

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

C.R.A.359 of 2001

Basudeb Basak

VS.

The State of West Bengal

For the Appellant : Mr. Prabir Majumdar, Advocate

For the State : Mr. Debasish Ray, Ld. P.P.
Mr. Abhra Mukherjee, Advocate
Mr. Dipankar Mahato, Advocate

Heard on : December 5, 2023

Judgement on : December 5, 2023

DEBANGSU BASAK, J.:-

1. The appeal is against the judgment of conviction dated March 27, 2001 and order of sentence dated June 28, 2001 passed in Sessions Case No.16(4) of 1999/Sessions Trial No.1(July)1999, by the learned Assistant Sessions Judge, 2nd Court, Krishnanagar, Nadia.

2. By the impugned judgment of conviction, the appellant was found guilty under Section 376 of the Indian Penal Code, 1860. By the impugned order of sentence, the appellant was awarded rigorous imprisonment for eight years and also to pay fine of Rs.5,000/- and in default to suffer rigorous imprisonment for a further period of one year for the conviction under Section 376 of the Indian Penal Code, 1860.

3. The police complaint was registered on May 18, 1995 on the basis of which, the police started Ranaghat Police Station Case No.144 dated May 18, 1995 under Section 376 of the Indian Penal Code, 1860.

4. On conclusion of investigation, police filed charge-sheet. Charge under Section 376 of the Indian Penal Code, 1860 was framed as against the appellant on July 1, 1999.

5. In support of the case of the prosecution, 15 witnesses were examined, at the trial. On conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Criminal Procedure Code where, he claimed innocence and declined to adduce any evidence.

6. The case of the prosecution is that, on May 15, 1995 at about 9 A.M., the appellant at his grocery shop committed rape on the victim. The victim is presently dead.

7. Learned advocate appearing for the appellant submits that, the victim was not examined at the trial since the victim expired prior to the commencement of the trial. He submits that, the prosecution failed to establish the complicity of the appellant by cogent evidence. He points out that, prosecution did not examine any person as eyewitness to the incident. There was delay in lodgement of the First Information Report. He points out the evidence of the Doctor examining the victim. He submits that, such Doctor being prosecution witness (P.W.13) stated on cross-examination that, the injury suffered by the victim may occur by the victim falling upon a sharp edged or hard substance also.

8. Learned advocate appearing for the appellant submits that, the age of the appellant at the time of the alleged offence and the present date should also be taken into consideration for the Court to consider the quantum of punishment awarded to the appellant. He submits that, at the present moment, the

appellant is about 61 years of age. At the time of the alleged offence, he was about 38 years old.

9. Learned advocate appearing for the State submits that, the victim recorded a statement under Section 164 of the Criminal Procedure Code which was tendered in evidence and marked as an exhibit being Exhibit-13. There is no disparity between the Exhibit-13 and the version of the mother of the victim stated at the trial. He submits that, the victim, after the incident disclosed the incident to her mother. He draws the attention of the Court to the fact that evidence of the mother and that of Exhibit-13 corroborate each other.

10. As noted above, 15 prosecution witnesses were examined.

11. The de facto complainant who is the father of the victim deposed as P.W.1. He stated that, the victim died due to the diseases suffered due to the rape committed on her. He came to know about the incident from his wife who is the mother of the victim. He stated that the victim was 13 years old at the time of the incident. He also stated that, he reported the incident to the members of the village Panchayat and other

persons. He also went to the local police station for lodging the complaint. He identified the complaint lodged with the police which was marked Exhibit-1. He stated that, the victim was forwarded to the Ranaghat Hospital for medical test and that he took the victim for medical test. He also tendered the bed head ticket of the victim which was marked Exhibit- 2. He was cross-examined at length by the defence.

12. The scribe of the written complaint deposed as P.W.2. He said that, he was then a member of the village Panchayat and that he wrote the written complaint as per the instruction of the Officer-in-Charge. He stated that, P.W.1 was known to him. He also stated that P.W.1 signed the complaint in his presence after he read over and explained to P.W.1 the written complaint.

13. P.W.2 was declared hostile by the prosecution and was cross-examined by the prosecution. P.W.2 was also cross-examined by the defence.

