

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. 418 of 2010

Tarak Das

-Vs-

State of West Bengal

For the Appellant : Mr. Partha Sarathi Bhattacharya, Adv.
Mr. Debangana Bhattacharjee, Adv.
Mr. Siddhartha Chowdhury, Adv.
Ms. Swarnali Saha, Adv.

For the State : Mr. Saswata Gopal Mukherjee .. Ld. Public Prosecutor
Mr. Saryati Datta, Adv.

Heard on : 17.02.2022

Judgment on : 17.02.2022

Joymalya Bagchi, J. :-

A minor aged around 11 years fell victim to the carnal lust of her own father. In a drunken condition he subjected the minor to sexual assault on a number of occasions. Finally, the minor was able to come out and disclose the incident to one Bijoli Chakraborty (PW1), a member of Paschim Banga Ganatantrik Mahila Samity, South Dum Dum area. She lodged FIR resulting in registration of Lake Town Police Station Case No.113 dated 16.06.2007 under Section 376(2)(f) of the Indian Penal Code

against the father of the victim i.e. the appellant herein. Victim was medically examined and her statement was recorded under Section 164 of the Code of Criminal Procedure during investigation. Appellant was arrested and charge-sheet was filed. Charge was framed under the aforesaid section and the appellant was put to trial. In course of trial, prosecution examined 12 witnesses. Defence of the appellant was one of innocence and false implication. It was his specific defence that he has been falsely implicated due to political rivalry. In conclusion of trial, the learned trial Judge by the judgment and order dated 30.04.2010 and 03.05.2010 convicted the appellant for commission of offence punishable under Section 376(2)(f) of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for one year more.

Mr. Partha Sarathi Bhattacharyya, learned advocate, appearing on behalf of the appellant submits that the prosecution case has not been proved beyond doubt. Minor victim did not state that she had been raped. Medical officer (PW11), who examined the victim, also did not note any injury on her body or private parts. FSL report was not collected during investigation. Maternal aunt of the victim was not examined. Hence, the appeal may be allowed.

Mr. Saryati Datta, learned advocate, appearing for the State submits that the victim was an eleven years old girl who was under the control of her father. Appellant sexually abused the victim on a number of occasions. Owing to her tender age and the fiduciary relationship between the perpetrator and the victim, the latter kept quiet. Finally, she divulged the

incident to PW1 and law was set into motion. Mere absence of injuries disclose the helpless surrender of a minor to the sexual attack of her own father. This does not render the prosecution case improbable. He prays for dismissal of the appeal.

PW5 is the minor victim in the instant case. She was aged around 11 years. Trial Court put questions to her and upon being satisfied with her capacity to depose, recorded her statement. Initially, in course of her deposition, the victim was shy and embarrassed. She was unable to come out with the truth and claimed that she had fallen asleep and was unaware of what happened at night. Thereafter, she started weeping. Finally, overcoming all inhibition she divulged that her own father committed foul act on her frequently at night.

Referring to her initial inhibition and statement that she had fallen asleep and was unaware of what happened, Mr. Bhattacharyya submits her latter version ought not to be believed. I am unable to subscribe to such argument. Assessment of evidence of a victim of sexual assault must be done with due care and sensitivity keeping in mind the severe trauma, both physical and psychological, suffered due to the heinous crime. This situation further exacerbated when the assault is perpetrated by the guardian himself i.e. the father in the present case. PW5 was barely 11 years of age. Her mother had died. Her brother had been kept in an *ashram* and she was in control of her father who sexually abused her regularly at night. It is, therefore, natural that initially the victim out of fear and shame could not spell out the manner in which her father had subjected her to sexual attacks. In fact, compelling the witness to recount the entire

incident in Court is to relive the horror and amounts to secondary victimisation. However, in an adversarial system of criminal justice, deposition on oath must be the foundation to come to a finding of guilt. Thus, the trial Court had to perform the unenviable job of pursuing the victim to come out with the ugly truth which she finally disclosed.

Assessing the evidence of the minor in this backdrop, her initial inhibition and recalcitrance cannot be a ground to treat her deposition as that of a prevaricating witness. On the other hand, such conduct borne out of shame and fear has a ring of unhappy truth which she was required to recount in Court for the purpose of administration of justice. Thus, I am of the opinion the evidence of the victim girl read as a whole is clear, succinct and wholly truthful.

It has been argued her maternal aunt has not been examined. Offence had been perpetrated by the father of the victim. Hence, the victim was extremely diffident to come with facts with her family members. It is also probable the aunt being a family member was under the influence of the father of the victim, that is the appellant herein and the prosecution chose not to unfold its case through her. On the other hand, the minor divulged the incident to a member of a local Mahila Samity namely, Bijoli Chakraborty (PW1) who lodged the FIR. Conduct of the victim in this regard cannot be stated to be unnatural. Bijoli Chakraborty was a social worker. She was trained to deal with victims of sexual crime. She was not a family member but a prominent and active personality in society. This empowered the victim girl to come out with the facts to Bijoli and not to others in the

family. In view of the aforesaid, this aspect of the prosecution case is neither unnatural nor suffers from any artificiality.

Plea has been taken that the appellant has been falsely implicated due to political reasons. Apart from bare suggestion to that effect, no evidence with regard to the political allegiance of the appellant, which was at cross purposes with Bijoli Chakraborty (PW1) and the other members of the Mahila Samity namely, PWs. 2, 3 & 4 who corroborate the prosecution case, has been brought on record. PW5 was a minor girl who had to meekly succumb to the sexual avarice of her father. The relationship between them and her helpless condition clearly show that she was not in a position to resist. Under such circumstances, absence of injuries on her body or private parts is neither unnatural nor renders the prosecution case improbable. It is trite law that version of a victim of sexual assault if reliable and inspires confidence, absence of injuries shall not be a ground to disbelieve the prosecution case.

Finally, it is submitted that FSL report was not produced. Since the prosecution case has been proved beyond doubt through the evidence of the victim (PW5) and the corroboration it receives from Bijoli Chakraborty (PW1), the informant and other members of the Mahila Samity namely, PWs. 2, 3 & 4 herein, I am of the opinion production of FSL report was not relevant for the unfolding of the prosecution case and does not affect its credibility.

In the light of the aforesaid discussion, I uphold the conviction and sentence imposed upon the appellant.

The appeal is accordingly, dismissed.

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.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

akd/tkm/PA (Sohel)