

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRA 749 of 2017

**Manik Mandal
-Vs.-
The State of West Bengal**

For the appellant : Mr. Sumanta Chakraborty

**For the State : Mr. Ranabir Roychowdhury
Ms. Faria Hossain
Mr. Sandip Chakraborty
Mr. Mainak Gupta**

Heard on : 21.04.2022

Judgment on : 25.04.2022

Bibek Chaudhuri, J.

This is an appeal against conviction passed by the learned Additional Sessions Judge, Fast Track, Second Court, Malda in Sessions Trial No.13(01)/2017 arising out of Sessions Case No. 571 of 2016 convicting the appellant under Sections 448/354 of the Indian Penal Code and sentencing him to suffer imprisonment for two years with fine and default clause for the offence punishable under Section 354 of the Indian Penal Code

and also sentencing him to pay fine of Rs.500/-, in default, to suffer simple imprisonment for one month for the offence punishable under Section 448 of the Indian Penal Code.

In the night of 11/12th June, 2015 when the de facto complainant was sleeping with her minor children, the appellant allegedly trespassed into her room and outraged her modesty touching different parts of her body. The de facto complainant woke up and tried to resist the appellant but the appellant gagged her mouth with the help of her wearing apparels. When the de facto complainant raised alarm, the accused assaulted her with fists and blow. In the meantime, some witnesses reached the place of occurrence but the accused managed to flee away.

It is alleged by the de facto complainant that she reported the matter to the police officer attached to Manikchak Police Station and then to the Superintendent of Police. But no step was taken by the police authority. This led her to file a written complaint before the Court of the learned Chief Judicial Magistrate, Malda on 7th July, 2015.

The learned Chief Judicial Magistrate, Malda sent the complaint to the Officer-in-charge of Manikchak Police Station

directing him to treat the complaint as F.I.R. and start a specific case against the appellant. On the basis of such written complaint, police registered Bhutni P.S. Case No.65 of 2016 on 25th August, 2016 under Sections 448/376/511/323 of the Indian Penal Code. Investigation of the case culminated to filing charge sheet against the accused. Since the offence under Section 376/511 of the Indian Penal Code is triable exclusively by the Court of Sessions, the case was transferred to the Fast Track, Second Court of Additional Sessions Judge at Malda. The learned trial Judge framed charge against the accused under Sections 448/376/511/323 of the Indian Penal Code. When the charge so framed was read over and explained to the accused, he pleaded not guilty and accordingly, trial of the case commenced.

During trial, prosecution examined seven witnesses. Some documents viz., injury report, formal FIR, written complaint, endorsement made in the formal FIR, rough sketch map with index were marked as exhibit-1, exhibit-2, exhibit-4(a) respectively. On the basis of the evidence on record and considering the argument advanced by the learned advocates for the prosecution and the defence, the Court below convicted the

accused and sentenced him accordingly. Hence, the instant appeal.

It is submitted at the outset by the learned advocate for the appellant that the instant case is a glaring example of non-compliance of the specific provisions of the Code of Criminal Procedure contained in Chapter 12 of the Code. In order to substantiate his contention, the learned advocate for the appellant refers to the written complaint which was filed by the de facto complainant/victim on 7th July, 2015 with a prayer to send the said written complaint to the Officer-in-charge of Manikchak P.S. directing him to treat the same as F.I.R. From the endorsement made by the Officer-in-charge of Bhutni P.S. it appears that the police registered Bhutni P.S. case No.65 of 2016 after a lapse of about one year and two months on 25th August, 2016. According to the learned advocate for the appellant the police authority is under obligation to register a police case immediately on receipt of the written complaint transmitted from the Court of the learned Chief Judicial Magistrate to the police station. From the endorsement made by the Chief Judicial Magistrate, it is clear that the learned Magistrate sent the said written complaint submitted by the de

facto complainant on the very date of filing of the complaint. There is no explanation for delay in registering the police case by the police authority. The learned trial Judge failed to consider this aspect of the matter involved in the instant case and without even trying to offer an explanation of such inordinate delay in registering the police case, the learned Court below proceeded with the case.

