

24.08.2022
Sl. 70
Court No.12
Sourav/
Suvayan

CRA 509 of 2006
With
IA No: CRAN 1 of 2006 (Old No: CRAN 1331 of 2006)
With
IA No: CRAN 2 of 2007 (Old No: CRAN 485 of 2007)

In the matter of: **Harshajit Bala & Anr.**

....Appellants.

Mr. Prabir Majumder
Mr. Snehansu Majumder

...for the appellants.

Mr. Madhusudan Sur
Mr. Manoranjan Mahata

...for the State.

1. Heard Mr. Snehansu Majumder, learned Counsel led by Mr. Prabir Majumder, learned Counsel appearing for the appellants and Mr. Madhusudan Sur, learned Counsel appearing for the State.

2. The judgment of conviction dated May 18, 2006 and the order of sentence dated May 19, 2006 passed by the learned Additional Sessions Judge, Fast Track Court – III, Krishnagar, Nadia in Sessions Case No. 65(8) of 2005/ Sessions Trial No. XIII (Aug) 2005, convicting the appellant for offence under Section 376(2)(g) of the Indian Penal Code and sentencing each of them to suffer rigorous imprisonment for 10 years and to pay fine of Rs. 2,000/- each, in default, to suffer rigorous imprisonment for one year more is impugned in this appeal by the appellants.

3. A compendium of prosecution case is that the occurrence happened at about 9.00 P.M. on October 27, 2004 and the FIR was lodged on October 28, 2004 before the jurisdictional Police Station. On October 27, 2004 at about 9.00 P.M. the mother of the victim girl went to the nearby telephone booth to have a talk with her husband over telephone as her husband (father of the victim) was residing at Dubai. She became late in returning. The victim went

out of her house for searching her mother. After proceeding, some distance from her house, the convicts, namely, Harshajit Bala (appellant No.1), Sadhan Kirtania (not an appellant), Golla Tikadar @ Sankar Tikadar (appellant No.2) and Madan Das (not an appellant) caught hold of her and pressed her mouth by a 'gamchha' and lifted her to an abandoned hut of Samar Roy situated in front of godown of Harshajit Bala (appellant No.1) adjunct to the road. It is further alleged that all the aforesaid convicts forcibly ravished her against her will.

4. After the incident, the victim returned to her house but out of fear and shame, she could not disclose about the incident before her mother. Next day, she disclosed about the incident before three of her friends and, thereafter, from their friends the victim's mother came to know about the incident and she came to the Police Station along with the victim with her wearing apparels, got an FIR scribed and lodged the report. On the registration of the FIR, investigation was taken up by the Investigating Officer. The victim and the accused persons were sent for medical examination, incriminating articles were seized, material witnesses were examined and on completion of investigation, charge-sheet under Section 376 (2) (g) of the Indian Penal Code was filed against the appellants and the others.

5. The prosecution has examined 14 witnesses to prove the charge. P.W. 1 is the victim girl, P.W. 2 is the scribe of the FIR, P.W.s. 3, 4 and 10 are the friends of the victim before whom she had disclosed about the incident first, P.W. 5 is the grand-father of convict Sadhan, P.W. 6 is a local person, P.W. 7 is the mother of the victim girl, P.W. 8 is the nephew of P.W. 7 before whom also the

victim had narrated the incident, P.W. 9 is the medical officer of Sadar Hospital, Krishnagar and he being a gynecologist had examined the victim on police requisition, P.W.s. 11 and 12 are two official witnesses, P.W. 13 is the teacher-in-charge of Goabari Netaji Bidhyapith who brought the school admission register of the victim in support of her age, P.W. 14 is the Investigating Officer. Besides the aforesaid oral evidence, incriminating materials along with the medical report, etc. have been proved by the prosecution to bring the charge to home.

6. Defence plea one of complete denial and no witness has been examined by the defence.

7. The learned Trial Court took into consideration the evidence of P.W. 1 (the victim girl), P.W. 7 (her mother) and P.W. 8 (nephew of P.W. 7) before whom the victim had narrated the incident to return the finding of the guilt against the accused persons. The friends of the victim, i.e., P.W.s. 3, 4 and 10 did not support the prosecution case and they were also cross-examined by the prosecution. Evidence of other witnesses narrated (Supra) are at the fringe.

