

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 833 of 2006

Ranjan Maity

-Vs-

The State of West Bengal

For the Appellant : Mr. Kallol Kumar Basu
Mr. Jamat Ul Firdous

For the State : Ms. Faria Hossain
Mr. Sandip Chakraborty

Heard on : 28.07.2023, 07.08.2023, 27.09.2023, 13.12.2023

Judgment on : 18.12.2023.

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 26.10.2006 & 27.10.2006 passed by Learned Assistant Sessions Judge, Basirhat, North 24 Parganas in Sessions Trial No. 3(7)01 arising out of Sessions Case No. 16(4)2000, thereby convicting the accused/appellant under Section 376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 7 years.
2. The prosecutions story precisely stated that on 31.01.1998 after completing her dinner at 9 P.M., the complainant went to sleep after her husband left their house to attend a 'Sradh' ceremony at 'Haroa'. The complainant was

staying at home with her mentally disabled son. At 11 P.M. she woke up to attend nature's call. When she returned to her room, one person caught hold of her from behind and pushed her on the bed. He threatened to commit the offence under Section 376 of the Indian Penal Code at knife point which frightened the complainant, and she did not call for help while she was being sexually assaulted. After ravishing her, the appellant applied a spurious liquid ('Bazbaruner Atha') on the complainant's private parts and ran away. Writhing in pain, the compliant started to scream which alerted the neighbours who was one PW-7, one Bhola and Sudhanya Mali who rushed to the complainant. The complainant disclosed the matter to them the next day and the complainant's brother-in-law took her to Kalinagar Hospital (Health Center). The doctor treated her and advised them to go the Sub-Divisional Hospital where the complainant was admitted.

3. On the basis of written complaint being Sandeshkhali Police Station Case No. 6 dated 05.02.98 under Sections 376/326 of the Indian Penal Code was registered. Upon completion of the investigation, charge-sheet being No. 3/98 dated 31.05.98 under Section 376 of the Indian Penal Code against the appellant was filed.
4. Charges were framed to which the appellant pleaded not guilty and claimed to be tried.
5. During trial the prosecution examined 12 witnesses. PW-1 was the informant and victim, PW-2 was the brother-in-law of the victim, PW-3 is the neighbour of the victim, PW-4 is the relative of the victim, PW-5 is the husband of the victim, PW-6 is the neighbour of the victim, PW-7 is the neighbour of the

victim, PW-8 is the doctor, who prepared medical report of accused/appellant and conducted medical test. PW-9 is the doctor, who conducted medical test of the victim and informant and prepared medical report. PW-10 is the Investigating Police Officer.

6. Learned Advocate for the appellant submitted that –

- i. The Learned Judge miserably failed to apply judicial mind at the time of passing the impugned judgment and order dated 27.10.06 convicting and sentencing the accused/appellant.
- ii. The manner in which PW-1 had deposed in court, fails to inspire confidence in reasonable mind about the truth fullness in a statement made in the evidence.
- iii. The Learned Judge has failed to appreciate that the complainant was lodged with police after 5 days of the incident.
- iv. The Learned Judge has failed to appreciate that prosecution failed to present any eye-witness to the alleged offence.
- v. The Learned Judge has failed to appreciate at the time of passing the impugned order and judgment that there was no injury of rape as alleged or poisonous substance on the private part of the victim as per the medical report.
- vi. The Learned Judge has failed to appreciate that no bed head ticket/hospital ticket was produced by the prosecution before the Learned Court in support of the prosecution story that the victim was admitted in Badartala Hospital.