It is further submitted by the learned advocate for the appellant that such inordinate delay in registering the police case prompted the Investigating Officer to create some purported documents in support of the case to file a false charge sheet against the appellant. In this regard, he takes me to exhibit -1 which is the injury report. It is rightly pointed out by the learned advocate for the appellant that the injury report (exhibit-1) was obtained by the Investigating Officer only on 1st September, 2016. According to the case of the prosecution, the incident took place in the night of 11th /12th June, 2015. The de facto complainant was allegedly medically treated on 12th June, 2015 but no contemporaneous injury report was seized from the Investigating Officer. It is further pointed out by the learned advocate for the appellant that the de facto complainant stated

in her written complaint that she filed a photostat copy of her medical examination report relating to her treatment dated 12th June, 2015 along with the petition of complaint. However, the said document was never produced by the prosecution during trial. From the lower Court record a copy of the communication made by the Investigating Officer to the Block Medical Officer of Health, Manikchak BPHC is found where the Investigating Officer requested the Block Medical Officer of Health to arrange for an injury report in the name of the de facto complainant. Accordingly, one injury report dated 1st September, 2016 prepared by P.W.4 Dr. Tavrez Rahman was produced and marked exhibit during trial of the case. It is submitted by the learned advocate for the appellant that exhibit -1 does not match with the photostat copy of the injury report prepared on 12th June, 2015 which was sent by the Investigating Officer to the Block Medical Officer of Health requesting him to hand over an injury report on the basis of the said photostat copy. The said photostat copy of the injury report has not been marked exhibit. Therefore, it ought to be held that the prosecution willfully suppressed the real evidence to present a false case against the appellant before the trial Court.

On factual score, it is submitted by the learned advocate for the appellant that the de facto complainant tried to suppress that the accused is a relative of her matrimonial side and there exists a long standing animosity between the de facto complainant, her husband in one side and the appellant on the other.

Learned advocate for the appellant further submits that in her evidence she stated on oath that on the date and time of occurrence the appellant entered into her room, gagged her mouth with cloth, touched her breasts and tried to rape her. She then raised alarm and then the villagers came to the place and the accused fled away after assaulting her. It is submitted by the learned advocate for the appellant that there is absolutely no evidence against the appellant to the fact that he outraged modesty of the de facto complainant. The minor daughter of the de facto complainant was examined during trial as P.W.5. She stated in her evidence that on the date of occurrence some time in the midnight she suddenly woke up from her sleep and saw the appellant assaulting her mother. Thus, it is contended by the learned advocate for the appellant that the daughter of the de facto complainant did not corroborate the allegation made by

P.W.1 that the appellant allegedly tried to commit rape upon her mother or outraged her modesty. It is further pointed out by the learned advocate for the appellant that except P.W.5 no other witness came forward to corroborate the evidence of the de facto complainant though in the written complaint she stated the names of six witnesses who amongst the others allegedly rushed to the place of occurrence hearing hue and cry of the de facto complainant and the accused assaulting the de facto complainant. It is further alleged that the appellant fled away seeing the said witnesses. However, none of the witnesses was examined during trial of the case. Thus, the learned advocate for the appellant submits that the learned trial Judge committed error in relying upon the solitary evidence of the de facto complainant and her minor daughter specially when the police case was registered after about one year and two months from filing of the written complaint, the evidence on record is clear that the Investigating Officer manufactured certain documents for the purpose of this case and independent witnesses did not come forward to support the prosecution case though it is the specific case of the prosecution that the local people saw the

incident and seeing them the appellant fled away from the room of the de facto complainant.

Mr. Ranabir Roy Chowdhury, learned Public-Prosecutor-in-Charge, on the other hand, submits by producing a Government Notification that Manikchak Police Station in the District of Malda was divided into police stations vide Government Notification dated 16th February, 2016 and by such bifurcation, two separate police stations namely Manikchak and Bhutni came into existence. The place of occurrence of this case falls within the jurisdiction of Bhutni Police Station. So there was delay in registering police case on the basis of a written complaint under Section 156(3) of the Code of Criminal Procedure, which was filed and allowed by the learned Chief Judicial Magistrate, Malda. Mr. Roy Chowdhury also submits that in appeal, the appellant cannot raise the issue of delay in registering police case because during the trial of the case, the appellant did not raise any such issue.

