

In The High Court At Calcutta
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Mr. Justice Rabindranath Samanta.

C.R.A. 560 of 2003

Sentu alias Prasenjit Sannyal
v.
The State.

For the Appellant : Mr. Prabir Majumder.

For the State : Mr. N. P. Agarwala,
Ms. Subhasree Patel.

Heard on : April 1, 2022.

Judgment on : April 1, 2022.

This appeal arises out of the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court-II, Krishnanagore, Nadia in Sessions Case No. 45(9) 2002.

By the judgment the appellant, Sentu alias Prasenjit Sannyal, was convicted for commission of offence punishable under Section 376 of the Indian Penal Code and was sentenced to suffer rigorous

imprisonment for seven years and to pay a fine of Rs.5,000/-; in default, to suffer rigorous imprisonment for two months more.

To put briefly, the prosecution case may be stated as under:

On 17th November, 2000 the victim girl then aged about eight years, the daughter of the informant Gobinda Sarkar, went to the house of Subal Halder to listen 'Kirtan' song. At that time the appellant, Sentu alias Prasenjit Sannyal, came to the victim girl, who was then holding a three cell torch light in her hand. The appellant lifted her on his lap and brought her by the side of a bush situated on the curve of a road running by the side of the house of Sajal. After bringing her there, the appellant forcibly put off her pant and sexually ravished her against her will. After committing rape the appellant left her there and went away. Thereafter the victim girl came to her house and narrated the incident to her mother Sankari Bala Sarkar with tears in her eyes. Her wearing apparels was drenched with blood and blood was oozing out from her private parts. The victim girl was brought to Karimpur Hospital for medial treatment and was medically treated there.

Narrating the episode as above, the informant, Gobinda Sarkar, lodged a First Information Report at the local police station and on the basis of the FIR lodged by him one Murutia P.S. Case No. 109 of 2000 dated 18.11.2000 under Section 376 of the Indian Penal Code was registered against the appellant for investigation. During the course of investigation the Investigating Officer arrested the appellant and forwarded him to Court. He seized the blood stained wearing apparels of the victim girl. The Investigating Officer had also arranged for medical examination of the victim girl as well as the appellant. Besides, the Investigating Officer made a prayer before the Sub-Divisional Judicial Magistrate for recording the statement of the victim girl under

Section 164 of the Code of Criminal Procedure and her statement was recorded accordingly. The Investigating Officer examined the available witnesses under Section 161 of the Code of Criminal Procedure and recorded their statements. After collection of the medical examination report and the copy of the statement of the victim girl recorded under Section 164 of the Code of Criminal Procedure, the Investigating Officer submitted the charge sheet against the appellant under Section 376 of the Indian Penal Code.

After the case was committed to the Court of learned Sessions Judge, Nadia, the learned Sessions Judge transferred the case to the learned Additional Sessions Judge, Fast Track Court-II, Krishnanagore, Nadia for disposal.

Charge under Section 376 of the Indian Penal Code was framed against the appellant by the learned Trial Judge. During the trial the prosecution examined as many as nineteen witnesses.

After hearing the learned lawyer appearing for the State and the learned lawyer appearing for the appellant herein, the learned Trial Judge by the impugned judgment convicted the appellant for commission of the offence as above and awarded the sentence to him in the manner as indicated above.

The appellant in this appeal assails the judgement and order of conviction passed by the learned Trial Judge on the ground that the learned Trial Judge erred in arriving the finding that the appellant committed rape on the victim girl.

Since the instant appeal is the first appeal before this Court, I scrutinize the evidence, both oral and the documentary.

Amongst the witnesses examined on the part of the prosecution, P.W. – 12 is the victim girl. The victim girl in her evidence states that the incident took place in the evening. At the material time she was

sitting in the house of her grand-father, Subal Sarkar, who was then performing puja. Then the appellant (hereinafter referred to as 'accused') came to her and called her. The accused told her to go to the shop with him to purchase sugar as one three-cell torchlight was with her at that time. She refused to go with him. Then the accused lifted her on his lap and brought her in the garden of one Sajal. There was a bush in the said garden. After bringing her to the garden he put off her pant and sexually ravished her. She then cried out. Then the accused threatened her that he would throttle her neck, if she cried out. Thereafter the accused left the place. She came to her house and narrated her pitiful plight to her mother.

I find that P.W. – 2 was cross-examined at length by the defence, but the evidence as adduced by her in chief remains unshaken.

