

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. 978 of 2013

Sambhu Das
-Vs-
The State of West Bengal

For the Appellant : Mr. Soumajit Chatterjee, Adv.

For the State : Ms. Zareen N. Khan, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 08.12.2022

Judgment on : 08.12.2022

Joymalya Bagchi, J. :-

1. Appeal is directed against judgment and order dated 30.09.2013 & 01.10.2013 passed by learned Additional District & Sessions Judge, Fast Track Court No.3, Alipore, South 24-Parganas in Sessions Trial No.01(07) of 2009 arising out Sessions Case No. 40(05) of 2009 convicting the appellant for commission of offence punishable under Section 376(2)(f) of the Indian Penal Code and sentencing him to

suffer rigorous imprisonment for life and to pay a fine of Rs.25,000/-, in default, to suffer rigorous imprisonment for one year more.

2. Victim is a 10-year-old girl who was ravished by a neighbour, the appellant herein.

3. Genesis of the prosecution case as transpiring from the statement of the mother of the minor (PW1) is to the effect on 25.02.2009 at 10:45 hrs. she had gone out for work while her daughter and sister were at her residence. At 4:00 P.M. when she returned, she noticed her daughter was weeping. Her sister was also in a state of shock. She noticed the skirt of her daughter was torn and blood was coming from her private parts. On query, her daughter told her while she was playing in the narrow lane in front of the house of the appellant. The latter had called her into the room. Thereafter, he committed rape on her. As a result, she suffered injuries. Appellant had also threatened her not to inform the incident to anyone.

4. Statement of PW1 was reduced into writing at the police station and Bhowanipore Police Station Case No. 42 dated 25.02.2009 under Section 376 IPC was registered against the appellant. In conclusion of investigation, charge-sheet was filed and charge was framed under Section 376(2)(f) IPC against the appellant.

5. Minor child were examined as PW3. Her mother was examined as PW1. Other witnesses including medical officer (PW4) who examined

the victim also deposed during trial. Defence of the appellant was one of innocence and false implication.

6. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 30.09.2013 & 01.10.2013 convicted and sentenced the appellant, as aforesaid.

7. PW3 is the minor child. She deposed on the fateful day around 2:00 P.M. she was playing in the lane. Appellant called her into his room. He shut the door. He undressed her forcefully and penetrated his penis into her vagina. She suffered bleeding injury and cried out for help. Her skirt was stained with blood. Appellant threatened her not to disclose the incident to anyone. At 4:30 P.M. her mother returned and she narrated the incident to her mother. She was taken to a doctor's chamber. Doctor was not available and they returned home. Then they went to the police station. From there she was taken to P.G. hospital. She was produced before the Magistrate and made statement. Police seized her wearing apparels.

8. Her mother was examined as PW1. She corroborated the deposition of her daughter.

9. PW2 (Saraswati Bhuian) is a neighbour. She heard the incident from PW1 and supported the prosecution case.

10. PW4 (Dr. Suparna Basak) examined the victim at S.S.K.M. Hospital. She found the following injuries :-

“vulval injury none. Labia majora covering the labia minora on thigh fully abducted position.

Labia-minora :- Red and inflamed covered by labia majora in thigh fully abducted position. Clitoris – small.

Fourchette : Hymen – Ruptured fresh, reddened inflamed tears in 3'o clock, 6'o clock and 8'o clock position.

Vagina – 1 finger admitted painfully.

Examination – painful. Vaginal discharge – none.

Injuries on the body other than those on the genitals – None.”

She opined genital injury corroborates attempt of forceful intercourse upon the child.

11. PW8 (Dr. R. Karim) is the Radiologist who examined the victim and opined she is a minor.

12. PW9 (Amit Sankar Mukherjee) and PW10 (S.I. Ram Behari Upadhyay) are the Investigating Officers.

13. Mr. Soumajit Chatterjee, learned advocate for the appellant argues Gayatri, sister of PW1 has not been examined. Medical officer (PW4) stated it was a case of attempted forcible intercourse. Hence, prosecution case of rape has not been proved.

14. I am unable to accept the aforesaid submissions in the light of the consistent evidence of the victim and her mother. Victim stated appellant had taken her into the room and forcefully undressed her. He thereafter penetrated her causing bleeding injuries. Medical officer (PW4) found her hymen ruptured and inflamed. The aforesaid medical finding clearly proves penetration and establishes the offence of rape.

15. Slight penetration is sufficient to establish the offence. Since the appellant was unable to penetrate the victim completely, medical officer recorded the injuries which corroborates attempt of forcible intercourse.

16. Age of the victim has also been established. She was around 10-12 years as per radiological report. Accordingly, prosecution case against the appellant is proved beyond doubt.

17. We are conscious that offence of rape on a minor is a grave one. Appellant was a young person and did not have criminal antecedents. He has already suffered incarceration for more than 14 years. Balancing the aggravating and mitigating circumstance, we modify the sentence imposed upon the appellant and direct that he shall suffer substantive sentence of imprisonment for the period already undergone and pay a fine of Rs.25,000/-, in default, to suffer rigorous imprisonment for one year more.

18. With this modification as to sentence, the appeal is disposed of.

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

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

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

I agree.

(Siddhartha Roy Chowdhury, J.)

(Joymalya Bagchi, J.)

as/akd/PA