

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 532 of 2015

Ram Prasad Rajbanshi
Vs.
The State of West Bengal

For the Appellant : Mr. Prabir Majumder, Adv.

For the State : Mr. Partha Pratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 9th January, 2023

Judgment on : 9th January, 2023

Joymalya Bagchi, J.:-

1. Appellant has assailed the judgment and order dated 23.06.2015 and 24.06.2015 passed by learned Additional Sessions Judge, Fast Track Court-III, Krishnagar, Nadia in Sessions Trial No. VI (January) 2011 arising out of Sessions Case no. 19(7) of 2009 convicting the appellant for commission of offence punishable under Sections 376(2)(f)/511 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 10 (ten) years and to pay a fine of Rs. 40,000/-, in default, to suffer rigorous imprisonment for two years more. 50% of the fine, if recovered, is directed to be paid as compensation to the victim through her mother.

2. Prosecution case, as alleged against the appellant is to the effect that on 11.3.2009 around 4 PM the victim aged around six years was playing with her friends. At that time the appellant induced the victim to accompany him to a dilapidated house. He offered biscuit to the victim. Inside the house he disrobed her and attempted to rape her. Mother of the victim saw her come out of the house in a dazed condition. She also saw the appellant run away from the spot. When the victim returned home, she felt unwell. After coxing she narrated the incident to her mother who lodged written complaint scribed by one Tapabrata Mahanta, a primary school teacher (PW13).

3. On the basis of written complaint Nabadwip P.S case no. 54/09 dated 12.3.2009 under sections 376(2)(f)/511 IPC was registered for investigation.

4. In the course of investigation, wearing apparels of the victim were seized. Her statement was recorded under section 164 Cr.P.C. Appellant was arrested and charge sheet was filed. Charge was framed under sections 376(2)(f)/511 IPC.

5. Appellant pleaded not guilty and claimed to be tried. Prosecution examined 16 witnesses to prove its case. Defence of the appellant was one of innocence and false implication.

6. In conclusion of trial, the trial Judge by the impugned judgment and order dated 23.06.2015 and 24.06.2015 convicted and sentenced the appellant, as aforesaid.

7. PW1 is the minor victim. She was seven years old at the time of examination. Trial court put questions to her to test her capacity and understanding. Being satisfied her deposition was recorded. She deposed on the fateful day she was playing with her friends beside the river. Appellant whom she called 'mama' came to the spot and dragged her to a nearby house. He offered her biscuit. He also offered biscuit to one of her friends who was his niece. Her friends ran away. Appellant removed her inner garments and trying to put his penis into her vagina and anus. She felt bad. At that time her mother came to the spot and appellant fled away. She narrated the incident to her mother. She was admitted to hospital. She made statement before police. During cross examination, she remained unshaken.

8. Relying on a stray sentence in her cross examination that she had deposed as instructed by the State lawyer, Mr. Majumder contends she is not a reliable witness.

9. I find little substance in the submission.

10. PW1 was a minor. Trial court put questions to her to ascertain her capacity and understanding. She graphically described the circumstances in which the crime was committed. Her deposition is consistent with her previous statement before the magistrate.

11. Judging from this backdrop, it is difficult for me to accept that she was tutored by the prosecutor.

12. On the other hand, her deposition is substantially corroborated by her mother PW2. She deposed her daughter was playing with her friends

in the evening. Thereafter she was missing. She went to search for her and found her come out of a dilapidated building. She was in dazed condition. Appellant ran away from the spot. Thereafter, her daughter described the incident to her and she lodged complaint which was scribed by PW13, a primary school teacher.

13. Mr. Majumder submits genesis of the incident as narrated by PW2 is at variance with PW1. While PW1 stated she was dragged from the spot by the appellant when she was playing with her friends, PW2 stated appellant had sent her niece Prarthana to summon the victim. Thereafter he took her to the dilapidated house.

14. I am not willing to give much credence to the version of PW2. Reading her evidence as a whole it appears PW2 was not present at the time when the victim had been taken away by the appellant. Her daughter had gone out to play with her friends. Thereafter she was missing. She went to search for her daughter and found her coming out of the dilapidated house in a dazed condition. Appellant was also seen running away from the place. These circumstances corroborate the version of PW1 with regard to the manner in which the appellant had attempted to rape her in the said house.

15. Though other witnesses have been declared hostile and have not supported the prosecution case, medical evidence on record supports the prosecution case. Evidence of PWs 9, 10 and 16 are the medical witnesses.

16. PW 16 Dr. Satadal Mondal who examined the victim at Nabadwip State General Hospital noted the history of assault on the victim. He noted pain in perineum i.e. between vagina and anus. He deposed such pain may be caused if someone tries to insert his male organ inside a female organ. He proved the outdoor ticket as Ext 10.

17. PW 10 Dr. Prasanta Sarkar, a gynaecologist of the hospital also examined the victim. He did not find marks of forceful sexual intercourse on the victim. He clarified if someone rubs his penis over the vagina no inflammation injury would be found. He proved injury report and bed-head ticket.

18. The aforesaid medical evidence supports the prosecution case of attempted rape on the victim.

19. In view of the evidence on record, I am of the opinion prosecution has been able to prove its case beyond reasonable doubt. Conviction of appellant is upheld.

20. Coming to the issue of sentence, I note that the offence of attempt to rape a minor is a heinous one. The appellant, however, has no criminal antecedents. He has already suffered incarceration for more than eight years. Balancing the aggravating and mitigating factors, I modify the substantive sentence imposed on the appellant and direct that he shall suffer imprisonment for the period already undergone. Fine imposed on the appellant shall remain unaltered.

21. With the aforesaid modification as to sentence, appeal is disposed of.

22. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

23. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)