In the case of *Raju vs. State of Madhya Pradesh* reported in (2008) 15 SCC 133 the Hon'ble Apex Court has held that the evidence of prosecutrix in cases of rape, molestation and other physical outrages is to be construed to be of an injured witness so much so that no corroboration is necessary; however, the accused at the same time must be protected against the possibility of false implication. In catena of decisions in the case of *Mukesh vs. The State NCT of Delhi* reported in (2017) 2 SCC CrL. 673, *Rajendar vs. State of Himachal Pradesh* reported in (2009) 16 SCC 69 the Apex Court has held that it is a settled proposition of law that conviction can be based on the sole testimony of the prosecutrix, if it is implicitly reliable and there is a ring of truth in it.

In this context, the evidence of Dr. Amitava Chatterjee (P.W.-18) may be referred. It is in his evidence that blood may ooze out from the private parts of a minor girl, if penis is penetrated in her vagina. Before

making the process of intercourse the blood cannot be found in the vagina in case of a girl of eight years old.

The evidence of P.W.-12, the victim girl, reveals that she narrated the incident to her mother first. P.W.-2, Sankari Sarkar, is the mother of the victim girl. She states in her evidence that on the date of the incident at about 7/7-30 p.m. her daughter came back home in dishevelled manner. She narrated her horrifying plight that the accused had forcibly took her from the house of Subal to a nearby Bush and sexually ravished her. This witness testifies that she noticed that the wearing apparel of her daughter was drenched with blood and the blood was oozing out from her private parts. Thereafter she was taken to hospital for her medical treatment. She narrated the incident to her husband Gobinda Sarkar, who later on lodged a written complaint at the local police station.

Gobinda Sarkar, (P.W.-1) in his evidence states that he came to know the incident from his wife and daughter and thereafter he narrated the episode in a written complaint lodged at the local police station. P.W. – 7, Subal Sarkar, corroborates the evidence of P.W. 12, the victim girl, that the victim girl came to her house and she was sitting there while he was offering the Puja. At that time the accused came. Later on he heard that the accused had forcibly taken the victim girl to a nearby bush and committed rape on her. P.W.-3, Bhabotosh Sarkar, the elder brother of the victim girl, P.W.-4, Subhra Sarkar @ Hazra, the elder sister of the victim girl testify that from the mother of the victim girl they came to know that the accused sexually ravished the victim girl. P.W.-5 Madhab Ch. Karmaka,; P.W.-6 Rabindranah Biswas and P.W.-8 Shantu Adhikary, the neighbours of the parents of the victim girl in their evidence state that they came to learn from the

parents of the victim girl that the accused committed rape on the victim girl.

Be that as it may, the fact remains that it is the prosecutrix, who suffered the brunt of the crime perpetrated by the accused. In view of the decisions (supra), if the evidence of the prosecutrix as an injured person appears to the Court to be reliable and trustworthy and not tainted with any falsity, the conviction can be recorded on the sole evidence of her.

From the evidence of P.W.-12, the victim girl, conjointly with the evidence of the Doctor (P.W.-18), it is quite evident that the prosecution has been able to bring him the charge without any shadow of doubt.

It appears from the case records that while the appeal was fixed for hearing, a defence was taken on the part of the accused that the accused was a juvenile and as such the conviction recorded against him treating him as a major is not sustainable. But no iota of evidence has been produced from the side of the defence to show that at the time of commission of the offence the accused was a juvenile. Therefore, the plea of defence that the accused at the time of commission of offence was a juvenile does not stand as believable.

In view of the above, I find that the findings recorded by the learned Trial Judge to find the accused guilty of commission of the offence are justified and such findings do not warrant any interference by this Court. As to imposing sentence I find that the learned Trial Judge after considering all the aggravating and mitigating circumstances has rightly inflicted the sentence upon the convict.

In view of the above, the appeal is liable to be dismissed.

Accordingly the appeal is dismissed.

The judgement and the order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court-II,

Krishnanagar, Nadia in Sessions Case No. 45(9)/2002 is hereby confirmed.

From the case records I find that the appellant was awarded the sentence on 17th September, 2003 and his repeated bail applications before this Court were rejected. Therefore, since the sentence was imposed upon him he incarcerated in the correctional home.

Learned Advocate appearing for the appellant confirms that the appellant has served out the sentence and he has been set free from the correctional home. Since the accused has already served out the sentence, he may be set at liberty at once.

Let a copy of the judgment along with the case record be sent down to the court below for information.

(Rabindranath Samanta, J.)