

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 109 of 2017

Abdul Latif Mondal @ Latif Mondal
-Vs-
State of West Bengal

For the Appellant: Mr. Imtiaz Ahmed, Adv.
Mrs. Ghazala Firdaus, Adv.
Mr. Md. Ibrahim, Adv.
Mr. Sk. Saidullah, Adv.
Mr. Mithun Mondal, Adv.
Mr. Md. Arsalan, Adv.

For the State : Mr. P. K. Datta, Id. A.P.P.
Mr. Santanu Deb Roy, Adv.

Heard on : 21.03.2023

Judgment on : 21.03.2023

Joymalya Bagchi, J. :-

1. Appellant has assailed judgment and order dated 09.01.2017 and 10.01.2017 passed by the learned Additional Sessions Judge, 7th Court at Barasat, North 24 Parganas in Sessions Trial No. 02(06) of 2006 arising out of Sessions Case No. 28(01) of 2006 convicting the

appellant for commission of offence punishable under Section 376(2)(f) of the Indian Penal Code read with Sections 3/4 of the Explosive Substance Act and sentencing him to suffer rigorous imprisonment for ten years and to pay fine of Rs.20,000/- only, in default, to suffer further rigorous imprisonment for one year more.

2. Prosecution case as alleged against the appellant is to the effect that on 21.08.2004 at 2:30p.m., the second daughter of PW 1 aged around 11 years and his third daughter aged around eight years went to Bamandanga field to cut grass for feeding the goat. At that time the appellant was reaping jute in the field. He threatened the third daughter of PW 1 and drove her away. Then he dragged the victim i.e. the second daughter to a shallow machine room. The younger daughter returned to her residence and disclosed the incident. Mojaffar Modal (PW 7), nephew of PW 1, proceeded towards the field. On the way he saw the victim returning. She was in tears. She stated that the appellant had taken her to a shallow machine room and raped her. On the next day, PW 1 lodged written complaint resulting in registration of Ashokenagar Police Station Case No. 248 of 2004 dated 22.08.2004 under Section 376(2)(f) of the Indian Penal Code.

3. In the course of investigation, the minor victim (PW 2) was medically examined. She made statement before Magistrate. Appellant was arrested and charge-sheet was filed. Charge was framed under

Section 376(2)(f) of the Indian Penal Code. Appellant pleaded not guilty and claimed to be tried.

4. In the course of trial, prosecution examined 15 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. In conclusion of trial, learned trial Judge by impugned judgment and order dated 09.01.2017 and 10.01.2017 convicted and sentenced the appellant, as aforesaid.

5. Learned Counsel for the appellant submits independent witnesses have not supported the prosecution case. Even Mujaffar Mondal, PW 7, nephew of the defacto complainant did not support the case. No injuries were found on the minor. There was a land dispute between the appellant and PW 1. Hence, the prosecution case is liable to be dismissed.

6. Learned Counsel for the State submits deposition of the minor victim (PW 1) is corroborated by her sister (PW 5). Penetration was minimal. As a result, no injuries were found by the treating doctor. During his examination under Section 313 of the Code of Criminal Procedure appellant did not say that he was falsely implicated due to land dispute. The prosecution case is proved beyond doubt. Hence, appeal is liable to be dismissed.

7. PW 2, is the minor victim. She was 13 years old when she deposed in Court. Trial Judge examined her capacity to depose and recorded her version. She stated on the fateful day she had gone to her

school. She returned home at around 12/1 P.M. Thereafter, she and her sister went to the field to cut the grass for feeding the goat. At that time the appellant was thrashing jute in the field. Appellant tripped her. She fell down. Thereafter, the appellant threatened her sister and asked her to leave the field. Appellant dragged her inside the sugarcane field and committed rape on her. Appellant threatened her not to disclose the incident. She returned home and narrated the incident to her mother. On the next day they lodged complaint. She was examined by Magistrate and treated by doctor. She proved her signature on the statement before Magistrate as well as the medical papers. She was cross-examined at length. However, no major contradiction could be elicited from her.

8. On the other hand, PW 5, her sister supported her version in Court. She deposed she had accompanied the victim to Bamandanga field to cut grass. At that time the appellant was reaping jute. He threatened her and told her to leave the field. Thereafter the appellant had dragged her sister towards the shallow room in the sugarcane field.

9. PW 1 (Abdul Rob Mondal) is the father of the victim. He deposed he was not present in the house. He heard the incident and lodged complaint on the next day. He is also a signatory to the seizure list which was prepared in connection with seizure of wearing apparels of the victim. In cross-examination he denied the suggestion that there was enmity between him and the appellant and that he had lodged false complaint.

10. The aforesaid evidence on record particularly that of PW 5 corroborates the minor victim, PW 2. PW 5 deposed with regard to the presence of the appellant at the place of occurrence. She also stated that he had dragged the victim towards the shallow machine room in the sugarcane field. In the light of the aforesaid corroboration from PW 5 who was present at the place of occurrence, lack of corroboration from PW 7 and other villagers do not affect the credibility of the prosecution case.

11. PW 3(Dr. Joydev Ghosh) examined the victim. He did not find injuries in her private parts. He clarified in case of penetration of penis into the vagina of a 11/12 years old girl the penetration is likely to be obstructed by the vulva. As a result, hymen may remain intact and no internal injuries may be caused. He stated in such cases external injuries are caused due to pressure of penis on the vagina.

12. Mr. Ahmed, learned Counsel contends no external injuries were found. Medical evidence on record requires to be assessed in the backdrop of the attending circumstances of the case. Doctor opined penetration in a minor girl may be obstructed by vulva and hymen may not be ruptured. It is trite law even slight penetration would constitute rape. In such cases pressure on vagina may not be of such nature which would cause external injury. Medical evidence does not wholly rule out a case of penetration.

13. Mr. Ahmed, learned Counsel submits FIR was registered in consultation with PW 4 who is a supporter of political party. He also

refers to PW 12 who stated there was a property dispute between the appellant and PW 1. Hence, false implication of appellant cannot be ruled out.

14. PW 12 is a hostile witness. During cross-examination, he rescind from his earlier statement to police wherein he had supported the prosecution case. Credibility of the said witnesses is in doubt. On the other hand, PW 1 denied the suggestions that there was land dispute between the parties. Even the appellant during his examination under Section 313 of the Code of Criminal Procedure did not say that he was falsely implicated due to land dispute. He claimed that he had been falsely implicated by party. It is true PW 1 consulted PW 4 who is a member of a political party but nothing has come on record that appellant belonged to a different political party or that PW 4 had grudge against the appellant on political grounds. Plea of false implication does not convince me as the version of minor (PW 1) is wholly corroborated by her sister PW 5.

15. Conviction and sentence of the appellant are upheld.

16. The appeal is, accordingly, dismissed.

17. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

18. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

19. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

sdas/PA