

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Siddhartha Roy Chowdhury

CRA 125 of 2019

Mannan Ghani
Vs.
The State of West Bengal & Anr.

For the Appellant	:	Mr. Prabir Majumder Mr. Snehansu Majumder
For the Sate	:	Mr. Bidyut Kumar Roy Ms. Ratna Ghosh
Heard on	:	20 th January, 2023
Judgment on :	:	20 th January, 2023

The Court:

Challenge in the appeal is to the judgement and order of conviction passed by the learned Trial Court in S.C. Case No. 43(7)2015 / Sessions Trial No. II of May 2016 on 19.7.2018 whereby the learned Trial Court was pleased to hold the appellant guilty for committing offence under Sections 448 /354 of Indian Penal Code and sentenced him to suffer simple imprisonment for six months and to pay a fine of Rs.500/- for committing the offence of criminal house trespass and rigorous imprisonment for two years and to pay a fine of Rs.5,000/- for committing the offence under Section 354 of the Indian Penal Code, with a default clause subject to the provision of Section 428 of the Code of Criminal Procedure. Learned Trial Court also

assigned reason as to why learned Trial Court did not invoke the provisions of Section 360 of the Code of Criminal Procedure or provisions of the Probation of Offenders' Act.

Briefly stated, the victim lady informed the Officer-in-Charge of Chapra Police Station in writing on 10.10.2013 stating inter alia that on 09.10.2013 around 7 P.M. the victim lady was alone with her matrimonial home. Her husband was not there. Her father-in-law went to offer Namaj. Taking advantage of their absence her neighbour Mannan Ghani entered into her room and hugged her and tried to ravish her. As the victim was resisting the accused person, he picked up hesua and threatened to kill her. In the meantime, her father-in-law came back and the accused person tried to flee. When the victim made an attempt to catch hold of the accused, the accused landed blow of hesua on her hand and as a result she sustained bleeding injury. The accused person even snatched one ear ring made of gold. The de facto complainant further stated that there was delay in informing the matter because of her illness.

Having found disclosure of cognizable offence, Chapra P.S. Case No. 689 of 2013 was registered under Sections 448/376/511/324/379 of the Indian Penal Code. Police took up investigation which culminated into submission of charge-sheet against the accused person. The accused person stood the trial pleading his innocence.

Prosecution in order to bring home charges examined as many as eight witnesses including the victim lady.

Learned Trial Court after considering the evidence on record, both oral and documentary was pleased to pass the judgement and order impugned.

Assailing the impugned judgement Mr. Majumder, learned counsel appearing on behalf of the appellant,t submits that the learned Trial Court pronounced the judgement impugned absolutely upon misreading of evidence.

Drawing my attention to the testimony of the victim as P.W. I, Mr. Majumder, argues that as witness, the victim stated that on the fateful day around 7 PM she was on her bed with her child by her side when the accused person entered into her bedroom, caught hold of her wearing 'Sari' and tried to disrobe her and thereby molested her. Having found her father-in-law in the room, the accused tried to flee, her father-in-law caught hold of the accused and wanted to know as to why did he enter into the room. The accused person failed to give any reply but somehow managed to escape from the clutches of her father-in-law and fled away. She herself and her father-in-law then went to the house of the accused person where both were assaulted by a hesua. As a result, she sustained cut injury on her index finger.

P.W. 2 is the father-in-law of the victim who stated that on the fateful day at the relevant point of time he had been to nearby Mosque. After returning home he found the accused person inside the bedroom of his daughter-in-law who was trying to come out of the room hurriedly. He tried to catch hold of the man, who managed to flee. Subsequently, he came to know from his daughter-in-law that the accused came and tried to molest her. Thereafter, the witness P.W. 2, his wife and daughter-in-law, three of them went to the house of the accused person. The accused made an attempt to assault him with hesua, his daughter-in-law came between and she was assaulted by the accused person with the said weapon. She sustained bleeding injury on the index finger of her right hand.

P.W. 3, P.W.4, P.W.5 did not have any direct knowledge about the alleged incident.

P.W. 6 is the doctor who attended the victim on 11.10.2013 at Bethuadahari BPHC. He found bruise mark on her right hand middle finger. He did not find any other external injury.

P.W. 7 is the scribe of the written information submitted by the de facto complainant to the police which was admitted as Exhibit 1/1.

P.W. 8 is the Investigating Officer of this case, who obviously had no direct knowledge about the incident.

Therefore, in this case victim girl is the solitary witness and immediately after the incident of alleged molestation, the father-in-law, P.W. 2 claimed to have witnessed part of the alleged incident.

While considering the oral testimony of victim, P.W. 1, I find that P.W. 1 has stated that she was lying on her bed with her child when accused Mannan Ghani came there and made an attempt to disrobe her with an intention to molest her. But during cross examination she stated that she did not tell learned Magistrate that accused person entered into her room. In her statement recorded under Section 164 of the Cr. P.C. she stated that she was alone in the house and she was lying by the side of her child when Mannan Ghani surreptitiously entered into the room; having heard a sound she turned her face, Mannan gagged her and there was a scuffle between the two. In the meantime her father-in-law came back having perceived his presence, the accused person tried to flee. Her father-in-law caught hold of his collar but he managed to escape. Thereafter when all of them went to the house of the

accused person, made an attempt to assault her father-in-law with hesua. She tried to resist such blow and sustained injury. Thus, the statement of victim as P.W. 1, and statement made by the victim before the learned Judicial Magistrate are found to be discrepant. The victim set the criminal administration justice into motion by informing the police in writing and there she gave a different narrative altogether. In her written information the victim stated that the accused person after entering into her room gagged her and made an attempt to ravish her by applying force and even intimidated her with hesua, lying near the place of occurrence. The victim made an attempt to catch hold of the accused person when he landed a blow of hesua on her resulting into bleeding injury. So the narrative appearing in the written information further differs from testimony of the victim.

From cross-examination of the victim, I find that there was disharmony between the family members of the accused person and the family members of the victim over a marital dispute. The accused person was the erstwhile son-in-law of P.W. 2 as stated by him during cross-examination. The discrepancies as transpired from the evidence of P.W. 1 the victim who is not getting support from doctor P.W. 6, I am of the view that prosecution case cannot be said to have been proved beyond reasonable doubt. It is really difficult to find a ring of truth around the testimony of the victim girl. In my view the impugned judgement of conviction is unmerited. I consider it just to extend the benefit of doubt to the accused person and to record an order of acquittal reversing the impugned order of conviction and sentence.

Consequently, the appeal is allowed, the judgement and order of conviction passed by the learned Trial Court is set aside.

The appellant be set at liberty discharged upon execution of bond under Section 437A of Cr.P.C. for six months.

With this observation, the criminal appeal is disposed of.

Let a copy of the judgment together with lower court record, be sent to the learned Trial Court for information and necessary action.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury,J)