

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Siddhartha Roy Chowdhury

C.R.A. No. 476 of 2014

Dibosh Mondal
Vs.
State of West Bengal

For the Appellant : Ms. Sreyashee Biswas, Adv.

For the State : Mr. Sanjoy Bardhan, Adv.
Mr. Palash Chandra Majhi, Adv.
Ms. Baishakhi Chatterjee, Adv.

Heard on : 08.12.2022

Judgment on : 08.12.2022

Joymalya Bagchi, J. :-

1. Appellant has assailed the judgement and order dated 07.03.2012 passed by the learned Additional District and Sessions Judge, Fast Track Court-1, Basirhat in Sessions Trial No. 5(2)09 arising out of Sessions Case No. 1(1)09 convicting the appellant for commission of offence punishable under Section 376(2)(f) of the Indian Penal Code and sentencing him to suffer rigours imprisonment for life and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for one year more.

2. Prosecution case as alleged against the appellant and co-accused Amal Mondal is to the effect that on 14.10.2008 in the morning the appellant told the victim, a minor girl to tether their goat in the field. Her mother (P.W. 2) did not allow her to do so. The victim asked the appellant for money to do the work. Thereupon, the appellant called her to his room. Inside the room he removed her inner garments and committed rape on her. She cried out in pain. He pressed her mouth with a cloth. Thereafter, she was taken to a pond and made to bathe.

3. Her mother could not trace the victim. She went out to search for her and found her wet and trembling. On query she disclosed the incident to her. She lodged written complaint at the police station against the appellant and one Amal Mondal who had threatened her resulting in registration of Hasnabad Police Station Case No. 198 dated 15.08.2008 under Sections 376(2)(f)/506 of the Indian Penal Code.

4. In conclusion of investigation, charge-sheet was filed and charges were framed under Section 376(2)(f) of the Indian Penal Code against the appellant and Section 506 of the Indian Penal Code against the co-accused, Amal Mondal.

5. In the course of trial, prosecution examined ten witnesses to prove its case. Defence of the appellant was one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgment and order convicted and sentence the appellant, as aforesaid.

By the self-same judgment and order learned trial Judge acquitted the co-accused, Amal Mondal.

6. Nobody appears for the appellant. Ms. Sreyashee Biswas, learned Counsel empanelled with High Court Legal Services Authority is requested to appear in the matter. Secretary, High Court Legal Services Authority is directed to regularise her appointment.

7. Ms. Biswas, learned Counsel submits prosecution case suffers from various infirmities. F.I.R. has not been proved. No injuries were found in the private parts of the victim. Hence, the prosecution case has not been proved.

8. Mr. Bardhan, learned Counsel for the State submits victim is a 9 year old girl. She was ravished by her neighbour. Medical officer (P.W. 9) found her hymen was ruptured and a lateral vaginal tear. This corroborates the prosecution case. Accordingly, the conviction and appeal is liable to be upheld.

9. P.W. 1 is a minor. She was a student of Class –III. Trial Judge put questions to test her capacity to depose. Being satisfied her evidence was recorded. She stated appellant had asked her to tether the goat in the field. Her mother objected. Thereafter, she wanted money to do the job. Appellant asked her to come to the house. There she was raped. She suffered injuries. Appellant took her to a pond and made her bathe. She was examined at Taki Hospital and as well as Basirhat S.D. Hospital. She

was admitted at the Basirhat S.D. Hospital for four days. She made statement before learned Magistrate.

10. Her deposition is corroborated by her mother, P.W. 2. She deposed victim had gone out to play. When she was not returning, P.W. 2 went out to search for her. She found her daughter drenched and trembling. Upon query her daughter narrated the incident to her. When her husband returned home she lodged written complaint which was scribed by one Kamal Bose.

11. P.W. 3 father of the victim has also corroborated her daughter.

12. P.W. 4 uncle of the victim deposed after the incident he came to the house and saw the victim. Her mother narrated the incident to him. Victim was taken to the hospital and treated.

13. P.Ws. 5 (Sumitra Mondal) and 6 (Krishnapada Mondal) are the neighbours. They corroborated the prosecution case.

14. P.Ws. 8 (Dr. Swapan Nag) and 9 (Dr. Banani Ghosh) are medical officers who treated the victim at Basirhat S.D. Hospital. They found her hymen absent and there was tear on her left lateral vaginal wall. They proved the medical reports marked as "Exbt.-4" and "Exbt.-1/1" as well as discharge certificate from the hospital marked as "Exbt.-5".

15. P.W. 10 (Sadhan Kumar Ghosh) is the investigating officer.

16. Analysis of the evidence on record shows deposition of the minor P.W. 1 is not only corroborated by her relations i.e. P.Ws. 2, 3 and 4 but also through independent witnesses i.e. P.Ws. 5 and 6. Date of birth

of the minor has been proved by production of birth certificate ("Exbt.-3") as 02.05.1999. Medical evidence on record shows her hymen was absent. There was tear on the left lateral vaginal wall. P.W. 8, medical officer, stated such injury could be caused if an adult male committed rape on a minor girl. Hence, ocular evidence of the victim is corroborated by medical evidence on record.

17. In the light of the aforesaid evidence, conviction and sentence of the appellant is upheld.

18. Coming to the sentence, I note the offence of rape on a minor is a grave one. But appellant has suffered incarceration for more than 14 years. He has no criminal antecedents.

19. Balancing the aggravating and mitigating factors, I am of the opinion sentence imposed on the appellant may be modified and it is directed appellant shall suffer substantive sentence of imprisonment for the period already undergone and pay fine of Rs. 5,000/-, in default, of payment of said fine amount the said convict shall undergo simple imprisonment for one year more.

20. With the aforesaid modification as to the sentence, the appeal is disposed of.

21. In view of disposal of the appeal connected application, if any, stands disposed of.

22. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

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

I agree.

(Siddhartha Roy Chowdhury, J.)

(Joymalya Bagchi, J.)