

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 169 of 2021

With

CRAN 1 of 2021

Ramkrishna Bakshi @ Buro

Vs.

The State of West Bengal

For the Appellant : Ms. Sananda Bhattacharya, Adv.

For the State : Mr. Swapan Banerjee, Adv.
Mr. Suman De, Adv.

Hearing Concluded on : February 8, 2023
Judgement on : February 20, 2023

DEBANGSU BASAK, J.:-

1. The appellant has assailed the judgement of conviction dated February 26, 2021 and the order of conviction dated March 1, 2021 passed by the learned Additional District and Sessions Judge, Ranaghat, Nadia in POCSO Trial No. 01 (08) 2017. By the impugned judgement of conviction, the appellant had been found guilty under Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. By the impugned order of sentence, the appellant has been sentenced to suffer rigorous imprisonment for 10 years with fine of Rs. 1 lakh and in the event of non-payment of the fine to suffer

rigorous imprisonment for further one year. The victim had been awarded a compensation of Rs. 4,50,000 by the learned Trial Judge.

2. At the trial, the prosecution had contended that, the appellant on June 7, 2017 at about 8 A.M in the morning, at the room housing a shallow water pump machine, committed penetrative sexual assault on the victim who was a minor and thereby committed an offence punishable under Section 6 of the POCSO Act.

3. The father of the victim had lodged a written complaint with the police on June 7, 2017 complaining of penetrative sexual assault on his daughter. The written complaint had been registered as the First Information Report on June 7, 2017 by the police. On conclusion of the investigations, police had submitted a charge sheet against the appellant. The court had framed a charge under Section 6 of the POCSO Act as against the appellant on August 4, 2017.

4. The appellant had pleaded not guilty to the charge framed against him and claimed to be tried. At the trial, the prosecution had examined 10 witnesses and relied upon various documentary and material evidences. The appellant, on conclusion of the evidence of the prosecution, had been

examined under Section 313 of the Criminal Procedure Code, where, he claimed innocence. At the trial, the appellant had examined 3 witnesses as defence witnesses.

5. The father of the victim who lodged the written complaint had deposed as PW 1. He had stated that, his son returned to his house and asked him to accompany his son as something serious had happened with his daughter. He, his wife and son and some others rushed towards the place of occurrence and found the victim on the bank of a water body lying in a bleeding condition from inside her private part. He had found her daughter not to be in a normal position. Seeing her condition, they had instantly taken her to the health centre. The health centre, seeing her condition, had referred her to the sub-divisional hospital. At that time, he had come to learn that the victim was raped. As the bleeding was not stopping, the victim had been taken to a private hospital for necessary medical assistance. Thereafter, she was again taken to the sub-divisional hospital, admitted and treated there for 2 days. His son had reported to him that, when the victim was in the field, another person was taking rest in the deep tube well room near the field. The victim had stated that, the miscreant was aged with partial bald headed. Police had

arrested 2 persons out of which, they could identify one culprit. He had identified the written complaint. He had identified the wearing apparels of the victim which were marked as Material Exhibit I and II.

6. The victim had deposed as PW 2. She had stated that, on the fateful day, she along with her brother had gone to cut grass in a field which was at a distance from their house. She was sitting alone on the field and her brother had gone far from him for cutting grass from the field. At that time, an aged person was sitting in a hut like room. Such person had closed her mouth by a gamcha and took her to a jute field and forcefully raped her. Thereafter, the appellant had left the place. Slowly, she had come out of the place as she was suffering pain and bleeding on her private parts. She had heard that her brother was calling her name. She had reported about the incident to her brothers and her parents.

7. PW 2 had stated that, she had been taken to the healthcare centre and thereafter to the sub-divisional hospital, where she was treated after being admitted for 2 days. She had stated about the incident to the doctors. She had signed a document prepared by the doctor at the health care centre. She had tendered her medical examination report of the

health care centre as Exhibit 1/1. Her father had lodged a complaint with the police. She had recorded a statement under Section 164 of the Criminal Procedure Code, which she had tendered in evidence and the same was marked as Exhibit 2/1. She had identified the appellant in Court as the person who committed the offence. She had also identified her wearing apparels in court.

