

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1935 of 2014

**Uttam Das
-Vs-
The State of West Bengal**

For the Petitioner : Mr. Pratip Kumar Chatterjee

For the State : Mr. Avishek Sinha

Heard on : 28.06.2023, 04.07.2023, 17.07.2023

Judgment on : 26.09.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is directed against the judgment and order dated 01.02.14 passed by Additional District Judge, Birbhum, at Rampurhat, in Criminal Appeal No. 4 of 2013 which modified the judgment dated 27.02.13 passed by Learned Judicial Magistrate, 2nd Court, Rampurhat in G.R. Case No. 180/95 arising out of Mayureswar P.S. Case No. 37/95 directing the petitioner herein to suffer sentence of six months rigorous imprisonment for the commission of offence under Section 354 of the Indian Penal Code.
2. On 23.04.95 one Niyati Mondal, wife of Late Bhagirat Mondal, of Village – Mahadevpur, P.O. – Koleshwar, P.S. – Mayureswar, Dist – Birbhum, lodged a written complaint, with the Officer-in-Charge, Mayureswar P.S. alleging

inter alia that on 13.04.95 at about 1.30 p.m. when her daughter was going to take bath at Thakurpukur, one Uttam Das, son of Shri Lakhi Das forcibly outraged the modesty of her daughter which was informed by him to the villagers. Lakhi Das, left the matter to the discretion of the villagers. Awaiting the decision of the villagers which did not materialise there was a delay to lodge the complaint.

3. On the basis of the aforesaid complaint Mayureswar P.S. registered a case being Mayureswar P.S. Case No. 37/95 dated 23.04.95 under Section 354 of the Indian Penal Code and started investigation.
4. The investigating agency after completion of investigation submitted Charge-Sheet against the petitioner herein under Section 354 of the Indian Penal Code being Charge-Sheet no. 38 dated 25.05.95. Charge was framed under Section 354 of the Indian Penal Code against the accused when he pleaded not guilty and claimed to be tried.
5. The prosecution examined 7 witnesses including the victim girl and her mother to prove its case and exhibited three documents.
6. Learned Advocate for the petitioner submitted that –
 - i. The Learned Trial Court as well as the First Appellate Court failed to consider that in the instant case the written complaint hasn't been proved and deceased fatal for the prosecution case as particularly when the alleged writer of the complaint i.e. the P.W. 6, Sadhu Charan Mondal flatly denies that he hasn't written any such complaint so it can't be ascertained that the complain of the instant case was at all the version of the complainant.

- ii. The Learned Trial Court as well as the First Appellate Court ought to have concluded in deciding the instant case that the place of occurrence in this case hasn't been properly proved or fixed. Because in the alleged complaint the complainant mentioned that the incident took place while the victim was going to take bath at Thakurpukur whereas the same witness at the time of her deposition before the Court stated that the incident taken place while her daughter was coming after taking bath from Thakurpukur, the victim herself deposed before the Court she went to take bath at Thakurpukur where the petitioner outraged her modesty. Moreover, in the formal F.I.R recorded under Section 154 of Code of Criminal Procedure the place of occurrence has been mentioned as at Village – Mahadevpur, J.L. No. 208, Anchal No. X1 A. So, from the evidence of P.W. 1 & P.W. 4 as well as the formal F.I.R and the written complaint, it cannot be ascertained as to where the alleged incident of outraging the modesty of the victim (P.W. – 4) has taken place and the said place was a lonely place or not as claimed by the prosecution.
- iii. At the time of examination of the accused under Section 313 of Code of Criminal Procedure the situation and circumstances of the ingredients of the offence as alleged in the evidence hasn't been properly explained to the petitioner herein as in his examination the petitioner was only aware about the fact that he had pulled the wiring apparel of Latika Mondal and thus outraged the modesty but no specific place mentioned therein.

