

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. 497 of 2013

Bappa Paul

-Vs-

The State of West Bengal

For the Appellant : Mrs. Manasi Roy, Adv.
For the State : Mr. Partha Pratim Das, Adv.
Mr. Manoranjan Mahata, Adv.
Heard on : 28.04.2022
Judgment on : 28.04.2022

Joymalya Bagchi, J. :-

Appellant has assailed judgment and order dated 15.12.2012 passed by the learned Additional Sessions Judge, 1st Court, Jalpaiguri in Sessions Case No.227 of 2003 convicting the appellant for commission of offence punishable under Section 376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 14 years and to pay a fine of Rs. 1,00,000/-, in default, to suffer rigorous imprisonment for three years more.

Prosecution case as alleged against the appellant is to the effect that the appellant cohabited with the victim who was aged around 15 years on the false promise of marriage. As a result, the victim became pregnant. Initially, the victim kept mum out of fear. After 7 months of pregnancy, she divulged the matter to her family members and local Pradhan. Victim gave birth to a girl child. However, appellant refused to marry her. Salish was held on 28.02.2002 but no decision could be arrived at. Victim lodged written complaint at Kotwali Police Station resulting in registration of Kotwali P. S. Case No. 83 of 2002 dated 01.03.2002 under Sections 493/376 of the Indian Penal Code. In course of investigation, appellant was arrested. Victim was medically examined. Her statement was recorded under Section 164 of the Code of Criminal Procedure. Finally, charge sheet was submitted and charges were framed under Sections 493/376 of the Indian Penal Code. Appellant pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 13 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 15.12.2012 convicted and sentenced the appellant, as aforesaid. Trial Judge further directed 90% of the fine amount, if realised, be paid as compensation to the victim girl.

Nobody appears for the appellant. Mrs. Manasi Roy, learned Advocate empanelled with High Court Legal Services Authority is

requested to represent the appellant. Secretary, High Court Legal Services Authority is requested to regularise her appointment.

Mrs. Roy submits the prosecution withheld the best evidence as DNA examination of the child born to the victim (P.W.2) was not undertaken. No ossification test of the victim was conducted and her age has not been proved beyond doubt. Appellant was falsely implicated in the instant case. Hence, he is entitled to an order of acquittal.

Mr. Partha Pratim Das, learned Advocate appearing for the State submits that the victim (P.W.2) and her father (P.W.4) have proved the case beyond doubt. Their deposition is corroborated by the Pradhans of the two anchals (P.W.5 P.W. 6) and P.W.9, a local resident who were present in the course of Salish. P.W.12, Head Teacher of Chota Pakuri R.R. Primary School produced the admission register as well as the school leaving certificate which proved the date of birth of the victim as 29.04.1986. Hence, the victim was 14-15 years of age at the time of occurrence. Accordingly, the appeal is liable to be dismissed.

P.W.2 is the victim girl. She deposed a love affair developed with the appellant. He cohabited with her on the promise of marriage. He threatened if she disclosed the affair to anyone, he would not marry her. He cohabited on 5-6 occasions. As a result, she became pregnant. Thereafter, he refused to marry her. When she was seven months' pregnant, she informed the incident to her parents. Pradhan was informed. A Salish was held on 27.2.2002. Appellant refused to marry

her. She lodged written complaint which was scribed by P.W.8. She made statement before the Magistrate. She was medically examined by P.W.1. Her deposition is corroborated by her father (P.W.4) and brother (P.W.7).

P.W.5, Subhadra Roy was the Gram Pradhan. He deposed a Salish was held with regard to the aforesaid issue. Appellant refused to marry the victim after a child was born. He proved a letter in connection with the Salish.

P.W.6, Sunil Sarkar, was the Pradhan of Arabinda Gram Panchayet. He was also present during the Salish. He corroborated P.W.5.

P.W.9, Netai Das, a local villager corroborated the prosecution case with regard to holding of Salish.

P.W.1, Ashok Kr. Chakraborty, Medical Officer attached to Jalpaiguri Sadar Hospital deposed he examined the victim girl and found her pregnant. Her hymen was torn.

P.W.3, Dr. Gauranga Kr. Ghatak, Gynaecologist attached to Jalpaiguri Sadar Hospital deposed on 08.02.2002 the victim was admitted in the hospital and delivered a female child.

P.W.12, Prokash Narayan Ghosh is the Headmaster of Chota Pakuri R.R. Primary School. Victim was a student of the said school. She had been admitted in the school on 07.06.1991. Her date of birth as per school admission register was on 29.04.1986. He proved the

admission register, Exhibit 9 and the school leaving certificate, Exhibit 10.

P.W.13, Sarita Pariyar is the Investigating Officer of the case. She submitted the charge-sheet.

Evidence of P.W.2 shows there was a love affair between the appellant and the victim. Appellant promised to marry the victim and cohabited with her. He threatened the victim not to disclose the incident to anyone. If she did, he would not marry her. Victim being a 15-year old girl kept mum. Due to cohabitation, she became pregnant. After seven months, she divulged the incident to her parents.

Matter was brought before Panchayet authorities. P.Ws.5 and 6, Gram Pradhans of the Anchals where the appellant and victim resided held Salish on 27.02.2002. P.W.9 was present in the Salish. They deposed appellant refused to marry the victim although she had given birth to a girl child on 08.02.2002.

In view of the overwhelming evidence on record with regard to cohabitation of the victim with the appellant resulting in the birth of a girl child, I am of the opinion failure to conduct DNA examination does not affect the veracity of the prosecution case. There is no cross-examination by the appellant that the victim girl had association with any other male person at the material point of time.

Age of the victim has also been proved. P.Ws.4 and 7 are the father and brother respectively of the victim girl. They stated the victim

was between 14-15 years at the time of incident. School register proved by P.W.12, Headmaster of the School shows date of birth of the victim as 29.04.1986 and proves the prosecution case that the victim was below 15 years at the time of occurrence.

In view of the aforesaid facts, I am of the opinion prosecution has been able to prove that the appellant cohabited with the victim who was below 16-years of age at the time of the incident. In view of the age of the victim, her consent to such cohabitation is immaterial and the ingredients of the offence under Section 376 IPC has been proved beyond doubt.

Conviction of the appellant is upheld.

Coming to the issue of sentence, I note that the appellant has been sentenced to suffer substantive sentence of rigorous imprisonment for 14 years. No doubt, offence is a grave one. But appellant has roots in society and has already suffered imprisonment for about 10 years. Balancing the aggravating and mitigating circumstances, I am of the opinion sentence of the appellant may be modified and he is directed to suffer substantive sentence of rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default, to suffer rigorous imprisonment for three years more. 90% of the fine amount, if realised, shall be handed over to the victim girl.

The appeal is thus disposed of.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

Lower court records along with copies of this judgment be sent down at once to the learned trial Court for necessary compliance.

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

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

as/akd/PA