8. In cross-examination, she had stated that, she saw the appellant for two times, once on the day of the offence and on another day while she was playing. She had stated that, she can identify the appellant who closed her mouth and raped her. She had stated that, the appellant caught her from behind and shut her mouth. During the incident, she had fallen unconscious.

9. The mother of the victim had deposed as PW 3. She had stated that, on the day of the incident, her son had taken the victim along with him separately for cutting grass from the field. When she had returned home, her son came rushing to her and informed her that the victim was in danger and asked her to accompany him to go to the place of the victim. Thereafter, she had reached the field after a water body. She had found the victim bleeding from her private parts. The

victim was lying on the field, her wearing apparels blotted with blood. They had taken the victim to the healthcare centre and thereafter to the hospital where the victim was admitted for treatment. The victim had told her that one person had taken her to an isolated place and after pressing her mouth committed rape. She had stated that, she could not identify the miscreant who committed the offence against the victim.

10. A brother of the victim had deposed as PW 4. He had stated that, he had taken the victim along with him to collect grass from a field near a water body which was at a distance of about 1 km from their house. As it was summer, to avoid getting direct sunlight, he had kept the victim inside a thatched room which was situated at a distance in the sight of the field. At that time, a middle-aged person wearing a lungi was also taking rest inside such thatched room. He had started work of cutting grass from the field. After completion of collecting grass, he had gone to the place where he had kept/left the victim to take her back for returning home but could not find her or the person whom he had seen inside the thatched room. He had shouted out the name of the victim and started searching for her at the nearby places. He had heard a response to his calls and found the victim in a jute

field. He had seen the victim to be lying on the jute field with her pant not found on her waist. He had found blood oozing out from her private part. The victim was unable to move. He had instantly picked up the victim on his arms and took her to the bank of the nearby water body, washed her wearing apparel and her to remove the blood. Keeping the victim sitting there, he had run towards his home and called his parents. Thereafter, the victim had been taken first to their home and then to the healthcare centre and thereafter to the sub-divisional hospital.

11. PW 4 however stated in examination in chief that, he had heard the name of the miscreant. He had failed to identify the appellant in court. He had stated that, after the incident, he recorded a statement before the magistrate under Section 164 of the Criminal Procedure Code.

12. In cross-examination, PW 4 had stated that, he cannot say the name and identity of the culprit who committed the offence against the victim.

13. A neighbour of the victim had deposed as PW 5. He had identified the appellant in Court. He had stated that, he saw the police come to a field where he was working to arrest the appellant.

14. The paternal aunty of the victim had deposed as PW 6. She had stated that, the victim had been brought to the house after the incident when she saw blood was oozing out from the private part of the victim. She along with the mother of the victim and others had taken the victim to the hospital. In cross-examination, she had stated that, when the victim was brought home, she was unconscious. When the victim had regained consciousness, she stated that she failed to identify the accused.

15. The doctor posted at the healthcare centre on June 7, 2017 had deposed as PW 7. He had examined the victim on that date. He had stated that, within the limited periphery of the primary health care Centre, he had inspected the victim and found active agile bleeding and prescribing primary treatment, he referred the victim to the sub-divisional hospital for better management and further treatment. He had also prepared the injury report of the victim and sent it to the police. He had tendered the emergency ticket which was marked as Exhibit 3. He had tendered the injury report of the victim which was marked as Exhibit 1. He had stated that, the victim was examined by him at about 3.05 PM with a history of sexual assault and rape on the victim happening at around

1.30 p.m. In cross-examination, he had stated that, the name of the miscreant was not stated by the victim or her mother at the time of examination of the victim.

