

14.03.2023

Court No.35
Item No. 94

D.Hira

CRA 167 of 2012

**Dhajen Modak
Vs.
The State of West Bengal**

Ms. Suruchi Saha.

... the amicus curiae

Mr. Pravash Bhattacharyya,
Mr. Pratick Bose.

... for the State

In this appeal the appellant/convict has challenged the judgment of conviction and order of sentence dated 3rd February, 2012 passed by Special-cum-Additional District and Sessions Judge, Cooch Behar in Sessions Trial No. 2(1)11 under Sections 448/376/506 of the Indian Penal Code.

At the outset a report submitted in Court today by Mr. Bose, learned Advocate for the State in this appeal, may be mentioned. The report is dated 7th March, 2023 and goes on to indicate that after serving the period of sentence the convict/appellant has already been released from the Correctional Home on 27th July, 2018. The said report be kept with the record.

The trial Court has convicted the appellant and imposed punishment of rigorous imprisonment for seven years, six months and one year, for the offences under Sections 376,448 and 506 of the Indian Penal Code, respectively. The trial Court has also directed him to pay an amount of fine of Rs.10,000/-, Rs.500/- and Rs.10,000/- respectively along with the period of sentence. Also directions were given for sufferance for imprisonment for further period in default of payment of fine.

The criminal proceeding was started against the present appellant/convict upon lodging the FIR by the victim on 18th July,

2009. Pursuant to the same Kotwali Police Station Case No. 535 of 2009 dated 18th July, 2009 under Section 448/376/506 of the Indian Penal Code was started. The said FIR may be extracted is hereinbelow:-

“Complainant :- Smt. Shyamali Sarkar, wife of Hiten Sarkar, Village & P.O. Chawdanga, P.S. Kotwali, Dist. Cooch-Bihar. I am lodging a written complaint to the Kotwali P.S. to the effect that on 09-07-09 during non I was staying in my house with my child aged about three years. Other aged family members of my house were working in our agricultural field at the relevant point of time. At about 1.00 P.M. one young man, namely, Dhajen Modak of western side of my house came to my house and asked me to want fire for smoking ‘bidi’. When I went to my room to bring a match box, he followed me and entered my room and closed the door of the room and then and there he embraced me, pressed my mouth with cloth and undressed me and laid me down on a cot and ride on my body and penetrated her penis in my vagina and poured semen. I tried to raise hue and cry but the accused threatened me brandishing an iron weapon, specially used for cutting jute plants (Benki) and threatened me that if I shout and disclose the matter to anybody, he kill me and gone away.

Thereafter, when I raised hue and cry, then, my husband, father-in-law and mother-in-law came to house and asked me as to why I am crying and narrated the entire incident to them. The guardians of my house narrated the entire incident to our neighbours as well as to the Anchal Pradhan by writing. The Anchal Pradhan assured us to solve the dispute. But the Anchal Pradhan informed us that the said heinous incident did not fall within his jurisdiction, you go to Police Station and lodge F.I.R. and then and there, we lodge the F.I.R., in the meantime, 10 days has been elapsed. I am a pregnant about 4 months. I want justice for torturing upon me.

I, therefore, pray that you would be kind enough to investigate the aforesaid heinous incident in the spot and arrest the accused person for torturing upon me and take appropriate action against the accused person and thus oblige.”

After investigation police submitted charge-sheet against the present appellant and after commitment of the case to the concerned Sessions Court the Trial proceeded with the framing of charges against the appellant on 10th January, 2011.

Several witnesses have been examined. Amongst them PW 1 is the victim lady, who has duly supported the FIR narrated incident in her deposition. She has duly withstood the cross-examination. Such

evidence of the victim lady has been supported in the trial by PW nos. 2, 3, 6, 10, 12 and 13.

Considering the consistency and co inherence in the evidence of all the witnesses, more particularly that of the victim lady, which has remained unshaken during the cross-examination, it is found that evidence is clinching enough to prove the prosecution case.

On perusal of the impugned judgment as mentioned above, it appears that the trial Court has heavily relied on the evidence of the victim lady finding it to be sufficient enough upon which the conviction of the appellant/convict should be founded.

In pursuance of Section 134 of the Indian Evidence Act, 1872, according to which, the quality but not the quantity of the evidence would be the determining factor as to whether the prosecution has been able to bring whom the charges against the accused person or not. In this case, the finding of the trial Court in the impugned judgment appeared to be unblemished. In consideration of the legal provisions the sole testimony of the victim would have been sufficient in this case to find guilt of the accused person/appellant. However, as discussed earlier, there are legible corroboration to the substantive evidence of the victim lady (PW 1) which has aided to the prosecution case immensely.

Accordingly, on the discussion as above, the impugned judgment is upheld, so far as the portion of finding guilt of the accused person/appellant as well as convicting him for the offence, is concerned.

However, so far as the sentence portion is concerned, this Court is inclined to take notice of the report submitted on behalf of the State today, as mentioned above, it appears that during the pendency of the present appeal, the appellant has already undergone the period of sentence, being incarcerated. After completion of the period of sentence he was released on 27th July, 2018. Accordingly, it is found necessary that requisite modification be made to the sentencing portion in the impugned judgment.

The appellant/ convict is sentenced to suffer imprisonment of like description, for the period he has already undergone in custody.

Thus, the appeal is allowed in part with the findings as above.

The Court appreciates the able assistance of Ld. Amicus Curiae, in disposing of this appeal.

Accordingly, this appeal is disposed of.

All pending applications, if any, are consequently disposed of.

Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

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(Rai Chattopadhyay, J.)