

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. 375 of 2013

Nirmal Kanti Sarkar @ Nirmal Sarkar
-Vs-
State of West Bengal

Amicus Curiae : Mr. Angshuman Chakraborty, Adv.

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

Heard on : 21.03.2022

Judgment on : 21.03.2022

Joymalya Bagchi, J. :-

This Court is informed that the appellant has served out the sentence.

Appeal is directed against the judgment and order dated 18.05.2011 and 19.05.2011 passed by the learned Additional Sessions Judge, Fast Track 2nd Court, Kalyani, Nadia, in Sessions Case No. 43(1)11/Sessions Trial No. 2(2)11 convicting the appellant for commission of offence punishable under Section 376(2)(f) of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten

years and to pay fine of Rs. 5,000/- in default, to suffer simple imprisonment for six months more.

At the time of admission of the appeal a co-ordinate Bench of this Court was pleased to issue a Rule calling upon the appellant why the sentence imposed upon him be not enhanced. Thus, in spite of serving out the sentence, the appeal along with aforesaid Rule requires to be considered on merit.

I have gone through the evidence of prosecution witnesses.

P.W. 3, Priyanka Mondal, is the victim girl while P.W. 1, Kartick Mondal and P.W 2, Sarmala Mondal, are her parents.

P.W. 4, Dr. Tapashi Chowdhuri, is the doctor who treated the victim and P.W 5, Anupam Sarkar, recorded her statement under Section 164 of the Code of Criminal Procedure.

P.W6 and P.W. 7, Uttam Biswas and Smt. Sarala Biswas respectively, are the neighbours of the victim girl.

P.W 8, Amiyatosh Roy, is the police officer who received the F.I.R. while P.W. 9, Arup Kumar Sen, is the investigating officer.

P.W. 3 deposed the appellant had closed the door of the room and had given her a mango. Thereafter, he had pushed his male organ into her vagina after removing her inner garments. The appellant told her not to disclose the incident to anyone. She suffered injury and was treated in the hospital. In cross-examination, she unequivocally stated her mother had not tutored her.

Her deposition in court is clear and convincing. It is corroborated by her parents as well as the medical officer, (P.W. 4) who found mild congestion and tenderness over labia minora and introitus. P.W. 4 stated that the victim was given necessary treatment and discharged from the hospital after four days, that is on 09.06.2010.

Local neighbours, P.Ws. 6 and 7 have corroborated the child. They had come to the residence of P.W. 3 and heard the incident from her. P.W. 7 also found injury in her private parts.

From the evidence on record it is clear that the minor victim had been raped by the appellant resulting in injuries.

In view of the aforesaid, I am of the opinion prosecution case against the appellant has been proved beyond reasonable doubt.

Conviction of the appellant is accordingly upheld.

The appeal is, accordingly, dismissed.

Coming to the issue of sentence, I note that the appellant had been awarded ten years of rigorous imprisonment along with fine. Sentence imposed on the appellant cannot be said to be illegal as the same is not below the minimum sentence prescribed in law at the time when the incident occurred. Appellant has already served out the sentence. Although the allegations are grave keeping in mind the aforesaid facts, I do not consider it prudent to enhance the sentence imposed on the appellant.

The Rule is accordingly discharged.

I record my appreciation for the able assistance rendered by Mr. Chakraborty, learned Counsel as amicus curiae in disposing of the appeal.

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately for necessary compliance.

Urgent photostat certified copy of this judgment and order be supplied to the parties on usual undertaking.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

Sdas/PA (Sohel)