16. The doctor who had treated the victim at the sub-divisional hospital, had deposed as PW 8. He had stated that, on June 7, 2017 at about 4 PM, he had examined the victim. The victim had reported that someone took her from a jute field after putting something on a face. She could not see him. Thereafter, such person had put his male part on her private part. He had described the injuries he found on the victim. He had tendered the medical report of the victim dated June 7, 2017 as Exhibit 7A. In cross-examination, he had stated that, the victim did not state the name and the description of the culprit. He did not agree with the suggestion that, the nature of injury which the victim had received could also be caused by falling on any sharp edged article.

17. The scribe of the written complaint had deposed as PW 9. He had tendered the written complaint dated June 7, 2017 which was marked as Exhibit 7.

18. The investigating officer had deposed as PW 10. He had narrated about the course of investigations. He had tendered the formal First Information Report in evidence

which was marked as Exhibit 8. He had tendered the seizure list dated June 7, 2017 which was marked as Exhibit 9. He had also tendered the seizure list dated June 15, 2017 which was marked as Exhibit 10 and the seizure list dated June 8, 2017 relating to the wearing apparel of the victim which was marked as Exhibit 11 and the seizure list dated June a 2017 relating to other wearing apparels which was tendered in evidence and marked as Exhibit 12. He had seized the School certificate of the victim on June 8, 2017 and such seizure list was tendered in evidence and marked as Exhibit 13. He had prepared the rough sketch map of the place of occurrence along with index which was tendered in evidence and marked as Exhibit 14. He had also tendered the statement of the victim recorded under Section 164 of the Criminal Procedure Code which was tendered in evidence and marked as Exhibit 2. He had identified the material exhibits in Court.

19. In cross-examination, PW 10 had stated that, the place of occurrence was identified to him by the de facto complainant. He had visited the place of occurrence on June 8, 2017 at about 10:55 hours. He had stated that, he did not arrange for any test identification parade of the suspect by the victim or her brother who were present on the field at the

material time. He had also stated that, while examining the victim, her brother or other family members did not narrate about any description of the wearing apparels of the accused at the relevant time. He had stated that, it appears from the medical reports that the victim and her mother stated before the doctor at the health centre and the sub-divisional hospital that the time of the occurrence was at 1.30 p.m. The de facto complainant had reported to him the time of departure of the victim and her brother from the house at 8:30 AM. In the formal First Information Report the time of occurrence of the offence had been noted at 8:30 A.M. He had examined the victim on June 11, 2017 as the victim was admitted to the hospital and the doctor did not consent for her examination on June 7, 2017. Thereafter, he did not attempt to examine the victim before June 11, 2017.

20. On conclusion of the evidence of the prosecution, the appellant had been examined under Section 313 of the Criminal Procedure Code. In such examination, he had claimed that he was not guilty. He had stated that, the victim did not recognise him as an accused. He had stated that he would produce defence witnesses.

- 21.** An acquaintance of the appellant had deposed as DW 1. He had stated that, on the fateful day, he along with DW 2 and the appellant were working on the land from 6 AM to 2 PM. Thereafter, they had returned home. Later on he had heard that the police arrested the appellant at 4 PM while he was watering the field of his father. He had stated that, he did not know the de facto complainant or his children.
- 22.** DW 2 had corroborated DW 1 with regard to the appellant working with them on the fateful day between 6 AM to 2 PM. He had also stated that he did not know the de facto complainant or his children.
- 23.** DW 3 had stated that, on the fateful day, he engaged the appellant, DW 1 and DW 2 as labour on his field from 6 AM in the morning to 2 PM in the afternoon. All of them had been engaged on that date for planting of banana tree. At 2 PM, they had returned home after completion of work. In cross-examination he had stated that, due to ill health he could not move easily and look after his property. He used to sit on a single place for long hours due to problem in his spinal chord. He stated that, he could not say as to where his labourers used to move during working hours. He would not follow their movement.

