

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. 357 of 2017

With

CRAN 3 of 2021

Ranjit Ghosh @ Chotton

-Vs-

The State of West Bengal & Anr.

For the Appellant : Mr. Sudip Ghosh Chowdhury, Advocate
Mr. Arghya Das, Advocate
Mr. Abhishek Bose, Advocate

For the State : Mr. Neguive Ahmed, Id. A.P.P.
Ms. Zareen N. Khan, Advocate
Ms. Ayantika Ray, Advocate

Heard on : 22nd March, 2022.

Judgment on : 22nd March, 2022.

Joymalya Bagchi, J. :-

With the consent of the parties, the appeal is taken up for hearing.

Appellant has assailed the judgment and order dated 16.03.2017 and 17.03.2017 passed by learned Additional Sessions Judge, 2nd Court, Hooghly in Sessions Trial (Spl.) No.31 of 2015 arising out of Sessions Case (Spl.) No.104 of 2014 convicting the appellant for commission of offence punishable under Section 376(2)(i) of the Indian Penal Code and

Section 6 of the Protection of Children from Sexual Offences Act and sentencing him to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-, in default to suffer further simple imprisonment for 15 days more.

In the present case, the victim was about five years of age when she was subjected to penetrative sexual assault by the appellant. On 17.11.2014 while the victim was playing with her friend Shilpa outside the house, the appellant came to the spot and called her. She went to his house and thereafter he put his finger into her vagina. After the incident, the victim went to her mother and the latter noticed injuries in her private parts. Thereupon, she disclosed the incident to her mother. She also stated the appellant had pressed her mouth and threatened her not to disclose the incident to anyone otherwise she will be cut into pieces. Victim was medically treated in the hospital. Written complaint was lodged by her father, P.W. 2 at Balagarh Police Station resulting in Balagarh Police Station Case No. 308 of 2014 dated 22.11.2014 under Section 376(2)(i) of the Indian Penal Code and Sections 3/4 of the POCSO Act. In conclusion of investigation, charge sheet was filed and charges were framed under Section 376(2)(i) of the Indian Penal Code and Section 6 of the POCSO Act.

In the course of trial, prosecution examined ten witnesses. Defence of the appellant was one of innocence and false implication. It was his specific defence there was an illicit affair between himself and the mother of the victim girl, P.W. 3. Over such issue, he had been falsely implicated

in the instant case. To probabilise his defence, the appellant examined one Narayan Ghosh, a vegetable vendor as D.W. 1.

In conclusion of trial, the Trial Judge by the impugned judgment and order dated 16.03.2017 and 17.03.2017 convicted and sentenced the appellant, as aforesaid.

Mr. Sudip Ghosh Chowdhury, learned Advocate appearing for the appellant submits the appellant had been falsely implicated in the case due to prior enmity. Possibility of injury in the private parts of the victim girl by scratching cannot be ruled out. Hence, the appellant is entitled to an order of acquittal.

Mr. Ahmed, learned Additional Public Prosecutor submits the victim girl categorically stated she was subjected to penetrative sexual assault. Injuries have been noted in her private parts. Plea of false implication appears to be an afterthought. D.W.1 had telephonic conversation with the defence Counsel before he deposed in Court which clearly shows that he is a tutored witness. Hence, appeal is liable to be dismissed.

I have examined the evidence on record particularly that of the victim girl, P.W.1. She was five years old at the time of deposition. Trial Court put questions to her to test her capacity to depose and upon being satisfied recorded her evidence. She graphically narrated the manner in which she had been subjected to penetrative sexual assault by the appellant by insertion of finger into her vagina. She stated she was playing with her friend Shilpa outside the house at the time of occurrence. The

appellant had taken her into his house and put his finger into her vagina. When she cried out, her mouth was pressed and she was threatened that she will be cut into pieces. After the incident, she met her mother, P.W. 3. Her mother noticed injuries in her private parts and she narrated the incident to her. She was medically treated. She also made statement before the Magistrate. She was cross-examined but remained unshaken. She, however, admitted she had scratched her vagina after the incident.

