a case of hostile discrimination at work resulting in false implication. He contended he was the only Adivasi teacher in the school. Hence, he had been falsely implicated by other teachers. No complaint of harassment of the appellant by his colleagues has been placed on record. On the other hand, evidence on record show appellant was not the sole teacher from Adivasi community. Other teachers in the school viz., Mukunda Soren and Bidhan Mandi appear to be members of the same community.

Hence, I am of the opinion plea of false implication by the appellant is wholly false and is a desperate and belated attempt to save himself from legal punishment.

For the aforesaid reasons, I uphold the conviction and sentence imposed upon the appellant.

The appeal is accordingly dismissed.

Connected application being **CRAN 1 of 2018 (Old CRAN No. 2622 of 2018)** is also disposed of.

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

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

Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)