24. Learned advocate appearing for the appellant has contended that, the prosecution failed to establish the charge against the appellant beyond reasonable doubt. She had submitted that, the appellant was not identified either by the victim or any of the prosecution witnesses as the perpetrator of the crime.

25. Learned advocate appearing for the appellant has submitted that, there were discrepancies in the statement of the victim with those made by other prosecution witnesses. She has submitted that, the conviction was based on the sole testimony of the victim. According to her, the testimony of the victim is unreliable and should not be used as a basis for the purpose of conviction. The testimony of the victim has not been corroborated by any other evidence on record.

26. Learned advocate appearing for the appellant has submitted that, the police did not hold a test identification parade. She has referred to the testimony of the investigating officer in this regard.

27. Learned advocate appearing for the appellant has submitted that, the appellant was working at the material point of time in a different field. The same has been established by the defence witnesses. Taking the time of

occurrence of the incident to be 8:30 AM, as recorded on the formal First Information Report, the appellant was working in a different field in presence of 2 witnesses. Taking the time of occurrence to be 1:30 PM as claimed by the victim, then also, the appellant was not present at the place of occurrence.

28. Learned advocate appearing for the appellant has submitted that, the victim could not identify the appellant. She has referred to the First Information Report and submitted that, the appellant was not identified therein. She has referred to the deposition of the Doctor being PW 7 as well as that of the paternal aunty of the victim being PW 6 and submitted that, they stated that the victim could not identify the appellant. Even the brother of the victim who was present near the place of occurrence had failed to identify the appellant in Court. She has also referred to the testimony of PW 4 in this regard.

29. Learned advocate appearing for the appellant has relied upon **2012 volume 8 Supreme Court Cases 21 (Rai Sandeep alias Dipu and another versus State of NCT of Delhi)** for the proposition that, when there are material contradictions in the evidence, it would be inappropriate to found the conviction on the sole testimony of the victim.

30. Learned advocate appearing for the appellant has relied upon **2022 Volume 9 Supreme Court Cases 402 (Amrik Singh versus State of Punjab)** and submitted that, the evidence of mere identification of an accused at the trial for the first time from its very nature is inherently of a weak character. She has highlighted the absence of the holding of the test identification parade.

31. Learned advocate appearing for the state has submitted that, the First Information Report was lodged immediately after the occurrence of the incident and therefore there was no chance of false implication. The victim had given vivid description of the incident. She had identified the appellant during trial as the perpetrator.

32. Learned advocate appearing for the state has submitted that, other prosecution witnesses had failed to identify the appellant at the trial as they were not the eyewitnesses to the occurrence. According to him, the inability of the other prosecution witnesses to identify the appellant at the trial did not affect the case of the prosecution. The brother of the victim, PW 4 had seen the appellant only once and for a limited period and as such he could not identify the appellant at the trial.

33. Learned advocate appearing for the state has submitted that, the School certificate of the victim had established that the victim was aged about 13 years on the date of the occurrence. The injury report of the victim had established that, the victim suffered a penetrative sexual assault. The claim of rape by the victim had been corroborated by the medical examination report of the victim.

34. Learned advocate appearing for the State has submitted that, the defence tried to establish the plea of alibi by examining three defence witnesses. The defence however could not establish that, the appellant was present at a different place at the time of the occurrence of the incident as, DW 3 in cross examination stated that he could not follow the movement of his labours.

35. Learned advocate appearing for the State has submitted that, in a case of sexual offence, the only consideration would be whether the victim was trustworthy or not. In the instant case, the evidence on record had established that the victim was reliable and trustworthy and therefore conviction of the appellant based on the evidence of the victim should be upheld.

36. By an order dated January 24, 2023, the officer-in-charge of the jurisdictional police station was directed to cause service of the appeal upon the victim and/or the de facto complainant and submit a report to such effect on the next date. A report dated February 3, 2023 had been submitted where, it has been stated that, the de facto complainant had died on July 15, 2018. The victim had been informed of the pendency of the appeal and order dated January 24, 2023. Despite the same, none had appeared on behalf of the victim.

