

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 162 of 2014

Amirul Sheikh

-Vs-

The State of West Bengal

For the Appellant : Mr. Fazle Rabi, Adv.
Mr. Amal Kumar Samanta, Adv.

For the State : Mr. Nguive Ahmed, Ld. Addl. Public Prosecutor.

Heard on : 13.09.2022

Judgment on : 13.09.2022

Joymalya Bagchi, J. :-

Appeal is directed against judgment and order dated 05.12.2013 & 06.12.2013 passed by learned Additional Sessions Judge, Fast Track Court, Rampurhat in Sessions Trial No. 02 of July, 2011 arising out of Sessions Case No. 83 of 2011 convicting the appellant for commission of offence punishable under Section 376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years and to pay a fine of Rs.50,000/-, in default, to suffer further rigorous imprisonment

for two years more. Fine amount, if realised, was directed to be paid to the victim (PW2) as compensation.

Prosecution case as alleged against the appellant is to the effect that on 11th Baisakh, 1415 BS appellant had forcibly raped the victim against her will. When victim protested, appellant initially promised to marry the victim. A female child was born to the victim. Subsequently, the appellant did not marry the victim. Father of the victim (PW1) submitted written complaint before the Officer-in-charge, Mayureswar Police Station. No steps were taken. Under such circumstances, he took out an application under Section 156(3) before the learned Additional Chief Judicial Magistrate, Rampurhat against the appellant and his relations viz. Rahamatullah Sekh (father), Anesha Bibi (mother) and Nurelhaque Sekh (brother) alleging commission of offence punishable under Sections 376/493/120B/406 IPC. Pursuant to direction by the Magistrate, Mayureswar Police Station Case No.200 of 2009 dated 09.11.2009 under Sections 376/493/120B/406 IPC was registered against the appellant and co-accuseds. In conclusion of investigation, charge-sheet was filed and charges were framed under Sections 376/493 IPC against the appellant and under Sections 376/120B IPC against the co-accuseds.

In course of trial, prosecution examined 12 witnesses. Initial defence of the appellant was to the effect that he did not have sexual relationship with the minor victim (PW2) at all. However, DNA report

(Ext. 12) placed before the Court showed appellant was the biological father of the minor child. Faced with such a situation, appellant changed his stance and claimed there was a consensual relationship between them.

Disbelieving the pre-varicating stance of the appellant, learned trial Judge by the impugned judgment and order dated convicted and sentenced the appellant, as aforesaid. Appellant, however, was acquitted of the charge under Section 493 IPC. Co-accuseds were acquitted of the charges levelled against them.

Learned advocate for the appellant submits victim (PW2) was above 16 years at the time of occurrence. She was a consenting party. Hence, offence is not disclosed and appellant may be acquitted.

Learned Additional Public Prosecutor submits PW2 was a minor at the time of occurrence. Her deposition shows appellant had forcibly raped her. Hence, question of consent does not arise.

We have considered the evidence on record particularly that of the victim (PW2).

PW2 deposed incident occurred on 11th Baisakh, 1415 BS. In the evening she had gone to the pond near her house. While returning the appellant caught her, closed her mouth with her dupatta and forcibly raped her. He threatened to kill her with a knife. Thereafter, he requested her not to disclose the incident to anyone. Parents of the victim had gone to Calcutta for treatment of her mother. When they

returned, she reported the matter to her father. Her father brought the matter before the local villagers. Under pressure, appellant agreed to marry. In the meantime, a female child was born to her. She made statement before the Magistrate.

Her father (PW1) corroborated the version of her daughter. He stated his daughter had been forcibly raped by the appellant. Subsequently, the parents of the appellant assured that they would look into the matter but later they denied the incident. He lodged complaint with Mayureswar Police Station. Subsequently, he filed complaint before court.

PW6 is the brother of PW1. PW7 (Mainuddin Sk.) and PW8 (Kalam Sheikh) are the co-villagers. They have corroborated PW1 with regard to the incident.

PW11 (Manik Chandra Mondal) is the Teacher-in-charge of Radhanagar High School where the victim was admitted as a student. He produced the admission register. As per the admission register, date of birth of the victim was 02.04.1993.

PW12 (Dr. Sanjib Shome) is a doctor posted at Rampurhat S.D. Hospital. He took blood samples from the appellant, victim girl (PW2) and minor child for the purpose of ascertaining paternity.

PW3 (Kazi Md. Hossain) is the investigating officer of the case.

Defence examined three witnesses. All the witnesses including DW1 and DW2 deposed regarding procedure of DNA examination to determine paternity of the child.

From the evidence on record, I note that the sexual attack on the minor was a forcible one. Thereafter, appellant gave an impression that he would marry the victim. Subsequently, he denied the incident. Even during trial, initially, he took a defence there was no sexual relationship between him and the minor victim. DNA examination was conducted and DNA report (Ext.12) shows the appellant is the biological father of the child.

The aforesaid evidence on record leaves no doubt in my mind that appellant had forcibly raped the minor girl who became pregnant. There was no consensual relationship between the parties. Plea of consensual relationship was an afterthought on the part of the appellant to protect himself from legal punishment.

In view of the aforesaid discussion, conviction and sentence of the appellant is upheld.

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

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

Lower court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

akd/PA