

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 93 of 2007

Pradesh Mondal

-Vs-

The State of West Bengal

Amicus Curiae : Mr. Mainak Bakshi

For the State : Mr. Avishek Sinha

Heard on : 13.01.2023, 03.02.2023

Judgment on : 19.04.2023

Ananya Bandyopadhyay, J.:-

1. The instant appeal is preferred against the Judgment and Order dated 18.01.2007 passed by Learned Additional Sessions Judge, Fast Track Court, Balurghat, Dakshin Dinajpur in Sessions Case No. 257/2006 (Sessions Trial No. 30/2006) convicting the appellant under Section 354 of the Indian Penal Code and sentencing the appellant to suffer rigorous imprisonment for one year and to pay a fine of Rs. 2000/- in default to suffer simple imprisonment for three months more.
2. The de facto complainant filed the written complaint inter alia stating that on 19.08.2006 on about 07:30 P.M. on the way to return to her

father's house, the accused person held her hand from the back and gagged her mouth dragging her to the backside of local Anganwadi Centre and tried commit rape upon her. On a clamour nearby people rushed to the spot where after the accused fled from the spot. Initially, the complainant hesitated to file the written complaint to avoid public disgrace and tried to settle the issue with the accused, but in vain, which compelled her to lodge a complaint against the accused seeking investigation of the case and legal action against the appellant.

3. Based on the written complaint, a formal FIR was drawn up on 09.09.2006 at 14:25 hours being Kumargunge PS Case No. 104 of 2006 dated 09.09.2006 under Sections 376/511 of the Indian Penal Code. Pursuant to the complaint, investigation ensued and ultimately charge sheet was filed against the appellant being no. 101/06 dated 23.09.2006 under Sections 376/511 of the Indian Penal Code.
4. The prosecution in order to establish its case cited 9 witnesses and exhibited certain documents.
5. The Learned Advocate Moinak Bakshi, the Amicus Curiae, submitted the charges against the appellant under Sections 375/511 of the Indian Penal Code were baseless and the Learned Trial Judge erred in law as well as in fact to convict the appellant as the prosecution failed to establish the ingredients of offence under Section 354 of Indian Penal Code, apart from the inconsistencies and contradictions in the evidence of the prosecution witnesses, none of whom, apart from the victim witnessed the incident. The inordinate delay in filing the written

complaint was also not explained. The 'Salish' as mentioned to have been organized for settlement of the issue was not proved. PW-1 was not medically examined. The Mother-in-law of the appellant was not examined. The prosecution failed to establish its case. Accordingly the appeal shall be allowed.

6. The Learned Advocate for the State submitted that PW-5 and PW-6 heard the cry of the victim i.e. PW-1 immediately after the incident and arrived at the spot and emphasized the doctrine of Res Gestae as a principle embodied in Section 6 of the Indian Evidence Act, 1872. The Learned Advocate for the State further submitted the instant case did not fall within the purview of the offence committed under Sections 376/511 of the Indian Penal Code. It was further submitted that the victim must have been harassed by the appellant in order to outrage her modesty and on her cry PW-5, PW-6 and PW-7 reached the spot and the Learned Trial Judge considering the same rightly convicted the appellant under Section 354 of the Indian Penal Code.
7. The evidence of the prosecution witnesses precisely stated PW-1 to be the de facto complainant also the victim who in her deposition before the Court reiterated her narrative in the written complaint further stating that she called the Mother-in-law of the appellant, who was also her 'Masisasuri' who arrived at the spot propelling the appellant to escape instantly. Local people including Minati Pramanick, Niranjan Mondal, Pradip Mondal, Saidul Islam, Kalpana Mondal and her father assembled at the spot and was informed of the entire incident. A meeting was called

which was not attended by the appellant. After 7 days of the incident, PW-1 lodged the complaint. On earlier occasions the appellant tried to outrage the modesty of PW-1 through indecent signals. During her cross examination PW-1 stated to have carried a cigarette case light which enabled her to identify the appellant in the dark and did not raise any alarm when the accused caught hold of her hand and dragged her to a place about 15 cubits away. PW-2 had scribed the written complaint marked 'Exhibit-1'. PW-3 Pradip Mondal the husband of the victim corroborated the evidence of his wife, the victim i.e. PW-1. During his cross examination PW-3 stated that the appellant was the husband of his sister.