37. Prosecution had tendered the first examination of the victim by a doctor as Exhibit 1. Exhibit 1 had recorded the date and time of the occurrence to be June 7, 2017 at around 1:30 P.M in a field near the home address of the victim. Exhibit 1 has recorded that, the victim stated that one unknown middle aged person sexually assaulted and raped her by bandaging her mouth in a field. Exhibit 3 has also recorded sexual assault and rape at around 1:30 PM in the field. Exhibit 7A is another Medical Examination Report of the victim recorded on June 7, 2017 at 4 P.M. There it has been recorded that, the victim claimed that someone took her from the field to another field and thereafter sexually assaulted her.

38. Exhibit 1, 3 and 7A had noted the injuries suffered by the victim. The injuries had been on the private part of the victim.

39. Exhibit 1, 3 and 7A have established that the victim was subjected to penetrative sexual assault. The doctor of the sub-divisional hospital being PW 8 who had treated the victim stated in cross-examination that the injuries suffered could not be inflicted by falling on a sharp edged article. That the victim was a minor had been established at trial by the evidences led including Exhibit 13.

40. Victim had claimed that the appellant was the person who raped her. She had identified the appellant in Court as the perpetrator.

41. When the incident of rape had occurred, no other eye witnesses were present. PW 4, the brother of the victim with whom the victim had gone to the field, was at a distance from the victim. He had seen a person at the thatched room where he had kept the victim prior to the incident occurring. After keeping the victim there, he had left the place. PW 4, had failed to identify the appellant in Court. His failure has been highlighted as a ground abluton of the appellant.

42. It is trite law that, a victim of rape stands on a higher pedestal than the injured witness. Whereas, for an injured witness, the injury is in the physical form while for a rape victim, it is physical, psychological and emotional. Conviction can be founded on the testimony of a rape victim alone, unless, there are compelling reasons to seek corroboration. Courts should not find difficulty in acting on the testimony of a victim of a sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Corroboration as a condition of judicial reliance on the testimony of the victim is not a requirement of law but a guidance of prudence under given circumstances.

43. In ***Rai Ssandeeep @ Deepu & Another (supra)*** the Supreme Court has noted the above proposition of law regarding the evidentiary value of a testimony of a victim of rape. In the facts of that case, the Supreme Court has found that, the testimony of the prosecutrix was unreliable and not corroborated by requisite evidence. The Supreme Court has noted that, the prosecutrix had made a summersault in the cross-examination, did not find support from other prosecution witnesses who were present in the house at the time of occurrence as well as the Forensic Science Laboratory

Report which disclosed absence of semen on the garment which was claimed by the prosecutrix to be used by the accused to wipe the semen. In that case it has been doubted as to whether the offence of rape had taken place or not.

44. In the facts of the present case, rape of the victim had been established both by the oral testimony of the victim as well as the medical evidences produced at the trial. The issue is who had committed the crime.

45. The victim had stated at the trial that, the appellant had arrived from behind her, put a cloth on her mouth and that the male part of the appellant was inserted into her. She had lost her consciousness during the incident. It is one thing to lose consciousness at the inception of the incident and remain unconscious for the remainder so as not to have a look at the perpetrator. She had seen the perpetrator to insert his male organ into her. Therefore, to doubt that she could be unable to identify the perpetrator as she had not seen him would be presumptuous. She had consciousness for sufficient period of time so as to identify the perpetrator. She had identified the appellant in Court as the perpetrator.

46. PW 4, had failed to identify the appellant in Court. His failure has been highlighted as fatal. He did not witness the

incident and therefore, according to us his failure to identify the appellant in Court was not fatal to the case of the prosecution. All that he had said was that, since he was not an eyewitness he would not be able to identify the perpetrator. This stance of his, reinforces a finding that the appellant was not being falsely implicated.

