

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. 121 of 2017
CRAN 2 of 2019 (Old CRAN 3593 of 2019)

Sk. Sayed @ Sk. Saiyad
-Vs-
State of West Bengal & Anr.

For the Appellant : Mr. K J Tewari, Adv.
Mr. Manas Kr. Das, Adv.
Ms. R Ghatak, Adv.
Ms. A Tewari, Adv.

For the State : Mr. Partha Pratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 13.02.2023

Judgment on : 13.02.2023

Joymalya Bagchi, J. :-

1. Appeal is directed against the judgment and order dated 21.12.2016 and 22.12.2016 passed by learned Additional District & Sessions Judge, 2nd Court Tamluk, Purba Medinipur, in Sessions Trial No. 08(8)2015 arising out of Sessions Case No. 30(7)2015 convicting the appellant for commission of offence

punishable under Sections 376(2)(i) of the Indian Penal Code and under section 6 of the POCSO Act and sentencing him to suffer rigorous imprisonment for 10 (ten) years and compensation to the tune of Rs. 20,000/- to the child through her parents.

2. Prosecution case, as alleged against the appellant, is to the effect that on 6.5.2015 at around 8 A.M. the appellant was working as a mason in the house of the grandmother of the minor victim. When the minor had gone upstairs, the appellant caught hold of her and put his finger into her vagina. She felt pain and complained to her parents. Her mother saw redness in her private parts. Victim was taken to primary health center and treated by PW11.

3. Mother of the child (PW2) lodged written complaint resulting in registration of Kolaghat Police Station Case No. 231 of 2015 dated 6.5.2015 under Sections 376(2)(i) IPC and under section 6 of the POCSO Act. In the course of investigation, appellant was arrested. Charges were framed against him under the aforesaid provisions of law. Appellant pleaded not guilty and claimed to be tried. Prosecution examined 12 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication.

4. In conclusion of trial, the trial Judge by the impugned judgment and order dated 21.12.2016 and 22.12.2016 convicted and sentenced the appellant as aforesaid.

5. Mr. Tewari, learned Counsel for the appellant, submits prosecution case is out and out false. Appellant owed money from one Kanto Manna. As a result he was falsely implicated. He also submits medical document from the district hospital was not placed on record. He prays for acquittal.

6. Ms. Roy, learned Counsel for the State, submits victim was examined as PW1. Her deposition is corroborated by her relations as well as medical evidence on record. Plea of false implication is out and out false. She prays for dismissal of the appeal.

7. I have considered the evidence on record. P.W.1 is the victim girl. Trial judge observed the necessary protocol to test her capacity to depose. Thereafter her deposition was recorded. She deposed appellant was a mason. He was working in the first floor. When she went upstairs, he pushed finger into her private parts. She made statement before the magistrate. She also identified the appellant.

8. Her deposition is corroborated by her mother PW2. She deposed on 6.5.2015 she had gone to her parental house. A mason was employed. He came along with a labour. They were working on the top floor. Her daughter came down crying. Appellant had

pushed his finger into her private parts. Her private parts were reddish. She disclosed the incident to her husband. She lodged complaint with police. She also made statement before the magistrate.

9. PW3 is the father of the minor child. His daughter complained that the mason had put his finger into her vagina. He took the child to Paikpari BPHC for treatment. Thereafter they went to the police station and lodged complaint.

10. PW4 is the grand-mother of the child. She deposed on the fateful day her daughter (PW2), grand-daughter and son-in law had come to their house. Construction work was in progress. Appellant was working as a mason. He committed the crime. Her granddaughter complained about the incident.

11. PW5 is the uncle of the minor child. He also corroborated the prosecution case. In cross-examination, he clarified there was no dues standing for the construction work by the mason.

12. PW 6 (Ashok Senapati) is a neighbour. Hearing hue and cry he came to the spot. He was informed that a mason working in the house, had misbehaved with the minor girl. In cross examination, he stated Kanto Manna is the nephew of Chandi Charan Manna. Work was going on at the residence of Kanto Manna.

