

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 316 of 2016

Jayanta Mondal
-Vs-
The State of West Bengal

For the Appellant : Mr. Jayanta Narayan Chatterjee, Adv.
Ms. Dipannita Das, Adv.
Ms. Pritha Sinha, Adv.

For the State : Mr. Saswata Gopal Mukherjee .. Id. P.P.
Mr. Parthapratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 24.08.2022

Judgment on : 24.08.2022

Joymalya Bagchi, J. :-

Appeal is directed against judgment and order dated 18.03.2016 & 19.03.2016 passed by learned Additional Sessions Judge, 4th Court, Malda, in Sessions Trial No. 58(11) of 2014 arising out of Sessions Case No. 342 of 2014 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 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 as compensation.

Prosecution case as alleged against the appellant is as follows :-

On 21.10.2011 the victim who was aged around 13/14 years was playing with her friends in front of the house. Appellant took the victim in his bicycle to a mango grove and after pasting cellotape on her mouth committed rape upon her. He also bit her lips. Victim somehow escaped and reported the matter to her mother (PW2). She lodged written complaint resulting in registration of English Bazar Police Station Case No.696 of 2011 dated 21.10.2011 under Sections 376/511 of the Indian Penal Code. In course of investigation, appellant was arrested. Victim was medically examined and her statement was recorded before the Magistrate. Charge-sheet was filed and charge was framed under Section 376 of the Indian Penal Code against the appellant. In course of trial, prosecution examined 7 witnesses to prove its case. Defence of the appellant was one of innocence and false implication.

In conclusion of trial, learned trial Judge by the impugned judgment and order dated 18.03.2016 & 19.03.2016 convicted and sentenced the appellant, as aforesaid.

Mr. Jayanta Narayan Chatterjee, learned advocate for the appellant submits falsehood of the prosecution case is evident from the FIR itself. While in FIR, PW2 stated appellant had attempted to rape her daughter, during trial the case was embellished to one of rape. No injury

was found on the mouth of the victim. Age of the victim has also not been proved. Medical opinion does not show the victim had been raped. Friends of the victim were not examined. Hence, appellant is entitled to an order of acquittal.

Mr. Parthapratim Das, learned advocate for the State submits the victim (PW3) deposed she had been forcibly raped by the appellant. Doctor (PW5), who examined the victim, found blood coming out from her private parts and opined it was a case of partial penetration. Due to ignorance, PW2 described the incident as an attempt to rape. Victim was 13/14 years of age at the time of occurrence. Her age was not seriously challenged during trial. Non-examination of her friends do not affect the unfolding of the prosecution case. Hence, appeal is liable to be dismissed.

PW3 is the victim. She deposed she was a student of Class-VIII at Mukdumpur Girls High School. Her date of birth was 16.01.1997. On the date of occurrence around 4:00 P.M., she was playing with her sister in front of Kali Mandir. Appellant called her, closed her mouth with cello tape and took her to a bamboo garden. He forcibly raped her and bit her cheek. He also scratched her breast. She shouted for help and saw her grandmother coming. Appellant climbed a tree and fled from the place. She came to her house with her grandmother and narrated the incident to her mother. She was medically examined and made statement before Magistrate.

Her deposition is corroborated by her mother viz. Sunati Mandal (PW2). She stated her daughter was more than 13 years old at the time of the incident. Appellant had taken her daughter in a bicycle to an orchard and forcibly raped her. Her daughter somehow fled and came to the house and informed the incident. She lodged written complaint. She proved her signature on the complaint. Her daughter was medically examined.

In cross-examination, she was unable to state the date of birth of her daughter.

PW5 (Ajit Kr. Dey) Medical Officer, examined the victim girl on 21.10.2011. He found scratch mark over left breast. Hymen was not torn but there was abrasion and oozing of fresh blood from fourchette. He opined oozing of blood may be due to forcible partial penetration. He proved the medical report.

In cross-examination, he stated he did not find any scratch mark on the right breast.

PW7 (Arun Som) is the Investigating Officer. He proved the formal FIR. He went to the place of occurrence, prepared rough sketch map along with index. He seized the wearing apparels of the victim. He took steps for medical examination and recording of statement of the victim under Section 164 of the Code of Criminal Procedure.

Apart from the evidence of PW2, medical evidence on record i.e. of PW5 also corroborates the prosecution case of rape. PW5 found blood

oozing out from the private parts of PW3 and opined such injury may occur due to forcible partial penetration.

It is settled law slight penetration is sufficient to constitute offence of rape.

In view of the aforesaid medical evidence on record, I am unable to accede to the submission of Mr. Chatterjee that prosecution case was embellished by the mother of the victim during trial. It is possible due to ignorance or out of shame mother of the victim had euphemistically described the incident as one of attempted rape in the FIR.

It is also argued no injury was found on the lips of the victim as well as on her right breast. It is true there is some variation with regard to the situs of injury on the secondary sexual organ of the victim. She stated appellant had scratched her right breast but injury was found on her left breast. Such variation, in my estimation, is a minor one and does not impact the inherent truthfulness of the victim with regard to the incident of rape. Victim stated she had been taken away by the appellant and after putting cellotape on her mouth she was forcibly raped. Medical officer found blood coming out from her private parts which supports the allegation of forcible rape. In this backdrop, absence of injury on her lips is a minor discrepancy and does not affect the crux of the prosecution case.

Finally, it is argued friends of the victim girl who were playing with her have not been examined. Evidence of the victim is corroborated

by her mother (PW2) and medical evidence on record. Non-examination of her friends does not impact the unfolding of the prosecution case.

Age of the victim has also been established. Victim (PW3) categorically stated she was a student of Class-VIII of Mukdumpur Girls High School and was born on 16.01.1997. Such evidence was not challenged by the defence in course of trial.

In view of the aforesaid discussion, I am of the opinion conviction and sentence of the appellant does not call for interference.

Appeal is accordingly dismissed.

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.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)