

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 196 of 2009

**Rameswar Biswas
-Vs-
State of West Bengal**

Amicus Curiae : Mr. Kallol Mondal
Mr. Krishan Ray
Mr. Souvik Das
Mr. Anamitra Banerjee

For the State : Mr. Avishek Sinha

Heard on : 05.01.2023, 11.01.2023

Judgment on : 18.07.2023

Ananya Bandyopadhyay, J. :-

1. The instant appeal is preferred against the judgment and order dated 29.09.2007 passed by Learned Additional Sessions Judge, 1st Fast Track Court, Dinhata, Cooch Behar, in Sessions Trial No. 1/May/2004 arising out of Sessions Case No. 240/2003 convicting the appellant under Section 376 of the Indian Penal Code.
2. The mother of the victim lodged a complaint before the officer-in-charge Dinhata P.S. inter alia stating that her minor daughter had been to the house of one Basanti Das to attend a religious function on the night of 07.09.95. The appellant found the minor victim returning alone on her way home and advantageously induced her leading to a bamboo garden and forcibly raped her.

The victim girl screamed to create an alarm whereby one Sakendar Ali, a local resident rushed to the place of occurrence and witnessing his approach the appellant escaped from the place of occurrence leaving the victim.

3. The minor narrated the entire incident of being ravished to Sakendar Ali and a village Salish was held over the issue but in vain. On 11.09.95, the witness Sakendar Ali was severely assaulted. The complainant further stated owing to the village Salish to be organised, there was a delay in lodging the Complaint.
4. Based on the aforesaid Complaint, Dinhata P.S Case no. 261/95, dated 12.09.95 under Section 376 of I.P.C was instituted. Investigation pursued ending in submission of the charge sheet under Section 376 of the I.P.C. Charge was framed to which the appellant pleaded not guilty and claimed to be tried.
5. The Prosecution in order to prove the case cited 17 witnesses and exhibited certain documents.
6. The Learned Amicus Curie appearing on behalf of the appellant submitted, that the appellant was falsely implicated in the instant case with a motive to get the victim married to the appellant, who was known to the victim and used to visit the house of the victim. It was further submitted that the appellant married the victim after 15 days of the incident of rape and the victim gave birth to a female child. It was further submitted that the appellant had married for the second time which infuriated the victim to falsely indict him.

7. The Learned Amicus Curie further stated the fact that the Learned Trial Court on the premise of desertion of the victim and marriage to another girl convicted the appellant without justification and prayed that the appeal shall be allowed.
8. The Learned Advocate for the State stated that the evidence of PW-1 and PW-2 corroborated each other. There was gap of 9 years of recording of the evidence and most of the witnesses were gained over. The age of the victim was below 16 years and consent on the part of minor if at all in a consensual relationship is nugatory and amounts to rape of a minor. Apart from contradiction and deviations, the sole evidence of a prosecutrix if credible and trustworthy is sufficient to punish an offender. Moreover, the refusal on the part of the appellant to answer the proceedings under Section 313 of Cr.P.C. raised adverse presumption against him under Section 114 (g) of the Indian Evidence Act.
9. The evidence of PW-2, the victim before the Court reverberated her statements recorded under Section 164 of Cr.P.C. and did not deviate or contradict the same.
10. PW-3, PW-6, PW-7 were declared hostile by the prosecution. The evidence of PW-5 though hearsay corroborated the evidence of PW-1 and PW-3. PW-5 stated the victim to have married the appellant after the incident and they gave birth to a child.
11. PW-8 and PW-9 identified their signature on the medical examination report, marked as exhibit 9 and exhibit 4 ('collectively') respectively.

12. PW-10 conducted the potency examination of the appellant. PW-12 conducted the ossification test of the victim after a gap of 2 years on 03.04.97 and opined the age of the victim to be presumably eighteen and half years i.e. on the date of the incident the victim was a minor.
13. PW-13, the medical officer who examined the victim in his report marked as exhibit 8 stated as follows-

“1. No Marks of injury on Private Parts or anywhere in her body.

2. Hymen shows old mark of (illegible) on 3 o'clock and 9 o'clock position.

3. There was no pain on walking or micturition.

4. There was no discharge from the genital track.

5. No foreign particles was detected upon genital track.

6. Vaginal swab was (illegible) for examination.

7. The age of the V.G. Gayetri Das was not determined due to the lack of Radiologist. This is my signature in the medical report which was prepared by me. The (illegible) medical report is marked on Ext-8. The signature is marked as Ext.8/1.”

14. The statement of the victim supported by the medical evidence and other contemporaneous circumstances were sufficient enough to rely on the incident of rape being committed by the appellant upon the victim girl.
15. Under the facts and circumstances of the case and evidence on record the credible oral testimony of the victim girl, who was a minor at the time of the incident, supported by the medical

evidence, the prosecution was successful in establishing its case and accordingly the instant appeal is dismissed.

16. In view of the above discussions it is concluded that the prosecution was able to establish its case and accordingly the appeal is dismissed.
17. The appellant has served out the sentence.
18. Accordingly, the instant criminal appeal being CRA 196 of 2009 stands disposed of. Connected application if any is also stands disposed of.
19. I record my appreciation for the able assistance rendered by Mr. Mr. Kallol Mondal, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.
20. Lower court records along with a copy of this judgment 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.)