

1. Appellant has preferred this appeal to challenge the judgment of the trial Court of conviction and sentence, being Sessions Trial No.4 dated 05.03.2009.
2. The trial Court has convicted the appellant for an offence under Section 376 (2) (f) read with Section 511 of the Indian Penal Code. It has sentenced him to suffer imprisonment for five years with a fine amount of Rs. 2,000/-, in default, of payment of which he is to suffer simple imprisonment for a further period of six months.

3. The connected FIR is Sadaipur Police Station Case No. 12/2008 dated 02.03.2008 under Section 376 (2) (f) of the Indian Penal Code. One Ajay Dalui is the informant and father of the victim. He informs that on March 2, 2008, the nine years old daughter of the informant/victim went to the bank of the pond to respond nature's call. The time has been mentioned to be about 3:00 p.m. in the afternoon. Allegedly, the present appellant had committed rape upon the minor girl at the bank of the pond taking the advantage of her being alone there. Investigation started pursuant to the said FIR and has culminated into filing of charge sheet against the present petitioner under Section 376 (2) (f) of the Indian Penal Code and the appellant faced the trial.
4. Upon consideration of the evidence on record the trial Court found the appellant to have been committed an offence of abetment of rape and thus convicted and sentenced in the manner as above.
5. Appellant's challenge to the said judgment impugned is mainly on the ground that the trial Court has failed to consider the evidence on record in its proper perspective and thus has reached to an erroneous finding, that the evidence on record would no way be said to have proved the allegation against the appellant beyond scope of any reasonable doubt and there are various circumstances to question the truthfulness of the prosecution's case and also the witnesses' evidence.
6. Appellant has not been represented in this appeal. That has prompted the Court to appoint Id. Amicus Curiae to assist the Court in disposing of the appeal. State is represented. It has been submitted that the appellant has already undergone incarceration for the period of sentence, as was granted by the trial Court in the impugned judgment.
7. So far as the merits of this appeal is concerned, it is found that amongst all the witnesses the evidence of the victim and her friend who

accompanied her to the bank of the pond on the relevant date and time, would be very important for the prosecution. The quality of the evidence of these two witnesses, if found sufficient would bring home the charges against the appellant. Victim P.W 1 is a minor. She has supported the prosecution's evidence to the fullest, her evidence is consistent and coherent and has not been shaken in the cross-examination. Her evidence is duly corroborated by that of her friend, i.e, P.W 5 and her mother, i.e, P.W 4 to whom the victim has disclosed the entire incident immediately after the occasion of the same. The evidence of the doctor, i.e, P.W 8 would also be relevant in this trial. The victim was examined on the day of the alleged incident when the doctor has not however found any sign of vaginal penetration or existence of sperm and pubic hair like foreign bodies, at the private part of the minor victim.

- 8.** In consideration of the evidence of P.W 1, P.W 4, P.W 5 and also the doctor, it would be found sufficient, in view of its dependability, truthfulness and consistency, that the appellant though has not been able to commit any penetrative sexual act with the minor victim on the relevant date and time as alleged, but definitely has made preparation and advanced to the state of abetment of the offence of rape upon the victim.
- 9.** Thus on consideration of the evidence on record, the finding of the trial Court can be said to be just legal and proper and the same would not warrant any interference by this Court.
- 10.** The sufficiently tangible evidence by the prosecution as above, has successfully brought home the charges against the present appellant of abetment of rape and he has been properly convicted. That far this Court does not interfere in any way as to finding of the trial Court.

11. However, so far as suffering the period of sentence, in custody already, is concerned, this Court takes into consideration the fact that the period of sentence for suffering simple imprisonment of five years, has already been undergone by the appellant, during the pendency of this appeal. Therefore the sentence is modified to the extent that the period already undergone by the appellant in custody would be sufficient discharge of the punishment imposed upon him.
12. With the directions as above this appeal being C.R.A 40 of 2010 is partly allowed and disposed of along with applications, if any.
13. Before parting, the Court appreciates the able assistance put in by the Ld. Amicus Curie in this case. Let the High Court Legal Services Committee take necessary steps to pay fees to the learned Amicus Curiae in accordance with the scale applicable to “Category-A” lawyer in its panel. The same may be paid within a period of one month from the date. A copy of this order be immediately forwarded to the Secretary, High Court Legal Services Committee, for doing the needful.
14. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

RAI

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(Rai Chattopadhyay,J.)