

22.02.2023

Court No.35
Item No. 16

D.Hira

CRA 560 of 2012

**Kartick Pramanick
Vs.
The State of West Bengal**

Mr. Aniket Mitra.

... for the appellant

Ms. Sibangi Chattopadhyay.

... for the amicus curiae

Mr. Pravash Bhattacharyya,
Mr. Mirza Firoj Ahmed Begg.

... for the State

Report submitted on behalf of the State in Court today is taken on record.

Ms. Sibangi Chattopadhyay, learned amicus curiae has extended considerable assistance 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 in the panel, within a period of one month from the date.

Appellant Kartick Pramanick is aggrieved with the judgment and order of conviction dated 14th June, 2012 and order of sentence dated 15th June, 2015 passed by the Additional Sessions Judge, Fast Track, 4th Court at Diamond Harbour in Sessions Trial No. 1(6)/2011 and has preferred the instant appeal against the same.

The Trial Court has directed the appellant/convict to suffer rigorous imprisonment for seven (7) years and also pay fine of Rs.30,000/-, in default, of which the appellant would undergo rigorous imprisonment for a further period of six (6) months.

The State started prosecution pursuant to filing of FIR dated 14th October, 2009 being Usthi Police Station Case No. 344 of 2009 dated 14th October, 2009 under Section 376(2)(f) of the Indian Penal Code. The crux of the allegations made in the said FIR may be narrated to be, that the eight (8) years old daughter of the defacto complainant, while going to her aunt's house on 14th October, 2009 at 9 p.m., was caught hold on and raped by the present appellant, Kartick Pramanick. Due to the hue and cry raised by the victim, some villagers rushed to the spot and the appellant fled away from there.

After completion of investigation, police submitted charge-sheet against the present appellant and trial commenced pursuant to framing of charge on 2nd June, 2011, under Section 376(2)(f) of the Indian Penal Code.

Prosecution has examined as many as thirteen (13) witnesses.

PW 9 is the victim, who has stated in her deposition as follows:

That on 14th October, 2009 at about 8:30/9:00 p.m. she was going to the house of one Santana Mondal. At that time, she was called by the appellant and had been taken to the saloon there he forcibly put-off victim's wearing apparels and penetrated into her vagina. The witness has stated that as she raised alarm, some person came and saw them from the backside window of the saloon. Possibly, after this, the victim was rescued, though she has not stated anything regarding this, in her deposition.

She has further stated to have gone to the police station as well as to the hospital where she was admitted for one day. The victim has identified the accused person on dock.

After the incident alleged to have happened on 14th October, 2009 at about 8:30 to 9:00 p.m. the victim was treated on the subsequent day, after expiry of about 20 hours, at Diamond Harbour S.D. Hospital. The doctor is cited as an witness in this case being PW 8. His findings

upon examining the victim may be narrated as hereinbelow:

“On examination no marks of injury detected on her body, back and breasts.

Hymen intact, Vagina Admits one finger (little) with pain a smallreddish area seem on the posterior aspect of Hymen on right side which is tender. No active bleeding seen.”

Therefore, considering the victim’s evidence with that of the doctor’s evidence who have examined her after about 20 hours of the incident, there can be found certain amount of discrepancy in the form that no active bleeding in the recent past, as alleged by the victim, was noticed by the doctor upon examination. No mark of external injury or injury on her private parts were noticed, though the victim has alleged of forceful penetration by the accused person upon her.

Independent witnesses have also been examined being PW 4, who may be termed to be the eye-witness of the occurrence. PW 4 deposes that he has witnessed the victim and the accused person to have been locked themselves from inside in the saloon of the accused person. He has further stated that due to the hue and cry raised by the victim he rushed to the said spot to find the door of the saloon to have been locked from inside. As such, he went from the backside of the saloon to find both of them inside the saloon, through the saloon window.

From the evidence of defacto complainant that is PW 1 and PW 2, the fact stated by the victim that she was proceeding to the house of PW 2 at the evening on the date of incident has been duly corroborated. That, having been read with the evidence of PW 4 who have seen both the victim and the accused person together in the saloon clearly and categorically lay down the coherence in the prosecution case and show the substantivity of the evidence laid by the prosecution in this case.

Under such circumstances, the mere discrepancy of the doctor having not found any external injury either on the body or the private parts of the victim, after 20 hours of the alleged incident would not be much damaging for the prosecution case. Instead, the continuity and

coherence in the evidence of the witnesses as discussed above including that of the victim, whose evidence may be treated in this case as evidence of an “injured person”, establishes beyond scope of any reasonable doubt, that the prosecution has been amply able to bring whom the charges levelled against the accused person.

Mr. Bhattacharyya, learned Advocate for the State has strongly relied on the impugned judgement and supported the same on the ground that in this case where the strong and convincing evidence of an eye-witness is supporting the prosecution’s case, there is hardly any other minor discrepancy, in the evidence of the witnesses, to be considered to interfere with the said judgement in any manner whatsoever.

In view of discussion as made above, this Court holds that the findings of the Trial Court regarding conviction of the appellant in this case is just fair and proper and the same should be upheld.

Hence, the impugned judgment and order of conviction dated 14th June, 2012 and order of sentence dated 15th June, 2015 is upheld to that extent.

At this stage, a report submitted in Court by the Superintendent of Baruipur Central Correctional Home dated 21st February, 2023 may be taken note of. Pursuant to the direction of the Court the report has been submitted to state that after serving the period of sentence/setting of remission of the period of sentence the appellant has already been enlarged from the Correctional Home on 6th August, 2016.

In such view of the fact, it is found proper that the sentence awarded by the Trial Court to the appellant in this case may be modified to be for the period of custody already undergone by him. To that extent, the impugned order of sentence is interfered with.

Hence, the appeal succeeds in part. The impugned the judgment and order of conviction dated 14th June, 2012 and order of sentence

dated 15th June, 2015 is upheld to the extent regarding finding of conviction against the present appellant. However, the sentence imposed is modified in terms of the findings as held above.

CRA 560 of 2012 is thus 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.

(Rai Chattopadhyay, J.)