P.Ws. 2 and 3 are the parents of the victim. P.W. 2 is her father. He was informed about the incident by his wife, P.W. 3. He met his daughter at Chinsurah Imambara Sadar Hospital. She narrated the incident to him. He lodged first information report.

P.W.3 is the mother of the victim girl. She deposed her daughter had gone out to play on the day of Kartick Puja. She returned home and stated she was having pain in her vagina. Upon examination she found injuries on the vagina. When she queried the minor, the latter disclosed the incident to her. She took her to Jirat Hospital and thereafter to Chinsurah Imambara Sadar Hospital. In Jirat Hospital, a lady doctor medically examined her daughter. In Chinsurah Imambara Sadar Hospital, her daughter was again medically examined. She was admitted for seven days.

P.W. 5, Prasun Dholey is a neighbour who accompanied P.W. 3 and the victim girl to Chinsurah Imambara Sadar Hospital. He has corroborated the depositions of P.Ws. 1 and 3.

P.Ws. 4 and 6 are the Medical Officers. P.W. 4, Dr. Sohini Khan examined the victim girl at Jirat Primary Health Centre. She found a cut injury in labia minora beside the urethra. She proved her injury report, Exhibit-5.

P.W. 6, Dr. Gautam Kr. Mondal was the Medical Officer at Chinsurah Imambara Sadar Hospital. He examined the victim girl and found minor abrasion in labia majora on the left side. He found the hymen, fossa navicularis and fourchette intact. Victim was admitted in hospital upto 22.11.2014, Exhibit-6. In cross-examination, he stated such injury may be caused due to scratching.

Relying on the evidence of P.W. 6, it is argued the injury on the victim is superficial and does not support a case of penetrative sexual assault. On the other hand, Medical Officer admitted such injury may be caused due to scratching. I am unimpressed by such submission. Evidence of a medical expert is in the nature of opinion evidence and cannot prevail over clear and unequivocal ocular version of a victim. Only when the medical evidence completely rules out the ocular version and creates an irreconcilable contradiction in the prosecution case, the same would cast a doubt with regard to its truthfulness. None of the medical witnesses deposed that the injury on the victim could not be caused due to insertion of finger in the vagina. Possibility of similar injury due to scratching is a hypothetical one and would not affect the positive evidence of a victim of sexual assault which receives corroboration from other quarters. P.W. 1, the minor victim has unequivocally stated the appellant

inserted his finger into her vagina. In the course of such deed, he caused injuries on the private parts of the victim. Her deposition clearly establishes the ingredients of the offence of rape as defined under Section 375 of the Indian Penal Code and Section 3 of POCSO Act as penetrative sexual assault.

Finally, the defence plea raised by the appellant is clearly an afterthought. There is no cross-examination of the minor victim, P.W. 1 with regard to the so called free mixing between the appellant and her mother, P.W. 3. On the other hand, suggestion was given to the minor that owing to land dispute the appellant had been falsely implicated. Subsequently, the reason for prior enmity was altered from one arising out of land dispute to an illicit relationship between the appellant and the mother of the victim girl and suggestions were given to that effect to P.Ws. 2 and 3 which was stoutly denied. The tenor of cross-examination of the prosecution witnesses, it appears during the course of trial there was a desperate shift in the stance of the appellant with regard to the reason for his alleged false implication.

D.W. 1 who speaks of a quarrel between the mother of the victim (P.W. 3) and the mother of the appellant also does not inspire confidence. During cross the witness admitted he had a consultation with the defence lawyer prior to his deposition in Court. Hence, the possibility of his being tutored by the defence cannot be ruled out. Such unconvincing and patently biased version of D.W. 1, in my estimation, cannot rebut the statutory presumption under Section 29 of the POCSO Act.

In the light of the aforesaid discussions, conviction and sentence of the appellant are upheld.

The appeal is accordingly dismissed.

In view of dismissal of appeal, the application being CRAN 3 of 2021 is accordingly 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 428 of the Code of Criminal Procedure.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)