

28.04.2023
Item No. 117
Ct. No. 236

CRA 237 of 2019

In the matter of: Gour Dutta

Mr. Uttam Kumar Ghosh

.... for the Appellant

Mr. Bibaswan Bhattacharyya

... for the State

Mr. Bibaswan Bhattacharyya, learned Counsel representing the State submits a report where from it appears that Gour Dutta, the appellant has served out sentenced and released on 1st June, 2021.

This criminal appeal challenges the judgement and order of conviction passed by the learned Additional Sessions Judge, 1st Court at Sealdah 24 Pgs. (South) cum Special Judge under the POCSO Act, 2012 in Special Case No.39 of 2018.

By the impugned judgment, learned trial court was pleased to record an order of conviction against the appellant for committing an offence within the meaning of Section 8 of the POCSO Act and directed him to suffer imprisonment for three years and to pay fine of Rs. 20,000/- with a default clause, subject to the provision of Section 428 of the Code of Criminal Procedure.

Briefly stated, Smt. Anita Devi set the criminal proceeding in motion by informing the Officer-in-Charge of Beliaghata Police Station in writing that on 7th August, 2018 her minor

daughter, is a student of Class- IX, was sexually assaulted by the accused person while she was on her way to attend tuition class. Earlier also the accused person sexually harassed the victim girl and the matter was brought to the notice of jurisdictional Police Station and Narkel Danga Police Station Case No.11 dated 11th January, 2018 under Section 354D of the IPC was registered. The information since disclosed offence cognizable in nature the Officer-in-Charge of Beliaghata Police Station Case No. 172 of 2018 dated 7th August, 2018 was also registered under Section 354D of the IPC and Section 12 of the POCSO Act. Police took up the investigation which culminated into submission of charge sheet against the accused person.

Trial commenced on 14th September, 2018 and the accused person stood the trial pleading his innocence to the charge under Section 8 of the POCSO Act. In order to crown success prosecution examined 7 witnesses and learned trial court after considering the evidence, both oral and documentary was pleased to pass the impugned judgement.

Mr. Uttam Kumar Ghosh, learned counsel representing the appellant submits that the learned trial court passed the impugned judgement without appreciating properly the evidence on record. Drawing my attention to the testimony of the victim girl, Mr. Ghosh submits that the accused person is a driver of auto-rickshaw. The incident allegedly took place at about 11-30 a.m. while the victim girl admittedly was on her way back from school by a bus, as disclosed by PW1 during

cross-examination. This statement of the victim is sufficient to destroy the prosecution case. As admittedly she was undertaking a journey by bus, there was no room for the accused person to restrain her or to assault her sexually. It is further contended that testimony of the victim girl is not getting support from any other witnesses including the doctor.

The attending medical officer, PW-5 in her testimony stated that though she examined the victim girl on 19th August, 2018 at NRS Medical College and Hospital, she did not find any injury on her genital organ.

It is contended by Mr. Ghosh, learned counsel for the appellant that the investigation was not conducted properly. The I.O. did not draw the sketch map, did not visit the tuition centre, did not examine the students or the teacher of that coaching centre. Even the prosecution fails to produce any extract of the GD entry which is mandatory on the part of the I.O. to record before leaving the Police Station for the investigation and after returning to the Police Station. There is unexplained delay in sending the vaginal swab for chemical examination. Cumulative effect of all such omissions is bound to have a fatal impact by learned Trial Court failed to appreciate the same.

Refuting such contention, Mr. Bibaswan Bhattacharyya, learned counsel representing the State submits that the victim while adducing evidence as PW-1 narrated the incident that happened while she was going to attend her tuition class and

not on her way back from the school. That apart, the manner of sexual assault committed by the accused person is not expected to cause a mark of injury on the genital organ of the victim, which is why the attending doctor did not find any injury on the person of the victim. According to Mr. Bhattacharyya, there is nothing to impeach the credibility of the victim girl or to disbelieve her testimony. She rather stood the test of cross-examination. The testimony of the victim girl alone is sufficient to justify the order of conviction. Although the testimony of Laltu Singh P.W.6 is lending support to the testimony of victim girl, with all fairness Mr. Bhattacharya further indicates that Mr. Laltu Singh was not cited as witness in the charge sheet.

Upon perusal of testimony of victim girl, P.W. 1, I find that she has stated clearly that while she was going to attend her tuition class on 6th August, 2018 at about 11-30 a.m., on the way the accused appeared. She was restrained and sexually harassed by the accused. There was no cross-examination on that material point. It is the settled principle of law that absence of cross-examination on material particular amounts to admission.

Under such circumstances, the testimony of victim girl inspires confidence in the mind of Court and I do not find any reason to look for any corroborative piece of evidence as that would amount to adding salt to her injury to the dignity of the victim girl as well. After all, she is not an accomplice.

Under such circumstances, I do not find any reason to be in agreement with the view expressed by Mr. Uttam Kumar Ghosh, learned counsel for the appellant. The appeal is devoid of merit and is dismissed.

Since the victim girl was sexually assaulted by the accused person, learned trial court ought to have followed the statutory mandate as laid down under Section 33(8) of the POCSO Act read with Rule 9 of the POCSO Rules, 2020 and should have awarded compensation. Before parting with the case, I direct the State Legal Services Authority to grant a sum of Rs.1 lakh towards compensation to the victim.

Let a copy of the judgment be sent down to the learned trial court for information and necessary action.

Urgent certified photostat copy of this order, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(Siddhartha Roy Chowdhury, J.)