

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 8 of 2019

Jagodish Barman

-vs.-

State of West Bengal

For the Appellant	:	Mr. Debajit Kundu.
For the State	:	Mr. Aditi Shankar Chakraborty, Ld. APP Mr. Arun Kumar Sarkar
Heard on	:	07.09.2022 & 13.09.2022
Judgment on	:	16.09.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order dated 08.04.2019 passed by the Learned Additional Sessions Judge, Mathabhanga, Coochbehar in Sessions Case No. (MTB) No.94 of 2015 (corresponding to Sessions Trial No. 01(11) of 2015) convicting the appellant under Section 448/354 of the Indian Penal Code and sentencing him as follows:

- i. Rigorous Imprisonment for 2 (two) months for the offence under Section 448 of the Indian Penal Code.

- ii. Rigorous Imprisonment for 8 (eight) months and fine of Rs.20,000/- in default Simple Imprisonment for 1 year for the offence under Section 354 of the Indian Penal Code.

The genesis of the case relates to Ghoksadanga police station case no. 149 dated 24.06.2014 which was registered for investigation under Section 376/511 of IPC. One 'X' (referred to as 'complainant') reported to the O/C Ghoksadanga Police Station on 24.06.2014 that on 21.06.2014 i.e. Saturday after at about 1.30/2.00 P.M. when she was busy with her household work the appellant came to her house and enquired about her husband, when she replied that her husband has left for work, thereafter he also enquired regarding her son when she replied that her son has left for his shop. At that time the appellant suddenly entered the room and after pressing her mouth pulled her and laid her on the bed. At that time the accused hugged her, pressed her body, touched her breast and by pulling up her wearing apparel attempted to rape her. The complainant pushed the appellant, ran out of the room and raised hue and cry, when her husband also came for taking his lunch and the accused seeing the same fled away. She narrated the incident to her husband, who then disclosed the incident to the nearby people who assembled there. A village meeting was held but the issue was not resolved and as such there was a delay in lodging the complaint. The complainant requested the police authorities to take legal action against the appellant for his conduct.

The Investigating authorities on completion of investigation submitted charge-sheet under Section 448/376/511 of the Indian Penal Code against the appellant.

The case was thereafter committed to the Court of Sessions and on or about 16.11.2015 charge was framed against the present appellant under Section 448/376/511 of the Indian Penal Code. The contents of the charge were read over to the appellant to which he pleaded not guilty and claimed to be tried.

Prosecution in order to prove its case relied upon eight witnesses which included PW1, the victim 'X' and the complainant; PW2, 'Y', husband of PW1; PW3, Sima Das, sister-in-law of PW1; PW4, Manik Chandra Das, co-villager; PW5, Haripada Sarkar, scribe; PW6, Upen Das, brother-in-law of PW1; PW7, Brojendra Das, brother-in-law of PW1 and PW8, S.I. Amalesh Sarkar, Investigating Officer of the case.

PW1, 'X', the victim lady identified the appellant, Jagodish Barman in Court. She deposed that on 21.06.2014 at about 1.30/2.00 p.m. when she was busy with her household work at that time the accused/appellant entered her residence, forcibly grabbed her, lay her on bed, opened her wearing apparel and attempted to rape her. She stated that in order to save herself she shouted and hearing the same local people came to the spot. After her husband returned she narrated the incident. Subsequently a salish was held but as there was no compromise, she filed written complaint which was admitted in evidence and marked as Ext.1. She also identified her signature in the medical examination report which was marked as Ext.2.

The witness also identified her signatures in the statement under Section 164 of Cr.P.C. before the Learned Judicial Magistrate, which were collectively marked as Ext.3. The signature of the witness in the seizure list (wherein seizure of wearing apparels were effected) dated 24.06.2014 on her identification was marked as Ext. 4. In cross-examination she stated that:

“.....I was not acquainted with the accused Jagadish Barman before the date of incident. When my statement was recorded by the Ld. Judicial Magistrate at Mathabhanga Court by the Ld. Judicial Magistrate I was not acquainted with accused Jagadish Barman. As my husband told me the name of the accused then I came to know that the name of accused was Jagadish Barman.....”

PW2, 'Y', stated that PW1 is his wife and the incident occurred on 21st June, about 2-2½ years ago at 3.30 p.m. when he was not present at the house. At 2.00 p.m. when he returned home he found that his wife was crying and subsequently she disclosed that the accused Jagadish Barman attempted to rape her after entering the house. He also deposed that he was informed by his wife that she raised protest, there was a scuffle and the accused ran away. A village salish was held but the accused refused to accept the terms of salish and so PW1 lodged a written complaint with the police station. The seizure of the wearing apparels of PW1 was effected and a seizure list was prepared, the witness identified his signature in the seizure list dated 24.06.2014 which was marked as Ext. 4/1. In cross-examination he stated that he did not see the wearing apparels of his wife seized by Investigating Officer in the seizure list dated 24.06.2014.

