

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Before: Hon'ble Justice Sugato Majumdar

CRA 769 of 2014

Asman Mondal

Vs.

The State of West Bengal

For the Appellant : **Ms. Minati Gomes,
Mr. Amanul Islam,
Mr. Sourav Mukherjee.**

For the State : **Mr. Prasun Kumar Dutta,
Mr. Zareen N. Khan,
Md. Kutubuddin.**

Hearing concluded on : **01/08/2022**

Judgment on : **08/08/2022**

Sugato Majumdar, J.:-

The instant criminal appeal is filed against the judgment of conviction and order of sentence dated 07/11/2014 passed by the Additional Sessions Judge, 3rd Court, Nadia in Sessions Trial No.1 (May) 2014 whereby the Appellant was convicted under section 354 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for two years along with a fine of Rs.5000/-, in default to suffer rigorous imprisonment of six months.

Genesis of the prosecution case is the written complaint of the victim lady wherein it was alleged that on 20/12/2012 at about 02:00 A.M., when she was sleeping along with her four children, the Appellant

being her next door neighbor, stealthily entered into her room. He shut her mouth, forcibly entered into her quilt tried to rape her. She was able to shout somehow removing his hand from her mouth. On being so resisted, the Appellant fled away. On hearing the hue and cry of the victim the neighbors rushed to her residence. Brothers of the Appellant also came there. She narrated the incident to the brothers but they assaulted her. When the neighbors interfered, they went away.

The written complaint was lodged in Chapra Police Station on 23/12/2012. The case was registered as Chapra P.S. Case No. 653/2012 dated 23/12/2012 under sections 376/511/506/34 of the Indian Penal Code. Investigating Officer, on being so entrusted with, conducted investigation. He visited the place of occurrence, prepared rough sketch map with index, recorded statement of witnesses, got the statement of the victim recorded under section 164 of the Code of Criminal Procedure, 1973 and on completion of the investigation he filed charge sheet under sections 376/511/506/34 of the Indian Penal Code against three accused persons namely Hamid Mondal, Chhamad Mondal as well as the Appellant. Charge against the first two accused persons were framed under sections 323/34 of the Indian Penal Code whereas charges against the Appellant were framed under sections 376/511 of the Indian Penal Code. Charges were read over and explained to the accused persons and they pleaded not guilty and claimed to be tried. Thereafter trial began.

In course of the trial prosecution examined as many as seven witnesses and produced various documents which were marked and exhibited.

The accused persons were examined under section 313 of the Code of Criminal Procedure. Defense of the Appellant was false implication.

The Trial Court, in terms of the impugned judgment, convicted and sentenced the Appellant but the other two accused persons were acquitted.

On being aggrieved and dissatisfied with the impugned judgment, the instant appeal has been preferred.

Ms. Gomes, appearing for the Appellant submitted that the conviction of the Appellant was based on sole testimony of the victim. The Trial Court failed to take into consideration the incongruities and contradictions in the material evidences adduced by the prosecution. No other witness corroborated the evidence of the victim. There are inherent contradictions in the statements of the victim which belies the probability factor. According to Ms. Gomes, the material evidences adduced by the prosecution do not support conviction and the impugned judgment is liable to be set aside.

Per contra Mr. Dutta, appearing for the State, submitted that there are enough cogent and reliable evidences to sustain conviction. The Trial Court, according to him, appreciated and considered all evidences and applied the correct principle of law. Therefore, according to Mr. Dutta, the impugned judgment demands no interference.

I have heard rival submissions.

The victim stated in the written complaint (Ext. 1) that at the time of the incident, she was sleeping with her four children. The written complaint indicates that she was sleeping inside her room. In her statement recorded under section 164 of the Code of Criminal Procedure (Ext. 2), she stated that she was sleeping inside her room. In examination-in-chief she stated that she was sleeping on “verandah”. The rough sketch map (Ext. 3) shows that the place of occurrence is “verandah”. It is one thing to say that she was sleeping inside room,

another thing to say sleeping on “verandah” in a winter night. Although nothing was stated either in Ext. 1 and Ext. 2, she stated in cross-examination that there occurred a scuffle between herself and the Appellant, when she tried to resist the later, in course of which her wearing apparels were torn. But the torn wearing apparels were not seized. This was corroborated by P.W. 7, the Investigating Officer. Although neither stated in Ext. 1 nor before the court, the victim stated before the Magistrate, as recorded in Ext. 2 that the Appellant brandished gun at her but when she made resistance, the Appellant fled away. This appears to be embellishment. She was sleeping with four children at the material point of time. In course of cross examination she stated that she was in the middle of four sons. Neither of them was examined.

It is in the statements of the victim that when the Appellant was about to rape her, pressing her mouth with his hand, she somehow removed the hand and shouted aloud. On hearing her hue and cry, local people rushed to the spot including her relatives. But, there is no corroboration of any witness in this regard. Even her relatives, living nearby, expressed their ignorance on the matter. It is also alleged by the victim that when she complained the alleged misdeed of the Appellant to his brothers, they assaulted her. This allegation is not proved and the other two accused persons being the brothers of the Appellant were acquitted.

Whole evidence placed by the prosecution including the statements of the victim suffers from contradictions, omissions and embellishments. The Trial Court observed that the evidence of the victim can be relied upon as consistent and trustworthy, but the Trial Court failed to appreciate the evidence and ignored the contradictions. According to the Trial Court, the Appellant caught the victim from

behind and tried to commit rape which incident, according to Trial Court was proved. The Trial Court committed grave error here as this is not the case of the victim at all. The Trial Court failed to appreciate and apply the correct principle of law. It is settled principle of law that sole testimony of a prosecutrix of sexual offence can be relied upon without looking for some corroboration if such evidence is cogent, reliable and inspire confidence. In **State of Punjab v. Gurmit Singh, (1996) 2 SCC 384**, relied upon by the Trial Court, it was observed that corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. This principle was reiterated by the Supreme Court of India in **State of Madhya Pradesh vs Dayal Sahu (2005) 8 SCC 122**. When the evidence of the prosecutrix suffers from contradictions and inconsistencies and there is scope to look for corroboration and no corroborative evidence is available, sole testimony of the victim cannot be relied upon.

On perusal of evidences adduced on behalf of the prosecution suffers serious contradictions, inherence and inconsistencies which the Trial Court failed to take notice. The victim's statements and deposition do not inspire confidence to rely upon. There was a flawed appreciation of evidence on the part of the Trial Court. Therefore, the findings demands interference of this court and are liable to be set aside.

In nutshell, the instant appeal is allowed. The impugned judgment of conviction and order of sentence is hereby set aside.

The Appellant is set at liberty and he is also released from bail bond.

Copy of the judgment along with Lower Court Records be send back to the Trial Court.

The appeal is accordingly disposed of along with pending application, if any.

(Sugato Majumdar, J.)