

CRA 213 of 2019
CRAN 2 of 2019

Mr. Angshuman Chakraborty	
Mr. S.S. Saha	... for the petitioner
Ms. Faria Hossain	
Mr. Aniket Mitra	... for the State

Challenge in this appeal is to the judgement and order of conviction passed by the learned Additional District and Sessions Judge, First Court, Sealdah, 24 Parganas (south) cum Special Judge under Protection of Children from Sexual Offences Act, 2012.

The brief fact is that Smt. Sudha Jha set the criminal administration of justice into motion by giving an information to the Officer-in-Charge of Phool Bagan Police Station on April 19, 2018 in writing disclosing inter alia that her minor daughter (who will be hereinafter referred to as victim girl) did not come back her house after she left on April 16, 2018 for her school. As the information disclosed an offence cognizable in nature Phool Bagan P.S. Case No. 54 dated April 19, 2019 was registered under Section 366A of the Indian Penal Code. Police took up investigation which culminated into submission of charge sheet against the accused person under Section 366A of the Indian Penal Code read with Section 4/17 of Protection of Children from Sexual Offences Act, 2012. Charge was framed by the learned Trial Court against the

accused before him under Sections 363/376 of the Indian Penal Code read with Section 4/17 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as (POCSO Act, 2012).

The accused person pleaded to be innocent and claimed to be tried.

The prosecution examined nine witnesses including the victim girl and upon perusal of evidence, learned Trial Court was pleased to record an order of conviction under Section 363 of the Indian Penal Code against the accused person who was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.20,000/- with a default clause. Learned Trial Court further directed to give 90% of the fine amount to the victim girl as compensation under Section 357 of the Code of Criminal Procedure.

Being aggrieved by and dissatisfied with the judgement and order of conviction, the convict preferred this appeal.

Mr. Ansuman Chakraborty, Learned Counsel representing the appellant submits with all fairness that the convict has already served out sentence. The appellant was 23 years of old in 2018, when he committed the offence; he has been spending his days for last 5 years behind the bar.

Mr. Chakraborty submits that the fine amount may be waived by altering the sentence imposed upon the convict/appellant.

Mr. Aniket Mitra, Learned Counsel representing the State however is expressing his reservation to any kind of leniency to be

shown to the appellant. According to Mr. Mitra, this Court may not interfere with the order of conviction under challenge taking into consideration the nature of offence committed by the appellant.

Upon perusal of impugned judgement I find that learned Trial Court did not invoke the provision of Section 360 Cr.P.C. without assigning any explanation as required under Section 361 of Cr.P.C., I am of the view that the appellant has been punished adequately and the sentence of fine as imposed upon him may be altered maintaining the order of conviction.

The appellant is directed to pay fine of Rs.1000/- instead of Rs.20,000/-in default to suffer imprisonment for 7 days; rest part of sentence stands affirmed.

Appeal is thus allowed but in part.

Let a copy of this order be sent to the Learned Trial Court for information and necessary action.

All parties to act in terms of server copy of the order downloaded from the official website of this Court.

Urgent certified copy of this judgement, if applied for, be handed over to the parties on compliance of necessary formalities.

(Siddhartha Roy Chowdhury, J.)