

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Siddhartha Roy Chowdhury

CRA 219 of 2019

Sri Raghu @ Ragha Dhibar
Vs.
The State of West Bengal

For the Appellant	:	Mr. Rajdip Ray, Adv. Mr. Madhusudan Mandal, Adv. Mr. Sandip Ray, Adv.
For the Victim Girl	:	Mr. Saryati Dutta, adv. From HCLSC
For the State	:	Mr. S. G. Mukherjee, Ld. P.P. Ms. Faria Hossain, Adv. Mr. Anand Keshri, Adv.
Heard on	:	20 th February 2023
Judgment on :	:	20 th February 2023

The Court:

This criminal appeal challenges the judgement and order of conviction passed by the learned Additional Sessions Judge, Raghunathpur, Purulia in Sessions (Special) Case No. 64 of 2017 and Session Trial No. 02(02) 2018. By the impugned judgement, the learned Trial Court was pleased to record an order of conviction and sentenced the accused person to suffer rigorous imprisonment of two years for committing offence punishable under Section 354A of the Indian Penal Code, to pay a fine of Rs.2000/- and to undergo rigorous imprisonment for three years for committing

offence within the meaning of Section 8 of POCSO Act and to pay a fine of Rs.2000/- with a default clause subject to the provision of Section 428 of the Cr.P.C.

Briefly stated the de facto complainant set the criminal proceeding into motion by informing Officer-in-Charge of Raghunathpur Police Station in writing that on 10th June, 2017, at about 12 Noon she was coming back to her home after taking bath in a pond at Mali. The accused person came to her and gave an indecent proposal. She refused the accused person. Then the accused person embraced her from behind and tried to disrobe her. The victim screamed for help which attracted co-villagers. The accused person fled away. As the information disclosed offence cognizable in nature, Raghunathpur P.S. Case No. 83 of 2017 dated 10.6.2017 was registered under Section 354B/506 of the Indian Penal Code. Police took up investigation which culminated into submission of charge sheet against the accused person. On 13.12.2018, trial was commenced. The accused person stood the trial pleading his innocence to the charges. Prosecution examined seven witnesses including the victim girl. Learned Trial Court after considering the evidence both oral and documentary was pleased to record an order of conviction.

Mr. Ray, learned counsel representing the appellant assails the impugned judgement on the ground that learned Trial Court failed to appreciate the oral testimony of prosecution witness P.W.1, the victim girl, who failed to give consistent narrative of the alleged incident.

Drawing my attention to the written information exhibit 2 it is submitted that according to F.I.R. victim screamed and such scream of hers attracted the co-villagers and with their advent the accused person fled away. While adducing

evidence as P.W. 1 the victim stated that the accused embraced her from behind and gave an indecent proposal. She shouted and accused fled away. Her parents came along with some local persons. She then informed her mother about the incident. In her statements under Section 164 of Code of Criminal Procedure, the victim gave a different story altogether before the learned Magistrate. The victim stated that while she was coming back home she was restrained by the accused person who tried to push her. She was wearing a churidar and also a napkin (gamcha) around her and removing her pant, the accused person made an attempt to rape her and she fled away.

Drawing my attention to the testimony of P.Ws 2 and 4 parents of the victim Mr. Ray submits that admittedly family of victim girl does not have good relation with the family of the accused, and they are not even in talking terms. Therefore, chance of false implication cannot be ruled out.

Refuting such contention Mr. Dutta, learned counsel representing the victim girl submits that she is the best witness in this case. With a poor educational qualification, it is quite natural for the girl to make certain statements which appear to be inconsistent. Though there are discrepancies in her statement, according to Mr. Dutta, such discrepancies should be ignored because everywhere the victim girl stated that the accused person touched her with sexual intent. The victim cannot be said to have any reason to implicate the accused person falsely, albeit the fact that her parents did not have talking terms with the parents of the accused.

Mr. Keshari, learned counsel appearing on behalf of the State supports the impugned judgement and submits that the victim girl stood the test of cross-

examination and she is consistent in her statement that accused person embraced her from behind. The conduct of the accused person should be considered in the light of Section 30 of the POCSO Act and presumption should be drawn that he embraced the victim girl with sexual intent.

Though the learned advocates representing the parties differ on various aspects, on one aspect they are in agreement that in view of Section 42 of POCSO Act, learned Trial Court could not have recorded an order of conviction under Section 354A of the Indian Penal Code, which is not sustainable.

It goes without saying that testimony of a victim girl should be examined with due sensitivity placing her at par with an injured witness. There is no reason to seek corroboration of her testimony as it would be an insult to her injury. But in the backdrop of relationship between the two families who being the neighbours do not maintain talking terms, the evidence of the victim girl, in my humble opinion should be examined with due care coupled with higher level of scrutiny. The victim girl is undoubtedly a child within the meaning of POCSO Act. She was born in the year 2000 as we find from her cross-examination. The incident took place in the year 2017, and, therefore, she was below the age of eighteen years. Thus I do not find any reason to be in agreement with Mr. Ray that prosecution has failed to prove the age of the victim. The alleged incident took place on 10.6.2017 when the victim informed the police in writing. She was produced on 21.6.2017 before the learned Judicial Magistrate. She drifted away from the information she gave to police, while narrating the alleged incident to the learned Judicial Magistrate and her testimony as P.W.1 depict another story.

It is rightly pointed out by Mr. Dutta that in all three occasions the bottom line of the narrative given by the victim was consistent that she was touched by the accused person. The statement before the learned Judicial Magistrate, coupled with her testimony as P.W.1 do not inspire my confidence to record an order of conviction. May be there is enmity between the two families but we should remember the enmity cuts both ways. Under such circumstances, in my view benefit of doubt should be extended to the accused person. This is the settled principle in the criminal administration of justice. I am inclined to set aside the order of conviction. The accused person may be released from bail bonds subject to the executing bond under Section 437A of Code of Criminal Procedure for six months.

Let a copy of this order 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)