

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Before: Hon'ble Justice Sugato Majumdar

CRA 149 of 2015

**Mihir Gorai
Vs.
The State of West Bengal & Anr.**

For the Appellant : **Mr. K. Ghosal.**

For the State : **Mr. Swapan Banerjee,
Ms. Purnima Ghosh.**

Hearing concluded on : **08/07/2022**

Judgment on : **13/07/2022**

Sugato Majumdar, J.:-

The instant criminal appeal is filed against the judgment dated 31st January, 2015 passed by the Additional Sessions Judge, 2nd Court, Purulia cum the Special Judge under P.O.C.S.O Act, 2012 whereby the accused of the trial Ashok Gorai was acquitted of the charges leveled against him under sections 457/354 of the Indian Penal Code read with section 12 of the P.O.C.S.O Act.

The present appellant being the de-facto complainant and the father of the victim, lodged a written complaint against the said Ashok Gorai alleging that on 22/03/2013 at about 11 p.m. he trespassed into his house, forcibly broken the door of the room where the victim was sleeping and outraged her modesty. The wife of the appellant resisted but when she could not do anything she called the local people and confined the said Ashok Gorai inside a room.

The written complaint was registered as Purulia (M) P.S. Case No. 59 of 2013 dated 23/03/2013. On completion of investigation charge sheet was filed. Charges were framed under sections 457/354 of the Indian Penal Code

along with section 8 of the P.O.C.S.O Act 2012. The said Ashok Gorai pleaded not guilty as a result of which he was tried. In trial, seven witnesses were examined including the victim girl and her parents.

Defense of the said Ashok Gorai was false implication. He stated so also in his examination under section 313 of the Code of Criminal Procedure, 1973.

The trial court, after appreciation of evidence came to the conclusion that the said Ashok Gorai is not guilty and acquitted him of all the charges leveled against him. The trial court observed that the evidences of the witnesses are contradictory and belies the truthfulness of the allegations.

Mr. Ghosal, the Learned Counsel for the appellant submitted that the victim was a rustic girl without having enough smartness. She might not have deposed or narrated the incidents without meticulous details. But there is no contradiction in her statements that her modesty was outraged by the said Ashok Gorai. Minor contradictions, according to him, cannot undermine her otherwise reliable evidence. The trial court should have considered and appreciated evidence from that point of view. According to him, appreciation of evidence by the trial court was seriously flawed which demands interference of this court by setting aside the order of acquittal and convicting the said Ashok Gorai as sufficient materials are there in the record to order conviction.

Mr. Banerjee along with Ms. Ghosh, appearing on behalf of the state, filed written notes of arguments in which several discrepancies in the evidence were pointed out. The sum and substance of the argument of Mr. Banerjee and Ms. Ghosh is that because of incoherent evidence, the trial court rightly acquitted the said Ashok Gorai.

I have heard rival submissions.

It is stated in the written complaint that the victim was sleeping inside her room when the said Ashok Gorai forcibly entered into the house breaking door and outraged her modesty. The victim girl stated in evidence that while she was returning from bathroom the said Ashok Gorai pressed her mouth - and tried to drag herself and also outraged her modesty. She somehow managed to shout on hearing which her parents came there and managed to catch the said assailant. She did not state that the alleged incident took place while she was sleeping inside the room, as stated in the written complaint. The appellant, deposed as P.W. 2 and stated in evidence that on hearing shouting he along with his wife came out of the room and found that the victim was caught hold by the said Ashok Gorai and she was placed on the cot with a cloth was pressed on her mouth. P.W. 2, being the appellant, further stated in cross-examination that it was not correct to say as stated in the written complaint that on 22/03/2013 at about 11 p.m. the said Ashok Gorai had attacked his house and at that time the victim and the wife of the appellant were sleeping inside the room. This statement of the appellant undermines the allegations contained in the written complaint. There was neither any seizure of the alleged piece of cloth nor any piece of material demonstrating and evidencing breaking of the door which, according to P.W. 3, the mother of the victim, was bolted from inside.

P.W. 3 stated that on hearing the shouting of the victim, she and her husband, being the appellant came out of her room and asked the victim what happened. The victim stated her that she came out for attending her nature's call at bathroom when the said Ashok Gorai held her from back and pulled her placing a cloth on her mouth. Again P.W. 3 stated that when she went to the room of the victim hearing shouting it was closed. The victim stated in cross examination that the said Ashok Gorai was detained at night in the room where she also stayed in the night. This is very odd that the assailant and the victim were kept confined in the same room throughout the night. P.W. 3 once stated in her evidence that she was all along with the victim throughout the night in her room. At the same time she stated that

she was in the room of the victim for five minutes. These statements are contradictory. Although it is stated that the villagers guarded the said Ashok Gorai at that time, no cogent evidence is available to support this contention.

P.W.1, the victim further stated in her evidence that police came at about 3/3.30 a.m. and arrested the said Ashok Gorai from there. Memo of Arrest, being Ext. A show that the said Ashok Gorai was arrested at 14:25 hours on 23/03/2013.

The appellant further stated in evidence that he visited the police station at about 3 a.m. and lodged complaint there whereas the endorsement on the written complaint shows that it was received at 18:25 hours on 23/03/2013. He further stated that he was accompanied to the police station by Bhabani Charan Gorai and Bibhuti Gorai but they were not examined as witnesses.

No evidence was adduced to show the age of the victim.

Entire evidence is rife with contradictions and inconsistencies as rightly observed by the trial court. No cogent, reliable and corroborative evidence is there to sustain conviction. Such evidences cannot be relied upon. I agree with the submission of the Counsels appearing for the state. The plea of the Learned Counsel for the appellant that the victim is a rustic girl and could not depose properly cannot help him as other evidences are also contradictory.

In nutshell, this Court agree with the finding of the trial court and the trial court committed no error in acquitting the said Ashok Gorai.

Accordingly, the instant appeal stands dismissed without cost.

Lower court record should be returned with a copy of this judgment.

(Sugato Majumdar, J.)