14. Mother of the victim deposed as P.W.3. She stated that, the victim went to the shop of the appellant who committed rape on the victim. She stated that, the victim suffered

bleeding injury on her vagina which became septic and that, the victim subsequently died of blood cancer. She stated that, the victim was about 12 years old at the time of the incident. She stated that the victim went to the shop room of the appellant and that, the appellant caught hold of her and forcible committed rape by reason of which, the victim suffered injury.

15. P.W.3 identified the appellant in Court. She stated that, on the next day of the incident, the victim disclosed the misdeed of the appellant to her and on hearing she noticed that blood was oozing out from the vagina of the victim and that, victim fell ill. She stated that, she narrated the incident to P.W.1, her husband.

16. P.W.3 was cross-examined at length by the defence. At one place, she stated that she went to the local police station along with the victim and subsequently said that, only P.W.1 went to the police station with the victim.

17. P.W.4 is a resident of the locality. P.W.4 claimed that P.W.1 pointed out by the learned advocate for the prosecution.

P.W.4 was declared hostile. He was cross-examined both by prosecution after he was declared hostile and the defence.

18. A Home Guard deposed as P.W.5. He stated about his escort of the victim to the Doctor of Ranaghat Sub Divisional Hospital. He tendered the challan which was marked as Exhibit-3. He also exhibited ossification test of the victim. Such document was marked as Exhibit-4. The challan to produce the victim before Doctor was marked Exhibit-5.

19. A Police Constable was examined as P.W.6 and he did not add any value to the case of the prosecution or the defence.

20. The seizure list witness deposed as P.W.7. He identified the signature on the seizure list dated June 14, 1995 which was marked Exhibit-6. He also tendered his signature on the seizure list dated June 19, 1995 which was marked Exhibit-7.

21. Another Police Constable was tendered in evidence as P.W.8. He also did not add any value to the case of the persecution or the defence.

22. A Radiologist then attached to the Ranaghat Sub Divisional Hospital deposed as P.W.9. He stated that, he was attached to such hospital and that, on July 7, 1995 he

examined the victim. He tendered the X-ray plate of the victim which was marked Mat Exhibit - I series. His findings with regard to the X-ray was that the victim girl was more than 10 years but below 14 years. His report was marked as Exhibit-8.

23. A Sub-Inspector of Police who took up the investigation deposed as P.W.10. He stated about the course of investigation. He stated that he visited the place of occurrence on May 18, 1995 and prepared a rough sketch map with index. He tendered the same which was marked Exhibits-10 and 11 respectively. He stated that, he examined the witnesses namely, the victim and others and conducted raid. He stated that, the victim was forwarded to the hospital through the lady Home Guard for medical test. He stated that initially appellant could not be found and that, Warrant of Proclamation of Arrest was issued. He stated that on June 14, 1995, he forwarded the victim to the Magistrate when she was released from the hospital for recording her statement under Section 164 of the Criminal Procedure Code. The statement of the victim so recorded which was tendered in evidence and marked as Exhibit-13. He stated that, he collected the medical

report of the victim. The seizure list with regard thereto was tendered in evidence and marked Exhibit-14. He also seized bed head ticket which was marked Exhibit-2 series. He tendered potency test which was marked Exhibit-15. He stated that, the appellant surrendered before the Magistrate on June 20, 1995. He also stated that, he examined the Doctor and various other witnesses. He submitted charge-sheet on May 22, 1996.

24. P.W.10 was cross-examined at length by the defence. The defence however could not extract anything favourable to him.

25. Surgeon attached to Ranaghat Sub Divisional Hospital was examined as P.W.11. He examined the appellant and he identified Exhibit-15 as his report.

26. P.W.12 is another Medical Officer who examined appellant. He concurred with the same view as appearing in Exhibit-15.

27. P.W.13 is a Medical Officer who examined the victim on May 18, 1995. She narrated the injuries suffered by the victim. She tendered the admission document of the victim which was marked as Exhibit-17. She stated that, she

examined the victim under general anaesthesia on May 18, 1995. She stated that, victim was discharged on June 14, 1995. The bed head ticket was tendered and marked as Exhibit-18.

28. In cross-examination, P.W.13 stated that, in case of fall on hard or pointed substance, the same injury as suffered by the victim may be caused apart from sexual assault.

29. The then Assistant Director attached to the Forensic Science Laboratory deposed as P.W.14 who stated that, on examination, he found no spermatozoon in the samples made available for testing. His report was tendered in evidence and marked as Exhibit-16.

