

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Siddhartha Roy Chowdhury**

CRR/2190/2008

**Srikanta Roy @ Shrikanta Roy
-Versus-
The State of West Bengal**

For the Amicus Curiae : Ms. Puja Goswami

**For the opposite : Mr. N.P. Agarwal , Adv.,
parties Mr. Pratick Bose , Adv.**

Judgement on : 15.11.2022.

Challenge in this revisional application is to the judgment passed by learned Additional District and Sessions Judge , Fast Track, 2nd Court, Barasat, 24 Parganas (North) in Criminal Appeal No. 9 of 2006 . The said appeal was preferred challenging the judgment and order of conviction passed by learned Chief Judicial Magistrate, North 24 Parganas on 6.12.2006 in GR Case No. 1398 of 2001 (T.R. No. 144 of 2002). Learned trial Court after recording an order of conviction against the petitioner /accused Shri Srikanta Roy @ Shrikanta Roy sentenced him to suffer rigorous imprisonment for three years and to pay fine of Rs. 1,000/-. Learned appellate Court was pleased to affirm the said order of conviction.

Briefly stated the victim girl informed the concerned P.S. about an incident allegedly took place on 2nd October, 2001. In the evening around at about 7 p.m. her private tutor Srikanta Roy @ Shrikanta Roy came and

at about 8 p.m. he suddenly closed the door of the room and embraced the victim girl. She tried to release herself and at that juncture her father pushed the door and entered inside the room . The private tutor fled away bare foot.

Police took up investigation and submitted a charge sheet. Accordingly, trial commenced . Prosecution examined four witnesses. The victim girl as PW 1 adduced evidence . Her parents adduced evidence as PW 2 and 3 while the investigating officer was examined as PW 4. Though in her maiden statement in writing which she submitted on the following day of incident before the police, the victim girl stated that the accused person came at about 7 p.m. and at about 8 p.m. he closed the door and embraced her, while adducing evidence she stated that the accused came to their house at about 8 p.m. closed the door and by touching her body he outraged her modesty. When her parents entered into the room he fled away. The father of the victim girl as PW 2 stated that having heard hue and cry of his daughter he entered into the room when the accused person fled away. PW 3, the mother of the victim stated that the accused person came to teach her daughter, the door was kept open . Her husband was in the market. After returning from market her husband found the door closed when he pushed the door, the lady then heard the cry of her daughter and rushed inside the room and the accused person fled away leaving behind his umbrella , diary and shoes in the room. Her daughter told her that the accused asked her to remove her wearing apparel . The investigating officer of the case as PW 4 has stated that during investigation he did not seize any item from the place of occurrence.

Out of four witnesses examined , PW 4 is not the witness to occurrence . PW 1 is the victim who drifted away her from her maiden statement made to police in writing while giving evidence. Her oral testimony differs from what has been adduced by her parents. If we

consider the testimony of PW 1 from the point of human probability it becomes really difficult to swallow that that her private tutor the accused person in the midst of coaching , closed the door but did not bolt it though he had the intention to do certain mischief. If the door was closed from within it would become improbable to appreciate that her father came and pushed the door and drew the attention of the accused person who fled away. Oral testimony of the mother of the victim gives a different narrative altogether. Non- seizure of articles left by the accused person inside the room makes the prosecution case further doubtful. Taking into consideration the discrepancies appearing in the written information , and oral testimony of PW 1,2 and 3, non-seizure of foot ware, umbrella , diary etc. by the investigating officer , in my view, shroud the prosecution case with shadow suspicion, which learned appellate Court has failed to appreciate. In my opinion it is a fit case to invoke the provision of Section 482 of the Criminal Procedure Code to avert miscarriage of justice that crept in due to misreading of evidence by learned trial Court as well as by the Court of appeal.

Accordingly, I set aside the judgment impugned , affirming the order of conviction passed by learned appellate Court .

Criminal revision is, thus, disposed of.

Let a copy of the judgment be sent down to the learned Court below for information and necessary action.

Urgent certified copy be made available , if applied, therefor, upon compliance of requisite formalities.

All parties are to act on the server copy of this order duly downloaded.

(Siddhartha Roy Chowdhury, J.)