PW3, Sima Das, sister-in-law of PW1 deposed that after the incident, PW1 had been to her house and disclosed that the accused/appellant attempted to rape her by entering her residence.

PW4, Manik Chandra Das stated both the complainant and accused/appellant are his co-villagers. He deposed that PW2 i.e., husband of PW1 informed him that the accused attempted to outrage the modesty of his wife, PW1.

PW5, Haripada Sarkar, is a law clerk who prepared the written complaint. He deposed that he read over and explained the written complaint and after understanding the same PW1 signed it. He identified his hand writing and signature, thus the written complaint was admitted in evidence and marked as Ext.1/1.

PW6, Upen Das stated that PW1 is his sister-in-law and at the relevant date when he returned home, his wife informed him that PW1 herself disclosed that the accused entered the house and attempted to rape her.

PW7, Brojendra Das also stated that PW1 is his sister-in-law and at the relevant date when he returned from work, his sister-in-law (PW1) informed him that the accused entered her house and attempted to rape her.

PW8, Sub-Inspector of Police Amalesh Sarkar is the Investigating Officer of the case who narrated the chronology and manner by which he conducted the investigation. He identified the written endorsement, formal

FIR, sketch map with index which were admitted in evidence and marked as Ext.1/1, Ext.5 and Ext.6 respectively. He also identified the seizure list dated 24.06.2014 which was marked as Ext.4/2. He also identified the two medical reports which were admitted with objection as Ext.2/1 and Ext.7 respectively.

Mr. Debajit Kundu, learned advocate appearing for the appellant submitted that the appellant has been falsely implicated in the instant case because of rivalry which arose due to the husband of the complainant having borrowed money from the appellant. He also submitted that the incident as complained of was not witnessed by any of the prosecution witnesses. The narration of facts of the victim has been constantly changing. The factum of salish has been planted in order to cover up the delay in lodging the First Information Report. Learned advocate stressed at the totality of the circumstances which has been portrayed in the present case and submitted that the case do call for interference by this Court as the judgment and order of conviction and sentence is required to be set aside based on the materials available on record.

Mr. Arun Kumar Sarkar, learned advocate appearing for the State resisted the contention and submitted that there are evidences particularly the evidence of the doctor which reflects that there were bruises available in the person of the victim and in such cases the testimony of the victim is to be considered as of prime importance. Learned advocate submitted that there is no scope for disbelieving the evidence adduced by the prosecution

regarding the involvement of the appellant in the instant case, as such the order of conviction and sentence should be affirmed.

I have considered the evidence of the victim as also the other witnesses. So far as the description of the sexual assault which has been narrated it is the victim who only has a firsthand knowledge regarding the incident and there were no eye-witnesses to the case. However, some of the facts narrated by the PW1, the complainant who happens to be the victim requires a deeper consideration in view of the case being one of sexual assault. The complainant/PW1/victim in her deposition stated that the accused initially enquired regarding the presence of her son and husband but such factum was not stated before the Court. In the complaint she stated that her husband was first to come immediately after the incident while in the deposition before the Court PW1 stated that she started shouting and hearing her hue and cry local people assembled there while in her statement before the Magistrate under Section 164 Cr.P.C. she stated that her sister-in-laws i.e. PW3 and another sister-in-law came down to save her. PW3 in her evidence before the Court stated that it was PW1 who came down to her house and disclosed the incident of the accused/appellant attempting to rape her by entering her residence. In fact, all the witnesses have heard the incident from the PW1/complainant/victim. None of them heard any hue and cry or any voice being raised by the PW1. None of the witnesses if at all who came at the spot after hearing the hue and cry of the victim were examined by the prosecution. Another peculiar feature is that the accused happens to be a co-villager but the victim has not named him

on the contrary, in her cross-examination she stated that her husband has stated that the appellant happens to be one Jagodish Barman. In her cross-examination she stated that she was not even acquainted with the accused Jagodish Barman when she gave her statement before the learned Judicial Magistrate. There is a contradiction in the facts stated by the complainant, particularly regarding her knowledge in respect of identity of the appellant Jagodish Barman as she was supposed to know the appellant who participated in the salish and is a co-villager.

In view of the inconsistency in the version of the victim PW1, I am of the opinion that it would not be safe to rely upon such testimony to arrive at a finding of guilt, as such the order of conviction and sentence so imposed by the Learned Additional Sessions Judge, Mathabhanga, Coochbehar in Sessions Case No. (MTB) No.94 of 2015 corresponding to Sessions Trial No. 01(11) of 2015 is hereby set aside.

The appellant is acquitted from all the charges.

Accordingly Criminal Appeal No. 8 of 2019 is allowed.

Pending applications, if any, are consequently disposed of.

The appellant is on bail, he is discharged from his bail bonds.

Department is directed to send back the Lower Court Records and intimate the judgment to the learned Trial Court as well as the learned Jurisdictional Magistrate.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)