

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.A 554 of 2016

Sujit Bhowmick

Vs.

The State of West Bengal

For the Appellant: Ms. Devipriya Mitra, Adv.

For the State: Mr. Prasun Kumar Datta, Adv.,
Md. Kutub Uddin, Adv.

Heard on: 23 February, 2022.

Judgment on: 04 March, 2022.

BIBEK CHAUDHURI, J. : –

1. The appellant faced trial on the charge under Sections 448, 376/511 and 325 and 379 of the Indian Penal Code, IPC in short and on completion of trial the learned Additional Sessions Judge Uluberia, found him guilty for committing offence under Sections 354, 448 and 323 of the IPC and he was convicted and sentenced to suffer rigorous imprisonment for three years with fine and default clause for committing offence under Section 354 of the IPC, rigorous imprisonment for six months with fine and default clause for the offence punishable under Section 448 of the

IPC and rigorous imprisonment for six months with fine and default clause for committing offence under Section 323 of the IPC in Sessions Trial No.116(U) of 2014 on 5th July, 2016.

2. The order of conviction and sentence is assailed in the instant appeal.

3. On 28th August, 2013 the defacto complainant lodged a written complaint before the Officer-in-Charge, Shyampur Police Station stating, inter alia, that her husband used to work at the relevant point of time in Kolkata. She used to reside alone in her house at village Gadiara. On 24th August, 2013 at about 2 am at night, accused Sujit Bhowmik @ Vikey broke open the door of her room and tried to commit rape upon her. The defacto complainant raised alarm which prevented him from committing rape upon her. But the accused snatched away one earring made of gold from her ear. Hearing her hue and cry, her elder brother-in-law and local people rushed to the place of occurrence. Seeing them the accused fled away from the room of the defacto complainant in naked condition leaving his 'lungi and shoes'. On the following day she was medically treated at Kamalpur Hospital. It is also stated by the defacto complainant that due to her medical treatment, there was delay in lodging complaint against the accused.

4. On the basis of the said complaint police registered Shyampur P.S Case No.351 of 2013 dated 28th August, 2013 under Sections 448, 376/511, 379 and 325 of the IPC against the accused and took up the case for investigation. On completion of investigation police submitted

charge-sheet against the accused. Since the offence under Section 376/511 of the IPC is tribal by the Court of Session the case was committed to the court of the learned Additional Sessions Judge, Uluberia.

5. Learned Advocate for the appellant has criticized the impugned judgment in course of her argument submitting, inter alia, that the alleged incident took place on 24th August, 2013 at about 2 am. From the evidence of the defacto complainant (PW1) it is ascertained that on the very date of occurrence, she went to Shyampur P.S at about 4 am. The Police Officer first advised her to have medical treatment and then lodge complaint in the P.S. On the same day she was medically treated at about 11 am at Kamalpur Hospital. But the written complaint was lodged on 28th August, 2013, i.e., after the lapse of about four days. According to the learned Counsel for the appellant there is unexplained, inordinate delay in lodging the complaint and as a result of such unexplained delay, false implication of the accused cannot be ruled out.

6. It is further submitted by the learned Advocate for the appellant that according to the defacto complainant, she raised hue and cry when the accused tried to commit rape upon her and hearing her cry, the elder brother of her husband and other local villagers rushed to her room and saw the accused assaulting the defacto complainant. Seeing them the accused fled away from the place of occurrence. Except Gour Dolui (PW2) no other villager came forward to corroborate the evidence of PW1. PW5 is the husband of the defacto complainant. He was not present in the house

on the date of occurrence. Therefore, he has no direct knowledge about the incident and his entire evidence is in the nature of hearsay.

7. It is also urged by the learned Counsel for the appellant that the defacto complainant made an allegation that the accused attempted to commit rape upon her. However, in her evidence, the basic ingredient of offence of attempt to commit rape is not established. The learned trial judge also disbelieved the evidence of the defacto complainant with regard to attempt to commit rape upon her. Therefore, the accused was convicted under Section 354 of the IPC.

8. It is submitted by the learned Advocate for the appellant that according to the defacto complainant the alleged incident took place inside her room. But from the sketch map (Exhibit-7) it is ascertained that the incident took place on the road in between the residence of the complainant and the residence of the accused. A question was raised as to why the defacto complainant was on the village road in the wee hours of night. Thus, it is argued by the learned Advocate for the appellant that when the prosecution has failed to prove the place of occurrence, entire incident remains doubtful and the appellant is entitled to get benefit of doubt.

9. The learned Advocate for the state respondent has supported the impugned judgment and submits that learned trial judge convicted the accused on proper appreciation of evidence and there is no reason to alter the order of conviction passed against appellant by the learned court below.

10. Having heard the learned Counsels for the appellant and the respondent, and on perusal of the evidence on record, both oral and documentary, it is found that on the date of occurrence the defacto complainant was alone in her room. The case of the prosecution is that the accused broke open the door of her room and attempted to abuse her sexually. The defacto complainant raised an alarm which attracted her elder brother-in-law and other local villagers. The elder brother-in-law of the defacto complainant deposed during trial as PW2. From his evidence it is found that on the date and time of occurrence he rushed to the place of occurrence hearing alarm of the defacto complainant. He saw accused Sujit assaulting the defacto complainant. According to the defacto complainant, the incident took place on 24th August, 2013 at about 2 am. She was medically examined on the same date at about 11 am at Kamalpur Block Primary Center. The Medical Officer found cut injury on the left ear lobule. The said injury was repaired by stitches. The defacto complainant lodged that the accused snatched away a gold earring from her left ear causing bleeding injury over the said left ear. The victim narrated the same history of assault before the Medical Officer. Therefore, though the written complaint was lodged four days after the occurrence, from the injury report and the history of injury sustained by the defacto complainant recorded by the Medical Officer (PW6), I do not find any reason to interfere with the order of conviction passed by the learned trial judge under Section 323 of the IPC against the appellant.

11. There is of course material contradiction with regard to the place of occurrence. In her written complaint the defacto complainant stated that the incident took place inside her room but the Investigating Officer found during investigation that the place of occurrence is on the road in front of the house of the defacto complainant. If the sketch map and evidence of Investigating Officer is believed, then the place of occurrence cannot be held to be in the room of the defacto complainant. Under such circumstances, the accused cannot be convicted under Section 448 of the IPC. It is needless to say that when two views are found from the evidence on record, the court shall accept the view that helps the accused/appellant.

12. For the above reason, this court is of the view that the conviction of the accused under Section 448 of the IPC cannot be sustained.

13. With regard to the conviction under Section 354 of the IPC, this Court is of the opinion that the defacto complainant narrated specifically the act committed by the accused with her on the date of occurrence at wee hours of night. It is found from the evidence of the defacto complainant that the accused forcibly pulled her saree and tore her petticoat. In cross examination no suggestion was put to the defacto complainant on behalf of the accused that there was previous enmity between her and the accused. Therefore, I do not find any reason to disbelieve the evidence of the defacto complainant on the charge under Section 354 of the IPC.

14. For the reasons stated above, the instant appeal is allowed in part.

15. The appellant is acquitted from the charge under Section 448 of the IPC.

16. However, the conviction and sentence passed by the learned trial judge for the offence punishable under Section 354 and under Section 323 of the IPC is upheld.

17. I do not also find any scope to alter the quantum of sentence passed by the learned trial judge on the aforesaid two heads of charge.

18. The appeal is set aside on contest on the aforesaid two heads.

(Bibek Chaudhuri, J.)