Mr. Roy Chowdhury further submits that the learned Advocate for the appellant completely misconstrued the evidentiary value of injury report and the medical advice treatment sheet of the de-facto complainant. It is not disputed by the learned Advocate for the appellant that the de-facto complainant/victim lady was medically examined on 12th June, 2015 at Manikchak Rural Hospital, Malda. The learned Advocate for the appellant also relied upon a requisition letter

written by the Investigating Officer to the Block Medical Officer of Health requesting him to supply the injury report of the de-facto complainant. On the opposite side of the said letter, a photostat copy of the treatment sheet of the de-facto complainant dated 12th June, 2015 was photocopied. Thus, according to the learned Public Prosecutor-in-Charge, the learned Advocate for the appellant never raised any question on the point that the de-facto complainant was medically treated on 12th June, 2015 at Manikchak Rural Hospital, Malda. Though the said requisition letter written by the Investigating Officer was not exhibited during the trial of the case, the Court can take judicial notice of the said document as the document was made part of the lower court record. It is submitted by Mr. Roy Chowdhury that injury report (Exhibit.1) was handed over to the Investigating Officer on 1st September, 2016 by Dr.Tavrez Rahman (Exhibit.4) as per requisition made by the Investigating Officer. Therefore, the Trial Court rightly accepted the injury report while passing the impugned judgment and order of conviction. It is also pointed out by Mr. Roy Chowdhury that the defence did not raise any objection against the said injury report (Exhibit.1) and at the stage of appeal such objection cannot be entertained. Thus, it is submitted by Mr. Roy Chowdhury that the de-facto complainant by adducing satisfactory evidence was able to prove that in the night of 11/12th June, 2015, the appellant trespassed into her

room, assaulted her and thereby outraged her modesty. The evidence of P.W.1 was corroborated by her minor daughter (P.W.5). It is not accepted that the minor daughter of the de-facto complainant was tortured to narrate a false incident only for the purpose of this case. Therefore, there is no ground to disbelieve P.W.1 and P.W.5. Oral evidence of the said two witnesses was corroborated by the injury report and the evidence of Dr. Tavrez Rahman (P.W.4). When it is established on satisfactory evidence that the appellant trespassed into the room of the de-facto complainant at dead hours of night and assaulted her, it is open for the Court to hold that such specific act was done by the appellant upon the de-facto complainant with sexual intent. Therefore, the learned Trial Judge was absolutely correct in convicting the appellant under Sections 448/354 of the Indian Penal Code and there is no ground of interference over the impugned judgment and order of conviction and sentence by this Court.

Having heard the learned Counsel for the appellant as well as the State respondent and on careful consideration of the entire materials on record, this Court is of the view that in a criminal trial it is the solemn duty of the Court to consider as to whether first information report is filed without any delay. If there is delay in filing the FIR, it must be explained by the prosecution during trial of the case. It is also duty of the prosecution to establish that the case of the prosecution is not

concocted and manufactured being vitiated by delay. According to the de-facto complainant, the incident took place in the night of 11/12th June, 2015. The de-facto complainant filed a petition of complaint with a prayer to send the said petition of complaint to the jurisdictional police station for treating the same as FIR under Section 156(3) of the Code of Criminal Procedure on 7th July, 2015. Thus, petition of complaint was filed after 25 days of the occurrence. In the petition of complaint it was stated by the de-facto complaint that she previously lodged complaint against the appellant over the self-same incident before the Officer-in-Charge of Manikchak Police Station and then to the Superintendent of Police, Malda. But they did not take any action in accordance with law against the appellant. During trial of the case, prosecution failed to prove the said fact before the Trial Court. The learned Trial Court also did not consider delay in filing the petition of complaint in the impugned judgment. In my opinion, it is immaterial as to whether the appellant took such defence that a false case was manufactured against him after a lapse of about 25 days from the date of alleged occurrence. The Court has the duty to be satisfied as to whether a false case is made out against the accused or not at a belated stage.