8. The evidence of PW-4 and PW-8 is based on hear say. PW-5 and PW-6 both reached the place of occurrence and was informed of the incident by PW-1.
9. PW-7 the father of the victim deposed the incident before the Court in conformity with PW-1.
10. PW-9 the Investigating Officer registered the FIR and identified his endorsement marked as 'Exhibit-2'. In absence of the regular Officer-in-Charge being the senior most Sub Inspector of the Police Station, he conducted the investigation, visited the place of occurrence and drew the rough sketch map along with the index marked as 'Exhibit-3' collectively. He examined the available witnesses, arrested the appellant and on completion of the investigation submitted the charge sheet.
11. Section 6 of Indian Evidence Act states as follows:

“Relevancy of facts forming part of same transaction.—*Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places. Illustrations*

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the 1[Government of India] by taking part in an armed insurrection in which property is destroyed, troops are attacked, and goals are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.”

12. Res Gestae are the facts that form a part of the same transaction automatically which has to be naturally the facts, which are assimilated in such a manner with the main transaction that they become relevant in view of the fact in question or the part of the original in view of the fact in question or the part of the original evidence all of which had happened which can be admitted as circumstantial facts. In the instant case the victim in her evidence stated her refusal in raising alarm when the accused caught her hand for first time. She stated to have incurred injury on her right cheek and this relevant fact along with her allegation

of being raped by the appellant was not proved by the prosecution. There is no report of medical examination on record. In her cross examination she stated her locality to be inhabited by the houses of many people along with the shop of Ranjit providing space to the local people in the evening. None of the people named by her except her husband deposed before the Court. Sandhya Mondal the mother-in-law of the appellant was not examined who allegedly came to the place of occurrence. The Investigating Officer did not record the statement of PW-1 under Section 161 Code of Criminal Procedure nor endeavored to get her statement recorded under Section 164 of Code of Criminal Procedure. Nobody saw her to be dragged across the road to a distance of 15 cubits. None of the facts stated by the victim either in conjunction or in disjunction or cumulatively can be considered to be relevant. The delay to lodge the complaint bolsters the element of fabricated story against the appellant who is a relative of PW-1. The facts forming a part of the same transaction has to be substantial and probative enough to instill reliability. It cannot simply be a mesh of concocted and capricious statements to intricate a person on the clout of vulnerability.

13. Section 354 of Indian Penal Code states that: “**Assault or criminal force to woman with intent to outrage her modesty.**—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

14. In absence of direct as well as circumstantial evidence to corroborate the evidence of PW-1, facts of the case stated by her are irrelevant, insignificant and untrustworthy and cannot be relied upon.
15. Under the facts and circumstances of the case in absence of proof of commission of the offence by the appellant beyond reasonable doubt, the prosecution has failed to prove its case and accordingly the appeal is allowed.
16. In view of the above discussions, the appeal is allowed.
17. The Judgment and Order dated 18.01.2007 passed by Learned Additional Sessions Judge, Fast Track Court, Balurghat, Dakshin Dinajpur in sessions Case No. 257/2006 (Sessions Trial No. 30/2006) convicting the appellant under Section 354 of the Indian Penal Code is set aside.
18. CRA 93 of 2007 is disposed of accordingly.
19. I record my appreciation for the able assistance rendered by Mr. Mainak Bakshi, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.
20. Lower Court records along with a copy of this judgment to 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.

(Ananya Bandyopadhyay, J.)