47. The victim did not know the appellant prior to the incident. Therefore, she was not in a position to name the appellant as the perpetrator while she was being examined by the doctors as well as when she was with her parents and family members. She had however described the appellant as a person of some age and with a bald head. She had also described the wearing apparels of the appellant. Existence of prior enmity has not come out in evidence. The evidence does not establish false implication. Appellant has not substantiated any ground to doubt the veracity of the oral testimony of the victim.

48. Police did not hold a Test Identification Parade and the failure thereof has been contended to be a ground for acquittal of the appellant. In ***Amrik Singh (supra)*** absence of a Test Identification Parade has played a role in reversing a judgement and order of conviction passed by the learned Trial

Court and affirmed by the High Court. It has observed that, Test Identification Parade is not a substantive evidence that, the substantive evidence is that of identification in Court. It has also observed that, evidence of mere identification of the accused person at the trial for the first time from its very nature is inherently of a weak character. The purpose of Test Identification Parade is to test and strengthen the trustworthiness of the evidence. It has observed that, it is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who was strangers to them in the form of earlier identification proceedings. However, such rule of prudence is subject to exceptions when for example, the Court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration. Failure to hold a Test Identification Parade is not making the evidence of identification in Court, inadmissible. However, the weight as to be attached to such identification should be a matter for the Court of facts.

49. In the present case, the learned Trial Court has relied upon the identification of the appellant by the victim in Court. Apart from the identification of the appellant by the victim in

Court, the description of the perpetrator which the victim had given contemporaneously to the doctors and to close relatives, corroborate the identification of the appellant in Court. Non-holding of a Test Identification Parade ipso facto does not lead to the rejection of the evidence of identification of the accused at the trial.

50. The appellant has set up a defence of alibi. In support of the contention that the appellant was present at a different place at the time of the occurrence, reliance has been placed on the evidence of three defence witnesses being DW 1, 2 and 3. DW 1 and 2 are co-workers who had been engaged by DW 3 along with the appellant to work on the field of the DW 3 at the material point of time. It is the consistent stand of DW 1, 2 and 3, that the appellant had been with DW 1 and 2 working on the field of the appellant on June 7, 2015 between 6 A.M in morning to 2 P.M in the noon. However, DW 3, who was the owner of the land on which he had engaged the appellant, DW 1 and 2 to work as labours, said that he had no control over the labourers working on his field. Therefore, there was every possibility of the appellant leaving the work on the field of the DW 3 to be at the place of occurrence at the relevant point of time. The defence has not established conclusively that, the

appellant was present at the field of DW 3 for all the time between 6 A.M in the morning till 2 P.M in the noon.

51. In view of the discussions above, the defence of alibi sought to be set up by the appellant cannot be accepted.

52. Contemporaneously the victim had stated that the incident had occurred at 1:30 P.M on June 7, 2017. The written complaint had been lodged by the father of the victim on June 7, 2017 itself. He did not state in the written complaint that the incident had occurred at 8:30 A.M although the formal First Information Report had recorded the time of occurrence at 8:30 A.M. The victim had deposed that the incident occurred at 1:30 P.M. In view of the evidences on record we are unable to accept the contention that there have been embellishment in the evidence regarding the time of occurrence.

53. Consequently, we have found no ground to interfere with the impugned judgement of conviction and the order of sentence.

54. CRA 169 of 2021 is dismissed. In view of the dismissal of the appeal, nothing survives in the interlocutory application and therefore, CRAN 1 of 2021 is also dismissed.

55. Period of custody already undergone shall be set off against the sentences imposed. The sentences shall run concurrently.

56. The trial court records along with a copy of this judgement and order be sent to the appropriate court at once for necessary action.

57. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

[DEBANGSU BASAK, J.]

58. I agree.

[MD. SHABBAR RASHIDI, J]