

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.A. 152 of 2018

***Gobinda Ghosh
Vs.
The State of West Bengal***

For Appellant : Mr. Dipanjan Chatterjee, Adv.,
Ms. Sonali Das, Adv.

For the Respondent : Ms. Faria Hossain, Adv.,
Mr. Sandip Chakraborty, Adv.

Heard & Judgment On : 09.02.2022

Bibek Chaudhuri, J.

One Gobinda Ghosh, appellant herein has filed the instant appeal assailing his conviction under Section 354B of the Indian Penal Code and consequent sentence to suffer simple imprisonment for three years with fine and default clause passed by the Learned Additional Sessions Judge, Ranaghat at Nadia in Sessions Case No. 07(11)/2016 corresponding to Sessions Trial No. 13(1)/2017. Indisputably, the appellant is the father-in-law of the *de facto* complainant. It is ascertained from the written complaint that the

marriage of the *de facto* complainant was solemnized with one Tanmoy Ghosh on 30th April, 2016. Within few days of marriage Tanmoy went to Punjab to join his employment as Border Security Force Jawan. The wife of Tanmoy used to stay alone at her matrimonial home. It is alleged by the *de facto* complainant that immediately after marriage some dispute cropped up between husband and wife and it was subsequently amicably settled between them. While she was staying alone at her matrimonial home, on 10th June, 2016 at night her father-in-law assaulted her and touched her body inappropriately. She also attempted to commit rape upon her. When the *de facto* complainant resisted, she was tied up with the help of 'gamcha'(towel) against a window and the appellant again attempted to commit rape upon her. When she raised hue and cry the appellant threatened her that he would pour kerosene oil on her body and set her ablaze. It was further stated by the *de facto* complainant that the appellant and his wife never accepted her as their daughter-in-law as the marriage between *de facto* complainant and their son, Tanmoy was an inter caste marriage, the *de facto* complainant being a member of so-called low caste.

On the basis of the said complaint, Police registered a case under Sections 498A/376/511/34 of the Indian Penal Code being Gangnapur Police Station Case No. 97/2016 and took up the case for

investigation. On completion of investigation charge-sheet was filed against the accused person under the above-mentioned heads of charge as the offence was exclusively triable by the Court of Sessions. It was committed to the Court of the Learned Additional Sessions Judge, Ranaghat at Nadia for trial. The Learned Trial Judge on consideration of materials-on-record framed charge under Sections 498A/34 of the Indian Penal Code against all the accused persons and under Sections 376/511 of the Indian Penal Code against the appellant. When the accused persons pleaded not guilty, the prosecution was called upon to produce the witnesses.

During trial, in all eight witnesses were not examined. Apart from the Investigating Officer (P.W. 8) and the Medical Officer (P.W. 7) and one Sanjib Das (P.W. 6) who was the scribe of the written complaint, all other witnesses are the close relatives of paternal side of the *de facto* complainant. It is needless to say that the *de facto* complainant was examined as P.W. 1 during trial.

The Learned Trial Judge on due consideration of evidence on record held appellant, Gobinda Ghosh guilty for committing offence under Section 354B of the Indian Penal Code and convicted and sentenced him accordingly. The appellant and his son, Tanmoy were, however, acquitted from the charge under Sections 498A/34 of the Indian Penal Code. It will not be out of place to mention here that

during trial of the case mother-in-law of the *de facto* complainant, namely, Runu Ghosh had expired and the case against her was abated.

I have carefully heard the submission made by the Learned Advocate for the appellant and Learned Public Prosecutor-in-Charge. I have also perused the evidence on record and scrutinized the same independently.

On scrutiny of the evidence on record, this Court finds the following glaring infirmities in the evidence adduced by the witnesses on behalf of the prosecution:-

- (i) Marriage of the *de facto* complainant was solemnized on 30th April, 2016. As per the written complaint she was tortured and abused on 10th June, 2016. Thus, the incident took place within 41 days of marriage of the *de facto* complainant. In her written complaint the *de facto* complainant stated that she was assaulted and inappropriately touched by her father-in-law in the night of 10th June, 2016. When she resisted the appellant tied her hands with the help of 'gamcha' against a window and again attempted to commit rape upon her. Thus, according to the written complaint

entire incident took place in the night of 10th June, 2016.

- (ii) Now in evidence she stated on oath that the incident took place on 10th June, 2016 at about 9.30/10.00 p.m. when she was cooking at her matrimonial home. At that time, the appellant came from behind, embarrassed her and pressed her breast. As a result of sudden push she fell down on the ground, then the accused/appellant tried to commit rape upon her. Again on the next day morning, i.e. on 11th June, 2016 the appellant tried to commit the same indecent act upon the *de facto* complainant. Surprisingly enough, the written complaint is absolutely silent about the incident that allegedly took place on 11th June, 2016.
- (iii) This Court is perfectly aware that the written complaint is not a substantive piece of evidence. It is not an encyclopaedia so that every minute details are to be stated by the *de facto* complainant, but the FIR must contain the incident in a summarized form which took place. When there is a material omission in the FIR regarding the incident of 11th June, 2016, such omission amounts to contradiction and in such case the

Court has no other opportunity but to hold that *the de facto* complainant tried to develop her case introducing a new story dated 11th June, 2016.

- (iv) The relatives of the *de facto* complainant also stated with great stress about the incident of 11th June, 2016 but the *de facto* complainant did not state such incident in his written complaint.
- (v) There is another glaring contradiction which comes from the evidence of the Medical officer. The Medical Officer (P.W. 7) wrote the injury report of the *de facto* complainant as per her statement. She stated before the Medical Officer that the alleged incident took place on 10th June, 2016 during noon. If such statement of the *de facto* complainant made before the Medical Officer for the first time even before lodging the FIR is believed, then the entire story of happening of the incident on 10th June, 2016 at night is held to be false, and false to the knowledge of the *de facto* complainant.
- (vi) Surprisingly enough, the Learned Trial Judge convicted the appellant under Section 354B of the Indian Penal Code. Section 354B is the penal provision for assault

or use of criminal force to a woman with intent to disrobe. It runs thus:-

“354B. Assault or use of criminal force to woman with intent to disrobe. - Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine”.

Careful reading of Section 354B suggests that even if an accused does not have any intention to commit rape, he may be held guilty for committing the offence of disrobing a woman. Even in Section 354B it is not required for the prosecution to prove that the victim was actually disrobed used of criminal force with the intent to disrobe by the accused is sufficient to bring home the charge under Section 354B of the Indian Penal Code.

Now the Learned Trial Judge did not frame any charge under Section 354B of the Indian Penal Code causing thereby prejudice to the appellant because he did not get any opportunity to understand or explain for which he was being tried. Section 354B of the Indian Penal Code is not a lesser offence of Sections 376/511 of the Indian

Penal Code. Therefore, the Learned Trial Judge committed a gross error in convicting the appellant under Section 354B of the Indian Penal Code taking aid of Sub-Section 4 of Section 222 of the Code of Criminal Procedure.

For the reasons stated above, this Court is of the view that the judgment and order of conviction and sentence passed by the Learned Additional Sessions Judge, Ranaghat, Nadia in Sessions Trial No. 13(1)/2017 arising out of Sessions Case No. 07(11)/2016 cannot be sustained.

The instant appeal is, therefore, **allowed** on contest.

The accused be discharged from the bail bond.

Office is directed to supply the urgent certified copy of this order to the Learned Advocates for the parties on the usual undertakings.

(Bibek Chaudhuri, J.)

**Srimanta
A.R. (Court)**