- iv. The Learned Trial Court as well as the First Appellate Court failed to consider that the P.W. 1 stated in her cross examination that a seating was held for settlement and the persons who took the responsibility of settlement told after spot verification that the act of outraging modesty is not possible at the alleged place of occurrence as per P.W. 2 & P.W. 3 the seating was held on the alleged date of occurrence i.e. 13.04.95. So the delay of ten days in lodging the F.I.R is fatal to the prosecution case particularly when the P.W. 1 brought out an exaggerated story of opening of wiring apparel of her daughter, which she hadn't disclosed earlier in her alleged complaint so there is a clear indication of fabrication and in that case the delay in lodging F.I.R itself is enough to reject the prosecution case.
- v. The Learned Trial Court as well as the First Appellate Court failed to appreciate that the petitioner herein has been charged for commission of offence of outraging modesty of a woman by assault of criminal force and in the instant case the victim who is the vital witness hasn't made out the case that the petitioner either assaulted or applied criminal force for alleged outraging of her modesty and more particularly no medical evidence has also come out to substantiate the application of criminal force upon a grown up woman.
- vi. The Learned Trial Court as well as the First Appellate Court ought to have decided that the petitioner herein didn't assault or applied criminal force before alleged outraging of the modesty of the victim in absence of medical evidence and to conceal or bypass the provision of

bringing medical evidence the delay in lodging the alleged F.I.R occurred plan fully and purposively.

vii. The Learned Trial Court as well as the First Appellate Court also failed to consider the evidence of the victim P.W. 4 in its proper perspective as the said witness disclosed in her evidence before the Court that after two days she went to Police Station and narrated the matter to O.C. who reduced the same in writing and collected her signature. She also alleged that at the Salish, paper was prepared which was written by Kanai Vollah and handed over that the incident at first reported before the Police Station by the victim. But the same was not brought before the Court and nor the paper prepared at the Salish. Withholding of such documents by the prosecution before the Court has not been explained by the prosecution and the conclusion can be arrived that the prosecution has not come with clean hands for which the prosecution case should suffer.

viii. The Learned Trial Court as well as the First Appellate Court that P.W. 4 also stated in her cross examination that Hazrapukur is situated nearer to their house but the prosecution hasn't placed any explanation as to why the victim went to take bath in a pond which isn't closer to their house and whether taking of bath in Hazrapukur is unhygienic and no one of the village takes bath in Hazrapukur or not.

7. Learned Advocate for the State submitted the investigation to be faulty and left it to the discretion of this Court.

8. P.W. – 1, the de-facto complainant, the mother of the victim initially delayed to lodge the complaint depending on the consequence of a village meeting which failed to fructify as the villagers on spot verification opined that the place of alleged occurrence could not be pliable and susceptible of commission of the alleged offence. P.W. – 1 deviated from her statement in complaint and her deposition before the Court as to occurrence the incident respectively as to on the way to bathe and after completion of the same on return.
9. P.W. – 2 and P.W. – 3 affirmed the village meeting without deposing anything specific and contributory.
10. P.W. – 6 and P.W. – 7 denied the complaint to have been written by him and the knowledge of the incident respectively.
11. Medical examination pertaining to the victim's claim of being physically molested is absent. The contradiction in her statements in examination-in-chief and cross-examination renders her deposition to be untrustworthy.
12. In view of the above discussions, the order dated 01.02.2014 passed in Criminal Appeal No. 4 of 2013 passed by the Learned Additional District Judge, Birbhum at Rampurhat whereby modified the judgment dated 27.02.2013 passed by Learned Judicial Magistrate, 2nd Court, Rampurhat in G.R. Case No. 180/1995 arising out of Mayureswar P.S. Case No. 37/1995 directing the petitioner to suffer sentence of six months rigorous imprisonment for the commission of offence under Section 354 of the Indian Penal Code are set aside.
13. The criminal revisional application being No. 1935 of 2014 is allowed.

14. Accordingly, CRR 1935 of 2014 stands disposed of. Connected application, if there be any, also stands disposed of.
15. There is no order as to cost.
16. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
17. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)