

CRR 4363 of 2009

In the matter of : Smt. Usha Jana

Mr. Amal Krishna Samanta
..... for the private opposite parties
Mr. B. K. Roy
Ms. Sima Biswas
..... for the State

This criminal revisional application challenges the judgment and order of acquittal passed by the learned Additional Sessions Judge, Fast Track, 1st Court, Contai in S.T. No. 21/January/2008 corresponding to G.R. Case No. 616 of 2007. By the impugned judgment learned Trial Court was pleased to record the order of acquittal. This petition under consideration manifestation of displeasure of the petitioner over the judgment impugned.

Mr. Samanta, learned counsel for the petitioner impeaches the judgment adverting, inter alia that learned Trial Court failed to appreciate the evidence adduced by prosecution witnesses. The victim lady stood the test of cross-examination and the attending Doctor P.W. 8 stated that she was subjected to sexual assault and there was a mark of injury found on the person of the victim.

Briefly stated that, the victim lady set the criminal proceeding into motion by informing the Inspector-in-charge of Contai Police Station in writing that on 25th November, 2007 at about 10/10.30 P.M. she received a phone call from an unknown person who told her that her husband indulged in illicit relationship

with a lady and requested the victim girl to come to the embankment of the tank by the side of the Cashew Factory of her husband to have a glimpse of the activity of her husband. The petitioner obliged to the man and found him sitting on the embankment of the tank and in the moon light she identified the man as the accused person. She told the man to show her husband and the man took her to the other side of the tank, then tied her mouth with a red cloth he was carrying with him, pulled her down, and thereafter ravished her. After committing the offence of rape the man snatched her necklace, one pair of earrings and the mobile set and fled away from the place of occurrence. The victim lady screamed for help but nobody heard her. She narrated the incident to her husband and other members of the family of her father. The information disclosed offence cognizable in nature, so Contai Police Station Case No. 238 of 2007 was registered at about 8 P.M. under Sections 376/379 of the Indian Penal Code. Police took up investigation and submitted charge sheet against the accused person who stood the trial by pleading innocence.

To bring home charges prosecution examined ten witnesses. Learned Trial Court however after considering the testimony of prosecution witnesses refused to believe the prosecution case and passed the judgment impugned. Though ten witnesses have been examined by the prosecution the victim lady is the only witness who can be said to have the said direct knowledge about the incident. According to the victim she received a phone call from an unknown number and she went out of her house around 10.00 P.M. of 25th of November, 2007 to

catch her husband red handed. It was the night when Kali Puja was being celebrated but the victim identified the accused person in the moon light. Thereafter the victim stated that accused made her walk with him a few steps and after reaching the other side of the tank he tied the mouth of the victim and pulled her down and committed rape upon her. The wearing apparel of the victim must have been smeared with seminal discharge but she destroyed such evidence. Admittedly she is a married lady, therefore, the opinion of Doctor as to the admissibility of two fingers is of no consequence. A torn blouse was seized by the Investigating Officer but in her maiden information the victim did not say anything indicating scuffling between the two. It is rightly observed by the Trial Court that had there been application of force or resistance of any kind, victim would have sustain injuries but no such injury was found by the Doctor. The mobile phone though was recovered as explained by the Investigating Officer, no attempt was made to find out whether the accused person actually made the phone call. On the contrary it appears from the oral testimony of the brother of the victim that husband of the victim runs a factory of Cashew Nut and there was rivalry between the husband and the accused person, which, however, was denied by the husband of the victim while adducing evidence as P.W. 2. The evidence, it goes without saying should be considered from the point of view of human probability. The narrative of the victim girl regarding snatching of gold ornaments by the accused person after ravishing her, sounds utterly improbable.

Upon perusal of judgment impugned I do not find anything to impeach the same. The impugned judgment does not warrant any interference.

This revisional application thus stands dismissed being bereft of merits.

Let a copy of the order be sent to learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)