8. Mr. Snehanu Majumder, learned Counsel appearing for the appellants submits that the victim having not disclosed the incident before her mother immediately after the occurrence, she cannot be believed as a truthful witness. It is also submitted that the evidence of the medical officer, i.e, P.W. 9 is clearly to the effect that the vagina of the victim was admitting one finger easily and there was discharge of blood as she was menstruating. P.W. 9 had found that there were old tears in the hymen of the victim at 3 and 6 O'clock position and no recent injury was seen in her vaginal

orifice.

It is submitted by learned Counsel for the appellants that in view of such specific opinion of the Medical Officer, it cannot be said that the medical evidence adduced on record corroborated the version of the victim girl of gang rape. It is also submitted by the learned Counsel for the appellants that the friends of the victim, P.W.s. 3, 4 and 10 having not supported the prosecution case, the victim's evidence finds no corroboration from any quarter.

9. Mr. Madhusudan Sur, learned Counsel appearing for the State submits that so far as the jurisprudence of rape is concerned, the victim is to be treated as an injured witness and not an accomplice and injured's evidence is the best evidence. There are catena of decisions to support the proposition that the evidence of victim if otherwise reliable needs no corroboration.

It is submitted by Mr. Sur, learned Counsel appearing for the State that had the victim disclosed the incident before her mother immediately after the occurrence, the evidence of her mother would have fallen under the category of corroborative evidence as a part of *res gestae* which assumes relevance under Section 6 of the Indian Evidence Act but she (the victim) having *ipse dixit* testified that she could not disclose about the incident before her mother out of fear and shame, the evidence of the victim cannot be disbelieved on that score.

10. We having heard the learned Counsel for the parties at length, having perused the relevant finding arrived at by learned Trial Court and having perused the evidence of P.W.s 1, 7 and 8 minutely, it is found that P.W. 1 (the victim) has been consistent in material particular throughout her testimony. Evidence of P.W.s 7

and 8 though held to be corroborative by learned Trial Court, we are unable to concur with that view inasmuch as there has been much delay in disclosure of the incident by P.W. 1 (the victim) before her mother (P.W. 7) and before her cousin (P.W. 8) and that too after P.W. 7 came to know about the incident from P.W.s. 3, 4 and 10 (friends of the victim), who have not supported the prosecution case. They have only reiterated what had been disclosed by the victim before them. While reproducing the disclosure made by the victim before them, there has been minor discrepancies and contradictions in their evidence but we having held that their evidence is of no relevance so far as the factum of rape is concerned, we are not commenting on the contradictions and discrepancies shown to us by the learned Counsel for the appellants in the evidence of P.W.s. 7 and 8.

11. Though much effort has been made by the learned Counsel for the appellants to make us read the evidence of P.W. 1 (the victim) between the lines, we do not find any major contradictions and discrepancies in the evidence of P.W. 1 which strikes at the root of the prosecution case as alleged. From her evidence regarding incident that attended the incident and that followed the incident, we are of the merited consideration that evidence of P.W. 1 (the victim) inspire our confidence to believe her version.

So far as the criticism of the evidence of Medical Officer, P.W. 9 is concerned, we are of the view that the test of one finger/two finger entry is never a scientific test and it has come to be recognized throughout these years mechanically as a matter of course. We do not agree with such test to be conclusive test

regarding the factum of ravishment or verginity. Further when the victim was menstruating at the time of ravishment, there would have been easy penetration without causing any injury to the vaginal orifice of the victim as at that time the vaginal orifice must have been congruous. Regarding had to such fact, we do not think that the medical evidence adduced by P.W. 9 in any way nullify the evidence of P.W. 1 (the victim) for us to disbelieve P.W. 1.

13. In view of the discussion (Supra), we are constrained to hold that we do find any infirmity in the impugned judgment and order of sentence and accordingly, the same are confirmed.

14. In view of the above, the appeal being **CRA 509 of 2006** is dismissed.

15. The interim application being **IA No: CRAN 1 of 2006 (Old No: CRAN 1331 of 2006)** and **IA No: CRAN 2 of 2007 (Old No: CRAN 485 of 2007)** are disposed of accordingly.

(Chitta Ranjan Dash, J.)

(Aniruddha Roy, J.)