

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. 154 of 2019
with
CRAN 1 of 2019 (Old No. CRAN 2492 of 2019)

Krishana @ Krishna Bagdi
-Vs-
State of West Bengal & Anr.

For the Appellant : Mr. Jayanta Narayan Chatterjee, Adv.
Mr. Apalak Basu, Adv.
Mr. Nazir Ahmed, Adv.
Ms. Sreeparna Ghosh, Adv.
Mr. S. Koley, Adv.
Ms. Ritusree Banerjee, Adv.
Ms. Pritha Sinha, Adv.

For the State : Mr. S. G. Mukherji, learned P.P.
Mr. Partha Pratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 06.04.2022

Judgment on : 06.04.2022

Joymalya Bagchi, J. :-

With the consent of the parties appeal is taken up for hearing.

The appeal is directed against judgment and order dated 18.01.2019 and 19.01.2019 passed by the learned Additional District and Sessions Judge-cum-Special Judge, POCSO Act, Kandi,

Murshidabad, in Sessions Trial No. 05(10) of 2018 corresponding to C. Spl. (CIS) No. 26 of 2018 convicting the appellant for commission of offence punishable under Sections 363/376(2)(i) of the Indian Penal Code and Section 4 of the POCSO Act and sentencing the appellant to suffer simple imprisonment for four years and to pay fine of Rs. 10,000/-, in default, to suffer further simple imprisonment for six months more for the offence punishable under Section 363 of the Indian Penal Code, to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/-, in default, to suffer further simple imprisonment for six months more for the offence punishable under Section 376(2)(i) of the Indian Penal Code and to suffer simple imprisonment for seven years and to pay fine of Rs. 10,000/-, in default, to suffer further simple imprisonment for six months more for the offence punishable under Section 4 of the POCSO Act with a further direction that the appellant is liable to suffer the graver sentence awarded for the offence punishable under Section 376(2)(i) of the Indian Penal Code than that imposed under Section 4 of the POCSO Act in view of Section 42 of the POCSO Act. All the sentences to run concurrently.

Prosecution case as alleged against the appellant is to the effect that on 05.07.2018 around 9:30 p.m. when the minor victim aged below 16 years went out to relieve herself the appellant pressed her mouth and took her to a vacant house named "Open Club" and forcibly raped her. Victim returned home and complained to her father. She lodged complaint at the police station resulting in registration of Burwan Police

Station Case No. 233 of 2018 dated 06.07.2018 under Section 376 of the Indian Penal Code and Section 6 of the POCSO Act. In the course of investigation, victim was medically examined and her statement was recorded under Section 164 of the Code of Criminal Procedure. In conclusion of investigation, charge-sheet was filed and charges were framed under Sections 376 of the Indian Penal Code and Section 4 of POCSO Act.

In the course of trial, prosecution examined five witnesses.

P.W. 1 examined is the victim. She stated on 05.07.2018 around 9:30 p.m. she had gone out from her house for urinal. Taking advantage of the situation, appellant pressed her mouth and stated he would marry her. Thereafter, the appellant took her to a vacant house named "Open Club" and raped her against her will. In cross-examination, though she admitted she knew the appellant she denied the suggestion of free mixing with him. She lodged F.I.R. marked as "Exhibit-1".

P.W. 2 is the father of the victim. He claimed his daughter informed the incident to him. In cross-examination, he stated that wearing apparels of her daughter were stained with blood.

P.W. 4, Dr. Rezzak Sk., examined the victim. He stated he did not notice any sign of injury on her person and her hymen was intact. There was no foreign body in her private parts. He also stated during examination victim disclosed she had been kidnapped and physically abused by the appellant by kissing, molestation and attempted sexual intercourse. He proved the medical report marked as "Exhibit-3".

P.W. 5, Md. Firoz, is the investigating officer of the case.

Defence of the appellant was one of innocence and false implication.

On an analysis of the evidence on record, learned trial Judge by the impugned judgment and order dated 18.01.2019 and 19.01.2019 convicted and sentenced the appellant, as aforesaid.

Mr. Chatterjee, learned Counsel appearing for the appellant has assailed the conviction of the appellant on the following counts:

Firstly, materials on record do not establish a case of forcible rape. Appellant was known to the victim. No injuries were found on her body. Hence, plea of forcible rape appears to be a concocted one. Secondly, victim did not disclose she had been raped before the treating doctor but claimed it was a case of attempted rape. Thirdly, no injuries were found on the private parts of the victim which improbabilises the prosecution case.

On the other hand, Mr. Das, learned Counsel appearing for the State, submits victim was below 16 years of age at the time of occurrence. Hence, her consent was immaterial. Victim had been subjected to rape against her will as would appear from her deposition as well as F.I.R. Medical officer, P.W. 4, had clarified presence of injuries depends on the manner of force used during rape. Hence, absence of injuries does not, by itself, rule out a case of forcible rape. Hence, the prosecution case is proved beyond doubt.

Evidence of the minor victim and her father disclosed the manner in which the victim was subjected to forcible rape. On the fateful night she had gone out to urinate. At that juncture, appellant pressed her mouth and stated he would marry her. Thereafter, she was taken to a vacant house and raped against her will.

It is contended victim was a consenting party. I am unable to accept such plea. During examination, P.Ws. 1 and 2 denied there was any free mixing between the parties. Appellant was a neighbour and known to P.W. 1. Mere acquaintance would not give rise to an inference of free mixing and consent to sexual intercourse. On the other hand, victim had been forcibly dragged to a vacant room and ravished against her will. Immediately after the occurrence she complained to her father. These circumstances rule out any consent on her part. Moreover, the victim was aged below 16 years and her consent to sexual intercourse, if any, was immaterial.

It has been argued no injuries were found on her body including the private parts. She had complained of attempt to rape before the doctor, P.W. 4. Hence, conviction of the appellant for commission of rape is unfounded. P.W. 1 lodged F.I.R. immediately after the incident alleging she had been raped against her will. Thereafter, she was examined before the learned Magistrate wherein she again stated she had been forcibly raped.

In view of the aforesaid facts, recording in the medical papers that the victim had complained of attempted rape is of little

consequence. It is common knowledge that when a victim, particularly a minor, has been sexually abused she remains extremely shy and hesitant to narrate the incident. In fact, such narration amounts to secondary victimisation as compelling a victim to recount an unpleasant incident puts her to extreme agony and stress. When judged from such background, it is possible that the victim was hesitant and did not disclose the complete facts before the treating doctor. Absence of injuries, by itself, is not a ground to disbelieve the version of a victim of sexual assault. I am fortified to come to such conclusion in view of the explanation offered by the medical doctor, P.W. 4 during cross-examination that presence of injuries on the body of the victim depends on the manner of force used. Thus, I am of the opinion there is no inconsistency or contradiction appearing from the medical evidence which renders the version of the minor victim completely improbable.

Hence, I am of the opinion the prosecution case is proved beyond doubt. Conviction and sentence of the appellant is accordingly upheld.

Appeal is accordingly dismissed. Connected applications, if any, also stand disposed of.

The period of detention suffered by appellant during investigation, enquiry or trial shall be set off under Section 428 of the Code of Criminal Procedure.

Copy of the judgment along with LCR be sent down to the trial court at once for necessary compliance.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

Sdas/PA(Sohel)