30. The Magistrate before whom, the victim recorded her Section 164 statement deposed as P.W.15. The Magistrate identified her signature as also the signature of the victim on the Section164 statement.

31. As noted above, the appellant was examined under Section 313 Criminal Procedure Code where, he claimed to be innocent and declined to adduce any evidence.

32. The date of the incident is May 15, 1995. The police complaint was lodged on May 18, 1995. The delay was explained in the police complaint itself being Exhibit-1 as also in the deposition of P.W.1 where, it was stated that, the delay occurred due to the discussions taking place with regard to the incident amongst well-wishers of the village.

33. The victim was taken to the police station on May 18, 1995 and from there, taken to the hospital. These event stands established both by documentary evidence and oral evidence. The lady home guard who took the victim to the hospital also deposed as prosecution witness no.5.

34. Victim disclosed about the incident to her mother on May 16, 1995. Mother narrated the incident to the father of the victim on the same day. Thereafter, the father took the assistance of the villagers. As noted above, the police complaint was lodged on May 18, 1995.

35. The victim was admitted into the hospital on May 18, 1995 and was discharged therefrom on June 14, 1995. Victim recorded her statement under Section 164 of the Criminal Procedure Code on June 18, 1995. The statement of the victim

recorded under Section 164 of the Criminal Procedure Code was marked as Exhibit-13.

36. In Exhibit-13, victim stated that, she went to the shop of the appellant, asked for a calendar and that, the appellant on the promise of giving her a calendar to her inside his shop room committed rape on her. She gave vivid description of the events unfolding to the Magistrate who recorded the same under Section 164 of the Criminal Procedure Code being Exhibit-13.

37. Her version of the incident stands corroborated by the evidence given by her mother being P.W.3 in whom, the victim confided about incident for the first time.

38. In cross-examination, P.W.3, initially stated that, she accompanied victim along with P.W.1 to the police station and immediately, stated that it was only the P.W.1 and the victim who went to the police station.

39. In our view, this is a minor aberration on the part of the P.W.1 is to be considered in light of the fact that she was giving evidence four years after the incident. It is not expected that she recollects every incident with the same clarity in view

of the passage of time. In any event, she corrected herself immediately when she said that she accompanied the victim and P.W.1 to police station.

40. Absence of the victim coming to the witness box and deposing and thereby the appellant being denied to the opportunity of cross-examination, in the facts of the present case is fatal to the case of the prosecution.

41. Victim suffered penetrative sexual assault and that stands established by the various medical documents marked as exhibits at the trial. In response to one of the queries in examination, the doctor who examined the victim being P.W.13 stated that, such type of injury suffered by the victim was from penetrative sexual assault and could also occur with the victim falling upon any hard or sharp substance.

42. Penetrative sexual assault on the victim by the appellant, at this shop at about 9 A.M. on May 15, 1995 stands established by the testimony of the victim being Exhibit-13 as also of the testimony of P.W.3.

43. On the date of the incident, that is, May 15, 1995 the victim was said to be 12 years old by her mother, P.W.3 and

13 years by her father, P.W.1. The ossification report being Exhibit-8 and the deposition of the Radiologist conducting the test being P.W.9 placed the age of the victim between 10 to 14 years on the date of the incident.

44. Appellant did not set up any defence apart from suggesting that two families belong to rival political parties. With respect, we are unable to accept such a defence, in the facts and circumstances of the present case, given evidence on record and the fact that, such claim of the appellant was not substantiated at the trial.

45. Appellant was convicted under Section 376 of the Indian Penal Code, 1860 and we find no reason to interfere with such conviction.

46. Appellant was awarded a sentence of 8 years in view of the prevailing provisions of Section 376 of the Indian Penal Code, 1860 and again, we find no reason to interfere with the quantum of punishment imposed by the learned trial Judge, giving the gravity of the offence.

47. In such circumstances, we affirm the judgment of conviction and the order of sentence. The period of time which

the appellant was in custody will be taken into consideration for the purpose of calculating the period of punishment imposed.

48. Appellant will surrender within four weeks from date to serve the remainder of the sentence. In default, jurisdictional Court will take appropriate steps.

49. Trial Court record along with this judgment and order be remitted to the appropriate Court forthwith.

50. **C.R.A.359 of 2001** is **disposed of** accordingly.

51. Urgent photostat certified copy of this judgment and order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

52. I agree.

(Md. Shabbar Rashidi, J.)