I am in agreement with the learned Advocate for the appellant that the prosecution failed to offer an explanation in respect of the question as to why the police case was registered after about one year and two

months from the date of order passed by the learned Chief Judicial Magistrate. The explanation offered by the learned Public Prosecutor-in-Charge is not at all satisfactory and convincing. A police station may be divided by a Government order in to two police stations on and from a date subsequent to the complaint having been sent by the learned Chief Judicial Magistrate to Manikchak Police Station directing the Officer-in-Charge of the said Police Station to start a specific case treating the petition of complaint as FIR. After about six months of the said order having been passed, Manikchak Police Station was divided into two Police Stations and Bhutni police station was created. Necessity of registering a police case on the basis of police complaint under Section 156(3) of the Code of Criminal Procedure is to collect evidence during investigation against the appellant if there is inordinate delay in recording the FIR on the basis of written complaint filed by the de-facto complainant or sent to the police station by an order passed by the competent Magistrate under Section 156(3) of the Cr.P.C., there is every chance that the evidence against the appellant may be washed away. For this reason, the Division Bench of this Court passed an order in **CRM No.4792 of 2019** (In re: **Abdul Khaleque**) that the police authority has the duty to register a case within 24 hours of receiving the written complaint under Section 156(3) of the Code of Criminal Procedure.

In the aforesaid judgment, the Division Bench of this Court held:-

"In order to ensure that such breaches of statutory duty do not occur in future and the constitutional obligation to 'uphold rule of law' by promptly registering F.I.R.s pursuant to directions given by the learned Magistrates under Section 156(3) of the Code of Criminal Procedure are effectively enforced, we direct as follows:-

- 1) order under Section 156(3) of the Code of Criminal Procedure passed by the learned Magistrate directing registration of FIR shall be positively dispatched from the court concerned to the appropriate police station on the day on which such order is passed and FIR shall be drawn up at the police station and not later than 24 hours from the date of receipt of such order;
- 2) Failure to do so shall attract disciplinary proceedings and also penal consequences under Section 166B of the Indian Penal Code particularly in sex offences;
- 3) Principal Secretary (Home), Government of West Bengal and Director General of Police, West Bengal shall take immediate step to incorporate the aforesaid directions in the police regulations so that the discharge of official duties of police officers in the State of West Bengal are accordingly regulated and the fundamental right to access to justice of victims of crime is not rendered illusory by gross dereliction of official duty by law enforcement agencies as in the present case."

While passing the aforesaid direction, the Division Bench of this Court relied on the decision of the Hon'ble Supreme Court in ***Lalita Kumari vs. Government of Uttar Pradesh & Ors.*** reported in **(2014) 2 SCC 1**. In the said judgment, the Constitution Bench of the Hon'ble Supreme Court held prompt registration of FIR is imperative for the following reasons:-

"97.1.(a) it is the first step to "access to justice" of a victim.

97.2. (b) it upholds the "rule of law" inasmuch as the ordinary person forth the commission of a cognizable crime in the knowledge of the State.

97.3. (c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.

97.4 (d) It leads to less manipulation in criminal cases and lessens incidents of "antedated" FIR or deliberately delayed FIR."

In the instant case, the police authority hopelessly failed to register the FIR immediately on receipt of the order passed by the learned Chief Judicial Magistrate, Malda.

The learned Trial Judge did not consider that no witness from the witness list stated in the petition of complaint was examined during trial of the case. On the other hand, the learned Trial Judge accepted the evidence of the de-facto complainant on the ground that her minor

daughter corroborated her evidence. The said minor daughter was not cited as witness in the petition of complaint. It is needless to say that a minor witness is competent to depose in a case, but her evidence is subject to scrutiny because a minor witness is prone to tutoring an imagination. In the instant case it will not be out of place to mention that the said minor witness deposed that she saw the appellant assaulting her mother. From her evidence I do not find any ingredient of offence under Section 354 of the Indian Penal Code. The witnesses who allegedly saw the appellant in the room of the victim were not examined. So far as the charge under Section 323 of the IPC, the appellant was acquitted.

As a result of delay in registering the case and in view of non-examination of the independent witnesses in a case based on inordinately delayed FIR, it is not safe for the Court to record conviction.

Resultantly this Court is of the view that the impugned judgment and order of conviction and sentence cannot be sustained and the same is liable to be set aside.

Accordingly, the instant appeal is **allowed on contest**.

The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track, Second Court, Malda in Sessions Trail No.13(01)/2017 arising out of Sessions Case No.571 of 2016 is set aside.

The appellant is acquitted and discharged from his bail bond.

(Bibek Chaudhuri, J.)

suman/Mithun, A.R.s (Court)