

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. 190 of 2017

Kachi Hansda

-Vs-

State of West Bengal & Ors.

For the appellant : Mr. Uday Sankar Chatterjee, Advocate.
Mr. Suman Sankar Chatterjee, Advocate
Mr. S Maji, Advocate
Ms. Snigdha Saha, Advocate
Mr. Pranoy Basak, Advocate

For the State : Mr. Saswata Gopal Mukherjee, Ld. APP,
Mr. Partha Pratim Das, Advocate,
Ms. Manasi Roy, Advocate.

Heard on : April 07, 2022.

Judgment on : April 07, 2022.

Joymalya Bagchi, J. :-

Appellant has assailed judgment and order dated 20.12.2016 and 21.12.2016 passed by the learned Additional District & Sessions Judge, 2nd Court, Burdwan in connection with Sessions Case No.66 of 2014 (Sessions Trial Case No. 36 of 2014) convicting the appellant for commission of offences punishable under sections 376(2)(i)/448/506 of the Indian Penal Code and under section 4 of the POCSO Act and sentencing him to suffer rigorous imprisonment for 15 years and to pay a fine of Rs. 5,000/-, in

default, to suffer rigorous imprisonment for one year more for the offence punishable under Section 376(2)(i) of the Indian Penal Code and alternatively for the offence punishable under section 4 of the POCSO Act, to suffer rigorous imprisonment for one year for the offence under Section 448 of the Indian Penal Code, and to suffer rigorous imprisonment for three years for the offence punishable under Section 506 of the Indian Penal Code. All the sentences shall run concurrently.

Prosecution case, as against the appellant is to the effect that on 21.1.2014 around 11.00 a.m. when the victim was alone at her residence, the appellant came inside the room and forcibly raped her. When the parents of the victim returned home after work in the evening, she narrated the incident to them. Next day her father Chunilal Tudu, PW 1 lodged FIR against the appellant resulting in registration of Memari PS case no. 30 of 2014 dated 22.01.2014 under section 448/376(2)(i)/506 IPC and under section 4 of the POCSO Act. In the course of investigation, victim was medically treated. Her statement was recorded. Appellant was arrested and charge-sheet was filed. Charges were framed under Sections 448/376(2)(i)/506 of the IPC and section 4 of the POCSO Act. Appellant pleaded not guilty and claimed to be tried.

In course of trial, prosecution examined 10 witnesses to prove its case. Defence of the appellant was one of innocence and false implication. In conclusion of trial, the trial Judge by the impugned judgment and order dated 20.12.2016 and 21.12.2016 convicted and sentenced the appellant, as aforesaid.

Victim girl was examined as PW 7. PWs 1 and 5 are her parents. PW 2 Smt. Sarmistha Ghosh is the medical officer who examined the victim and found injuries in her private parts. PW 10 Sukumar Dey was the head master of Kuchut P.C Institution where the victim studied. He produced school certificate showing date of birth of the victim was 28.11.1999 which shows the victim was 14 years old at the time occurrence. PW 9 is the investigating officer of the case.

Mr. Chatterjee, learned Advocate appearing for the appellant submits genesis of the prosecution case is improbable. Appellant had come to the residence of the victim at 11 a.m. and stayed there for an hour. Victim did not raise hue and cry. None of the neighbours saw the appellant enter and go out of the house. Hence, the prosecution case is not proved beyond doubt.

Mr. Das, learned Advocate appearing for the State submits that victim was aged about 14 years and was alone in the room. Taking advantage of the situation, the appellant forcibly raped her. Version of the victim is corroborated not only by her parents but through medical evidence. Hence, the appeal is liable to be dismissed.

PW 7 is the minor victim. She deposed on 21.1.2014 she was alone in the room. At 11 am appellant came into her house and closed the door from inside. She tried to raise alarm but appellant gagged her mouth, opened her wearing apparels and committed rape on her. When her parents returned in the evening from work, she disclosed the incident to them. On 22.01.2014 her father lodged complaint at Memari police station. She was medically examined. She made statement before police.

PW 7 is corroborated by her parents PW 1 and 5. PW 1 is her father. He stated he and his wife had gone out for work. His daughter was alone in the house. When they returned home in the evening, his daughter narrated the incident to them. On the next day, he lodged complaint. He proved the complaint. After lodging FIR he was threatened by the family members of the appellant. Deposition of PW 1 is supported by his wife PW 5 and his elder sister-in-law PW 3. PW 4, a neighbour also deposed he came to know from PW 1 that the appellant had raped his daughter at 11 a.m on the fateful day.

From the deposition of victim PW 7 it appears that the appellant had trespassed into the house and gagged her mouth. As a result she was unable to raise hue and cry. Thereafter, she was raped. As the victim had been gagged and was unable to raise hue and cry, local people were unaware of the incident. After the brutal sexual assault, the victim kept mum and divulged the incident only when her parents came home in the evening. This conduct of a minor victim of sexual assault is most natural and cannot be a ground to disbelieve her version.

Prosecution case of forcible sexual assault as narrated by PW 7 is also supported by medical evidence. PW 2 who examined the victim girl at Burdwan Medical College and Hospital noted injuries in her private parts and opined that she had been subjected to forcible sexual intercourse.

In view of the aforesaid evidence on record, I am of the opinion conviction of the appellant is proved beyond doubt.

With regard to sentence, I note appellant had committed penetrative sexual assault on a minor. She suffered injuries. However, he does not have any criminal antecedent and has roots in the society.

Balancing the aggravating and mitigating factors in the present case, I am of the opinion, interest of justice would be served in the event the substantive sentence imposed on the appellant on count of section 376(2)(i) of the IPC and alternatively under section 4 of the POCSO Act is altered and the appellant is directed to suffer rigorous imprisonment for 12 years instead of 15 years as awarded by the trial court. Other sentences shall remain unaltered. All the sentences shall run concurrently.

With the aforesaid modification as to sentence, the appeal is disposed of.

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

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)