

18.05.2023

Court No.35
Item No. 25

D.Hira

CRA 299 of 2012

**Mojimul Haque @ Mojimul Ali
Vs.
The State of West Bengal**

Ms. Sudesna Das.

... for the amicus curiae

Mr. Pravas Bhattacharya,
Mr. M.F.A. Begg.

... for the State

This appeal has been directed against the judgment and order of conviction dated April 4, 2012 passed by the Additional Sessions Judge, 1st Court at Malda in Sessions Trial No. 11 of 2010.

The accused person/appellant was charged with the offence under Section 376 of the Indian Penal Code for raping the victim girl. The Court found the appellant guilty and convicted him and sentenced him to suffer rigorous imprisonment for seven (7) years and also to pay fine of Rs.10,000/-, in default, of which he was to suffer six months of imprisonment more.

The appellant has challenged the said judgment of the Additional Sessions Judge on the grounds that the Court while considering the merits of the case has ignored the relevant substantive evidence before it. More so, lack of sufficient evidence provided by the prosecution, in order to hold the appellant as guilty of the alleged offence is noticeable, which the Court has ignored. The appellant has stated that the Court proceeded on erroneously perceiving the facts revealed from the evidence of the witnesses, therefore, having arrived at an erroneous finding as regards the guilt of the accused person.

It is further stated that the prosecution has not been able to bring on record any sufficient evidence in order to prove the charges against the appellant beyond all reasonable doubt and, thus, prosecution's case

should have failed.

Appellant's plea is that the Trial Court has considered the evidence on record wrongly and, thus, the judgment impugned suffers from error, impropriety and illegality. The appellant has prayed for setting aside of the same.

It is necessary in this case to mention at the outset about the report submitted in Court by Mr. Bhattacharya, who is representing the State in this appeal. The report is provided by the Superintendent Berhampore Central Correctional Home dated 5.5.2023. The Superintendent Berhampore Central Correctional Home has declared reported that the appellant/convict has already undergone the period of sentence and was awarded with remission of the sentence period of 315 days. He has finally been released from the Correctional Home on 19.11.2018. The said report is kept with the record.

Be that as it may, the prosecution against the present appellant started pursuant to lodging of FIR by one Fatema Bibi on 10.08.2009, being registered as Chanchal P.S. Case no. 255 of 2009 dated 10.08.2009 under Section 376 of the Indian Penal Code. The allegations made in the FIR may be described as hereinbelow:-

“The husband of the defacto complainant resides elsewhere in connection with earning of their livelihood. The defacto complainant and her daughter (name is not mentioned, hereinafter be referred to as only the victim), aged 15 years reside at Nurganj under P.S. Chanchal, Malda. On 10.08.2009 at about 3 pm the victim had gone on the bank of a pond at ‘Jabuimath’ of their village for mowing and collecting grasses for their reared cattle. While she was mowing grass from ‘ail’ of a field by scythe, this accused all on a sudden accosted her from behind and the accused forcibly placed his palm on her mouth. She was dragged to a nearby bush. This accused had committed rape upon her. The accused threatened her. The victim did not dare to shout at first instance. Thereafter, she started shouting. Hearing the shouting one Musrefa Bibi came to the P.O. She made the victim stood and took her with herself and lodged the girl with the custody of the defacto complainant. Thereafter, the victim disclosed all the incident.”

Prosecution has cited eleven witnesses in this case and also exhibited and proved certain documents, including the medical

examination report of the victim.

Prosecution's case is largely dependent on the evidence of the victim that is PW 5.

Her evidence is as follows:-

"About two years back at 3 p.m. at Jabui Math I was ravished and raped by Mojammel Haque s/o Mansur Ali. Said Mojammel Haque is present on dock (identified). I went to that Jabui Math for cutting grass for our pet goat. While I was cutting grasses, this accused accosted me from behind and placed his palms on my mouth. Therefrom he dragged me to bamboo groves of Yakub. There is also 'pat khet' attached to the bamboo groves. He pulled of my 'jama'. I started shouting but this accused threatened me with the saying that, if I shouted at all. He would kill me, I requested him to let me go as I was like his sister and he was like my father. Despite that he raped me. After that event again I started shouting. Then Musrefa Bibi stated from a distance that who was the son of golam did commit raped upon her. At that time, this accused left me and fled along the bank of a pond and through the bamboo grove. Musrefa Bibi put of my dresses. At that time, the father of this accused was going along the nearby path. Musrefa Bibi reported and complained the incident to the father of this accused. Then his father requested me not to disclose the matter to anybody else and he promised to give marry of his son with me and took to me to his house. When Musrefa Bibi said something to his father, he threatened her by saying not to poke her nose into the affair. Musrefa Bibi took me to my mother and to whom I narrated the incident. Thereafter, my mother took me to P.S. Presently, I am 15 years old. I was taken to Magistrate to whom I stated the entire incident. My statement was recorded by Magistrate. This is my signature on the statement recorded by Magistrate. The signature is marked as Ext 4. I was medically treated at Chanchal Hospital. I narrated the incident to doctor".

There is no eye-witness in this case. The expert witness has supported prosecution's case.

In a case of this nature, it is the settled law that, if the evidence of the victim inspires confidence in the mind of the Court, the Court can find guilt of the accused person only on the basis of the same, without insisting for corroboration by any other evidence in the case.

It is found in this case that the evidence of the victim which is consistent and has not been shaken in the cross-examination in any way, is duly supported by the evidence of the Doctor (PW 8) who has asserted, after examining the victim, that sexual intercourse happened.

The evidence of the victim being read with the Doctor's evidence and being supported with the medical report proved in the case, inspires confidence of this Court as regards the truthfulness and reliability of the same.

Under such circumstances, it is found not proper to interfere with the finding of the Sessions Judge in the impugned judgment.

In the premises as above, the judgment of the Sessions Judge dated April 4, 2012 passed by the Additional Sessions Judge, 1st Court at Malda is upheld, to the extent of finding guilt of the present appellant as well as the conviction.

However, so far the sentence portion of the said judgment is concerned, this Court finds it proper to take into consideration the report of the Superintendent Berhampore Central Correctional Home dated 5.5.2023, as submitted in Court.

As it is found that the appellant has already served out the period of sentence and finally was remitted and has been released from the Correctional Home on 19.11.2018, the sentence awarded to the appellant by the Sessions Judge is modified in the following manner:

Let the appellant be sentenced for the period, which he has already undergone in Correctional Home.

Ms. Sudesna Das, learned amicus curiae has extended extensive help and support in disposing of this case. Her diligent and sincere efforts are appreciated.

Let the High Court Legal Services Committee take necessary steps to pay fees to the learned amicus curiae in accordance with the scale applicable to Category-A lawyer of its panel, within a period of two months from the date.

Rest of the impugned judgment remains as it is .

With this direction as above, this appeal is disposed of.

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

(Rai Chattopadhyay, J.)