

28.11.2022
Item No. 07
BR

CRR 2955 of 2004

In the matter of : Kamala Sutradhar

Mr. Souvik Mitter For the petitioner

Mr. Arijit Ganguly,
Ms. S.Das For the State

This criminal revision assails the judgment passed by learned Additional Sessions Judge, 1st Fast Track Court , Cooch behar in Sessions Case No. 205 of 2003, Sessions Trial No. 3(2)/04. By the impugned judgment learned trial Court recorded an order of acquittal in a case registered 376 /324/307/34 of the Indian Penal Code .

Mr. Souvik Mitter , learned counsel representing the petitioner drawing my attention to the impugned judgment submits that though learned trial Judge recorded an order of acquittal taking into consideration that the victim has attained her age of discretion and it was consensual union between the two. The ossification test report further indicates otherwise. The victim could have been 15 years old as well as the report indicated that victim would be below 15 years and not above 17 years. Drawing my attention to the narrative how the victim was ravished. Mr. Mitter, learned counsel further submits that very narrative indicates application for force which runs counter to the theory of consensual union.

Having recorded the aforesaid facts the learned trial Court had no reason let off the accused persons invoking the provision of Section 235 (1) of Cr

P C . True it is the ossification test report suggests that the victim was not below the age of 15 years and not above 17 years. The incident took place sometime in the year 2002 before the amendment came into force . Therefore, the observation made in the ossification test report , in my view, should go in favour of the accused person. It is the settled principles of criminal jurisprudence between the two probable views . One which still in favour of the accused should be accepted by the Court. Learned trial Court also presumed the victim girl of the age of 16 years by taking the mean. The next point agitated by Mr. Mitter is an application of force but medical officer who attended the victim when he was told by the victim that an attempt was made by perpetrator. The charge under Section 376 cannot be said to have been proved. It was alleged that after the incident the victim was administered poison by the accused person and she was admitted to hospital but the unexplained delay in reporting the matter to the police further shrowd the case of prosecution with suspicion.

Under such circumstances after elapsed of 18 years I do not feel it expedient to being agreement with the submission of Mr. Souvik Mitter. The order of acquittal, in my view does not warrant any interference .

With this observation the criminal revision is disposed of . Application, if any, stand disposed of along with interim order, if any, stand vacated.

Let a copy of the order be sent to the learned trial Court for information and necessary action. Applications are also disposed of.

All parties are to act on the server copy of this order duly downloaded.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Siddhartha Roy Chowdhury, J.)