

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(Circuit Bench at Jalpaiguri)**

PRESENT: **THE HON'BLE JUSTICE SUGATO MAJUMDAR**

CRA 03 OF 2019

**Dhiren Biswas @ Dhira
Vs.
The State of West Bengal**

For the Appellant : Ms. Suman Sehanabis
Mr. Salok Sah

For the State : Mr. Aditi Shankar Chakraborty, APP,
Mr. Arun Sarkar

Heard on : 29.11.2022 & 01.12.2022

Judgment on : 06.12.2022

Sugato Majumdar, J:-

The instant appeal is preferred against the Judgment of conviction dated 16/02/2019 and Order of sentence dated 18/02/2019 passed by the Additional Sessions Judge, 3rd Court, Cooch Behar in Sessions Case No. 44 of 2017, corresponding to Sessions Trial No.03 (08) of 2017, whereby the Appellant was convicted and sentenced to suffer rigorous imprisonment of one year along with a fine of Rs.1000/-. He was also convicted under section 448 of the Indian Penal Code and sentenced to suffer rigorous imprisonment of three months.

Genesis of the case is the written complaint dated 12th September, 2016, addressed to the Officer-in-Charge, Women Police Station, Cooch Behar lodged by the victim. It was stated in the written complaint that since the victim had no issue, she underwent treatment of the Appellant for previous seventeen months. At the time of lodging the complaint she was six month pregnant. Initially she was treated well. Subsequently, the Appellant put the victim in fear of abortion and asked for physical relationship. On 10/09/2016, taking advantage of absence of the husband of the victim, the Appellant intruded her residence at about 9:00 P.M., entered into her bedroom and made indecent proposal. When she resisted, the Appellant forcefully laid her on her bed and tried to commit rape on her. Being in helpless condition she shouted when nearby people rushed into the spot and rescued her.

The written complaint was received by the police station on 12/09/2016 at 15.45 hours and entry was made in the general diary. Formal F.I.R. was drawn up and numbered as 193/2016 dated 12/09/2016 under sections 448/376/511 of the Indian Penal Code. Investigation was initiated by the Investigation Officer. On completion of the investigation charge-sheet was filed under sections 448/376/511 of the Indian Penal Code. Charges were framed under sections 448/376/511 of the Indian Penal Code. Since the Appellant did not plead guilty and claimed to be tried, trial began.

In course of trial eight witnesses were examined and various documents were adduced as evidence which were marked and exhibited.

The Appellant was examined under section 313 of the Code of Criminal Procedure, 1973.

Defense of the Appellant was false implication.

No witness was examined on behalf of the Appellant.

The Trial Court, in terms of the impugned judgment and order of sentence convicted the Appellant and sentenced to imprisonment as stated above.

The Learned Counsel appearing on behalf of the Appellant vehemently argued that the Trial Court failed to appreciate the inherent contradictions of prosecution evidence. The Trial Court also failed to appreciate that the testimony of the victim suffers from incongruities and that the witnesses are interested as appears from cross-examination. In view of such material discrepancies and contradictions, inherent in the prosecution case, the order of conviction cannot be sustained and should be set aside.

Per contra, the Learned Public Prosecutor argued that there might be some minor discrepancies in the prosecution case but such discrepancies do not go to the root of the case making the prosecution case feeble and unsustainable.

I have heard rival submissions.

The entire incident, as alleged, took place inside the bedroom of the victim. Except the victim, who deposed as P.W.1, none witnessed the alleged incident. It is alleged that the Appellant entered into the room

taking advantage of the absence of the husband of the victim. Victim also stated in course of cross-examination that the Appellant “*gave her treatment and then gave indecent proposal to me inside my room*”. If it is so that the Appellant entered into her bedroom for the purpose of treatment then it contradicts the other version stated in the written complaint as well as in examination-in-chief, that he intruded into her bedroom. Contradictory statements of the victim created doubt as to whether the Appellant intruded into her bedroom or whether he was there on consent of the victim for treatment. In view of such doubtful and contradictory statements, it is not clear whether there was trespass by the Appellant or the Appellant was there on consent or invitation. The Trial Court failed to appreciate this contradiction in the testimony of the victim. It is settled rule that benefit of doubt should always go in favour of the accused. Therefore, conviction under section 448 of the Indian Penal Code is not sustainable.

There are contradictions in the statement of the victim. She stated in the written complaint that when the Appellant tried to commit rape upon her she shouted. Nearby people came to rescue her. In course of examination-in-chief she stated that when the Appellant attempted to commit rape upon her she shouted when her mother-in-law and some other nearby people came to rescue her. In course of cross-examination she stated “*Dhiren gave me treatment and then gave indecent proposal to me inside my bedroom. Immediately I did not call my mother-in-law asking her to come inside my bedroom*”. Her statement again is contradictory. This contradiction again creates a doubt going to the root of the case. When the

whole prosecution case is based on sole testimony of the victim, it should be reliable and free from contradictions and doubts. In absence of reliable and cogent evidence, and in case where available evidence suffers from contradictions, benefit of such doubt must go in favour of the accused and he should be acquitted.

In nutshell, the instant appeal is allowed.

The impugned judgment and the order of conviction is hereby set aside.

The Appellant is acquitted of all the charges. He is also released from the bail bonds.

The lower court record be sent back along with a copy of this judgment.

The instant appeal is disposed of accordingly.

(Sugato Majumdar, J.)