

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. 377 of 2018
CRAN 1 of 2022

Bhola Bairagi
-Vs-
State of West Bengal

For the Appellant : Mr. Anjan Bhattacharya, Adv.

For the State : Mr. Partha Pratim Das, Adv.
Mrs. Mnasi Roy, Adv.

Heard on : 20th April, 2022

Judgment on : 20th April, 2022

Joymalya Bagchi, J. :-

The appellant has assailed the impugned judgment and order dated 29.05.2018 and 31.05.2018 passed by the learned Additional Sessions Judge, 1st Court and Judge, Special Court, Bongaon, North 24 Parganas convicting the appellant for commission of offence punishable under Section 363/376(2)(i)(n) of the Indian Penal Code and section 6 of the POCSO Act directing him to suffer rigorous imprisonment for 10 years and also to pay fine of Rs.15,000/-, in default, to suffer rigorous imprisonment for a period of six months more for the offence punishable under section 376(2)(i)(n) of the IPC and to suffer rigorous imprisonment

for 10 years and to pay a fine of Rs. 15,000/-, in default to suffer rigorous imprisonment for 6 months for the offence punishable under section 6 of the POCSO Act and to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for six months for the offence punishable under section 363 of the IPC. All the sentences shall run concurrently.

Prosecution case as alleged against the appellant is to the effect that on 09.05.2017 when the victim girl aged around 14 years (P.W. 1) had gone to Bajitpur market, the appellant and his friend put handkerchief on her mouth and forcibly took her on a motorcycle from a place beside the sawmill of Dinesh. After sometime, friend of the appellant got down from the motorcycle and left. Appellant took the victim to his aunt's house at Aishmali. His aunt told the appellant to return the victim to her residence. On the pretext of taking the victim home, the appellant took her to a banana plantation and forcibly raped her repeatedly. In the morning, the appellant released her at Sindrani near Bajitpur Bridge. The victim went to the residence of a friend and telephoned her mother. Thereafter, she reached home and disclosed everything to her mother and written complaint was lodged by the victim (P.W. 1) at the police station resulting in registration of Bagda P.S Case No. 349 of 2017 dated 10.05.2017 under sections 363/376(2)(i)(n) IPC and section 6 of the POCSO Act against the appellant. In the course of investigation, victim was medically examined. Her statement was recorded under section 164 Cr.P.C. Appellant was arrested and charge-sheet came to be filed against

him. Charges were framed under Section 363/376(2)(i)(n) of the Indian Penal Code and under section 6 of the POCSO Act. Appellant pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 12 witnesses and exhibited a number of documents. 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 29.05.2018 and 31.05.2018 convicted and sentenced the appellant, as aforesaid.

Mr. Bhattacharya, learned Counsel appearing for the appellant submits narration of the victim with regard to the incident is highly improbable. Victim was allegedly kidnapped from a busy market place. No one from the market place has been examined to corroborate such fact. Friend of the appellant, who was at the place of occurrence, has also not been examined. P.W. 6, Arjun Halder stated there was a love affair between the two and there were talks of marriage. Allegation of forcible rape appears to be highly unnatural. Appellant is entitled to an order of acquittal.

On the other hand, Mr. Das along with Mrs. Roy, learned Counsels for the State submit that the victim was a minor girl. She was forcibly kidnapped and raped. Medical report supports the version of the victim. Appeal is liable to be dismissed.

P.W. 1 is the minor victim. She deposed at 5 p.m she had gone to Bajitpur bazar for marketing. Appellant and his friend called her and took her near the sawmill of Dinesh. Thereafter, they took her in a motorcycle

to Aishmali. After sometime, friend of the appellant got down from the motorcycle. Appellant took her to the house of maternal aunt who told the appellant to take her back to her residence. Appellant left the house on the pretext of taking her back to her home. However, he took her to a banana garden and committed rape on her on several occasions. Thereafter, he left her near Sindrani bridge. She went to her friend's house and contacted her family members over telephone. After reaching home, she narrated the incident to her mother and lodged complaint (Exhibit-1). She made statement before the magistrate. She was medically treated at Bagda Rural Hospital.

P.W. 2, mother of the victim, has substantially corroborated the version of P.W. 1.

P.W. 12, medical officer who examined the victim at the hospital found her hymen ruptured, vagina reddish and bleeding upon touch.

He opined that the victim had been subjected to recent sexual intercourse/rape. He proved the report (Exhibit-3).

Evidence of the minor victim P.W. 1, therefore, has been corroborated not only by her mother but also from the medical evidence.

Mr. Bhattacharya argues kidnapping of the victim from a busy market place is absurd. No independent witness has supported her version. Evidence has come on record particularly from the deposition of P.W. 6 that the victim was known to the appellant. They had a love affair. When conduct of the parties is judged from that perspective, it would not appear to be unnatural. The victim on the request of the appellant had

accompanied him and his friend to a sawmill in the market. At this juncture, she was made to board a motorcycle and driven away to the aunt's house of the appellant at Aishmali. When the aunt disapproved the conduct of the appellant, the latter left with the victim on the pretext of returning her home. Instead of doing so, she was forcibly raped in the banana garden throughout the night. On the next day, she reached home and her mother lodged complaint.

Genesis of the incident as transpiring from the mouth of the victim is natural and does not suffer from any patent improbability. Although the victim may have been close to the appellant but it is undeniable she was a minor. Hence, she could not have been taken away by the appellant without the permission of her lawful guardian.

Hence ingredients of offence punishable under section 363 IPC is satisfied.

It is further contended appellant and victim had a love affair and therefore, the allegation of forcible rape is improbable. I am unable to accede to such submission. Appellant and the victim may have been friendly to one another. However on the fateful night, the victim was under the impression that the appellant would return her home. On the other hand, he took her to a banana garden and against her will committed rape. Forcible intercourse on the victim is evident from the medical opinion which shows reddishness in vagina and blood coming from her private parts upon touch. It is argued lacerated injuries were not found. However, presence of reddishness in the vagina and blood coming

out from the private parts give sufficient indication that the sexual intercourse by no stretch of imagination could have been consensual. Moreover, victim was a minor and, therefore, her consent would be immaterial in the factual backdrop of the case.

In the light of the aforesaid discussion, I am of the view prosecution case has been fully proved and the conviction and sentence of the appellant is upheld.

Appeal is, accordingly, dismissed. CRAN 1 of 2022 stands disposed of.

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

Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

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

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)