13. PW7 is the sister-in-law of PW2. She deposed that her residence is adjacent to Chandi Charan Manna. She corroborated the prosecution case and stated that minor had complained of misbehaviour by the mason. Her private parts were reddish.

14. PW 9 is another sister-in-law of PW2. She also corroborated the prosecution case.

15. PW 8 (Sultan Khan) is helper of the appellant. He deposed he was going to work in the house of Chandi Charan Manna. He told the police that Saiyad asked him to sift the sand while he would cut rod. He saw Saiyad came out with a little girl. In cross examination, he stated that Saiyad had asked for money from wife of Chandi Manna. Earlier there was a quarrel over the issue.

16. PW 11 (Dr. Sougata Kr. Ghosh) is the doctor who examined the child at Paikpari BPHC. On examination he found tender and reddening around vaginal orifice. He gave her oral medicine and referred her to gynaecologist at Tamluk District Hospital. In the case of fingering such type of injury may be caused. He proved the medical report of BPHC (Ext 8).

17. PW 12 (Tinngopal Pramanik) is the investigating officer. He deposed on 6.5.2015 PW 2 lodged written complaint. Officer in Charge Jaleshwar Tiwary drew up formal FIR (Ext 9). He took up investigation. He visited the place of occurrence, prepared rough

sketch map with index. He examined witnesses. He seized medical documents. He took the victim girl for examination at the district hospital. He seized wearing apparels of the victim. He forwarded her for recording statement under section 164 Cr.P.C. He arrested the appellant. He submitted charge sheet.

18. Evidence on record shows version of penetrative sexual assault by the appellant is graphically narrated by the minor, PW1. Trial court took pains to test her capacity to depose. Thereafter her version was recorded. The minor stated appellant was working as a mason. She went upstairs when other family members were in the ground-floor. Taking advantage of the situation, the appellant put his finger into her vagina. She suffered pain and complained to her mother and others. PW1 identified the appellant in court.

19. Her parents were examined as PW2 and 3. They corroborated the version of the child. Other relations, namely, PW4 grand-mother, PW5 maternal-uncle, PWs7 and 9 aunts have also corroborated the prosecution case. PW6, a neighbour is a post occurrence witness. Hearing hue and cry he came to the spot and was informed about the incident.

20. PW11, a medical officer treated the victim at Paikpari BHPC. His report shows tender and reddening around the vaginal orifice.

He opined fingering on the child may cause such injury. Ocular version of the minor is corroborated through medical evidence.

21. It is contended that child was treated at district hospital but medical documents have not been examined. Hence, adverse inference ought to be drawn. I am unable to subscribe to such proposition. Only upon registration of FIR the investigating officer PW12 had referred her to the district hospital. Presumably, medical examination of the child in the district hospital was after a lapse of some time. On the other hand, PW11 examined the child immediately after the incident. His report is the best evidence with regard to the injuries suffered by the child and cannot be ignored on the ground subsequent report regarding medical examination of the child during investigation has not been produced.

22. Finally, it is argued that the appellant has been falsely implicated due to enmity. During his examination under section 313 Cr.P.C., appellant contended he owed money from one Kanto Manna and not Chandi Charan Manna, grandfather of the minor. PW5, son of Chandi Charan categorically stated no dues were payable to the appellant. Hence, parents of PW2 did not owe any money to the appellant. Kanto Manna is a nephew of Chandi Charan. Hence, it is patently absurd to believe that PWs 2 and 3 will falsely implicate the appellant for the penetrative sexual

assault on their minor which is established through medical evidence. Admittedly family of PW2 had owed money due and payable to the appellant.

23. In view of the aforesaid discussion, I am of the opinion the plea of false implication is a desperate figment of imagination and the prosecution case may not be disbelieved on such score.

24. Conviction and sentence of the appellant are upheld.

25. The appeal is accordingly, dismissed.

26. In view of disposal of appeal, connected application(s) if any stands disposed of.

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

28. Copy of the judgment along with L.C.R. be sent down to the trial Court at once.

29. Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)