

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 482 of 2014

Biswajit @ Subhas @ Bikash Soren & Ors.

-Vs-

The State of West Bengal

For the Appellants : Mr. Sudip Ghosh Chowdhury, Adv.
Mr. Abhisek Bose, Adv.

For the State : Mr. Nuguive Ahmed, Ld. Addl. Public Prosecutor.
Ms. Manisha Sharma, Adv.

Heard on : 15.09.2022

Judgment on : 15.09.2022

Joymalya Bagchi, J. :-

Appeal is directed against judgment and order dated 17.05.2014 passed by learned Sessions Judge, Hooghly in Sessions Trial No. 07 of 2012 arising out of Sessions Case No. 286 of 2012 convicting the appellants for commission of offence punishable under Sections 376(2)(g)/120B of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default, to suffer further rigorous imprisonment for one year more.

Prosecution case as alleged against the appellants and Gita Malik @ Chhutki is to the effect that on 05.03.2012 at Halusai village, P.S. Polba appellants had forcibly taken away the victim (PW8) and committed rape upon her in a nearby field pursuant to a conspiracy hatched between themselves. Charges were framed against the appellants and one Gita Malik @ Chhutki under Section 376(2)(g) read with Section 120B and under section 376(2)(g) of the Indian Penal Code against the appellants. In course of trial, prosecution examined 9 witnesses including the victim (PW8). Defence of the appellants was one of innocence and false implication.

In conclusion of trial, learned trial Judge by the impugned judgment and order dated 17.05.2014 convicted and sentenced the appellants, as aforesaid. However, by the selfsame judgment, Gita Malik @ Chhutki was acquitted of all the charges levelled against her.

Learned advocate for the appellants submits that the victim (PW8) is an unreliable witness and the prosecution case has not been proved. However, the appellants have almost served out the substantial sentence and they do not wish to press the appeal.

Learned Additional Public Prosecutor supports the conviction.

We have considered the evidence on record particularly that of the victim lady (PW8).

PW8 deposed on 05.03.2012 in the evening she had been to the house of her sister by village courtesy viz. Gita Malik @ Chhutki. She was cooking in the kitchen. At that time, appellants came to the house

and forcibly took her to a tomato orchard and committed rape upon her. She identified the appellants in Court. She lodged written complaint against them. She made statement before Magistrate.

PW9 (SI Atish Das) received the written complaint from PW8 and commenced investigation. During investigation, he seized the wearing apparels of the victim. He came to the place of occurrence and drew up a rough sketch map. He seized polythene packets containing liquor and one *jangia* from the place of occurrence which was witnessed by PW2, Uttam Santra. He took the victim for medical examination. He forwarded the appellants for Test Identification parade before Judicial Magistrate. He submitted charge sheet.

PW1 (Tulshi Debnath) is the mother of the victim. She corroborated the latter's version and stated the victim had gone to the residence of Gita Malik @ Chhutki. She had accompanied her to the police station.

PW6 (Surajit Mondal) is the Judicial Magistrate who conducted Test Identification parade. He deposed on 11.04.2012 Test Identification parade was conducted and the victim had identified Bapi Hansda @ Bachan but not Suklal Tudu @ Kochi.

PW7 (Dr. S. Pathak) is the medical officer who examined the victim. She stated victim was married one year ago. She did not find injury in her private parts. She proved the report (Ext.5/1). She also examined the appellants and found they were capable of sexual intercourse.

Learned advocate for the appellants submits Sukla Tudu @ Kochi had not been identified in course of Test Identification parade. Although victim lady claimed she was gang raped, no injuries were found in her private parts.

I have given my anxious consideration to the aforesaid submissions. Victim had been forcibly abducted from the house of co-accused viz. Gita Malik @ Chhutki and gang raped in a tomato orchard. She had the opportunity of seeing the appellants at close quarters. Appellants are known to her and they were named in the FIR. She identified them in court. Identification of a witness in court is substantive evidence.

In view of the aforesaid, failure on the part of the victim to identify one of the appellants in course of Test Identification parade does not affect the credibility of the prosecution case.

Victim was a married lady and had been overpowered by three men who raped her. As the victim had been overpowered, there was little opportunity for her to resist. Hence, absence of injuries in her private parts does not affect the truth of her version which finds corroboration from other evidence on record.

In the light of the aforesaid discussion, I uphold the conviction and sentence imposed upon the appellants.

Appeal is accordingly dismissed. Connected applications, if any, are also disposed of.

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

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

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

akd/PA