- vii. The Learned Judge has failed to appreciate that no forensic examination report was produced by the prosecution on behalf the Learned Court during the trial.
- viii. The Learned Judge failed to consider that PW-1 the victim stated categorically that a prolonged dispute was going on between the appellant and the victim over the issue of land.
- ix. The Learned Judge failed to consider that 'the knife' on the point of which the offence was committed as alleged, was not seized and produced by the prosecution during trial before the Learned Court.
- x. The Learned Judge failed to appreciate that the victim's son who was lying beside her at the time of commission of offence as alleged was not examined.
- xi. No prayer for recording of statement of victim lady under Section 164 of the Cr.P.C. was made before the Learned Magistrate.
- xii. The Learned Judge has failed to appreciate that the evidence of the seizure list witness Radha Rani Biswas, the PW-6 is not at all reliable as she categorically stated that she handed over the seized articles at Sandeshkhali Police Station but in the charge-sheet the place of seizure has been shown at the 'house of victim'.
- xiii. The Learned Judge failed to appreciate that the victim could not identify the seized wearing apparels.
- xiv. In this case the best evidence was withheld from the Learned Court.
- xv. The Learned Judge miserably failed to appreciate the dearth of direct evidence coming from any independent witness.

7. The Learned Advocate for the State submitted the latches on the part of the investigating officers, would not affect the prosecution case in as much as the sole testimony of the prosecutrix was believable and therefore the appeal should be dismissed.
8. The PW-1, who had been the victim stated that after hearing hue and cry, 6 persons came to the residence of the victim out of which only 3 persons namely PW-6, PW-11 and PW-7 were examined. They were post occurrence witnesses and their evidence was based on hearsay evidence and therefore cannot be relied upon. In examination in chief, PW-1 stated that she was admitted at the hospital and stayed there for 12 days at a stretch and she lodged a complaint at the police station after 3-4 days and such a reason for delay was not explained in the complaint. PW-1 stated that the semen of the appellant may have fallen on the mat or her 'saya' however she did not handover such articles to the police and she did not know whether such articles were handed over to the police. She also stated there was no mark on her apparels. The articles were seized at the hospital however she does not know the date on which she was discharged from the hospital. She has also stated that there was a prolonged land dispute with the accused over vested land.
9. PW-2, who happened to be the brother-in-law of PW-1 stated that he heard the noise of people and rushed to the spot and found PW-1 in an irritated condition but did not ask her about the cause of pain. He then heard from PW-1 that she had been sexually assaulted by the appellant. In his cross-examination, he deposed that he did not inform the Investigating Officer

that he, PW-6 and others accompanied PW-1 to the hospital. He also stated that he did see the victims wearing apparel.

10. PW-3, the neighbour of PW-1 stated that she heard a noise and accompanied by others rushed to the place of occurrence. On arriving at the house of PW-1, PW-3 asked PW-1 the reason of her weeping and PW-1 told her she had been sexually assaulted by the appellant. She stated that PW-1 lived in the said house with her five children and her husband. She also stated that there was a 'chulai vatti' in the old house of the husband of PW-1. She stated that the houses of one Montu, Netai, Nurupam and Panchu were situated near the house but they were never interrogated or tested as witnesses on the dock before the Learned Court. She further stated that she was brought in Court by PW-6 who was a local leader of a party. She stated she was living with the appellant in the said compound which was demarcated by a boundary wall and stated she had no enmity with the appellant.
11. PW-4, a neighbour and relative of PW-1 was a post occurrence witness. He got the information from the other women who were present there to whom PW-1 disclosed the incident. His evidence was hearsay evidence. In his cross examination, PW-4 stated that he did not notice any blood stain marks on her wearing apparels, as was told by PW-3 in her evidence. He further stated to have come with PW-6 to depose before the Learned Court.
12. PW-5, the husband of PW-1 in his examination in chief stated that the police came to his house at 11 P.M. when he was not there. PW-6 was there. He further stated that 5-6 days after the occurrence of the incidence, the

police came to his house. The police asked him to handover the wearing apparels worn by PW-1 at the time of the incident. In response to that PW-5 gave them the all the articles. In cross examination, he stated that he could not say the color of the 'saya' and blouse worn by his wife on the date of the incident. He returned home in the evening the next day and he heard about the incident from his neighbours. At 11 P.M., PW-5 saw the 'saya' and blouse of PW-1 which the victim wore when the incident had occurred. The 'daragababu' took the 'saya' and blouse at 11 P.M. from PW-5. However, in the next sentence PW-5 stated that his wife was wearing the same apparels when admitted to Badartala Hospital. He also stated that his wife was taken to Ghoshpur Hospital and the next day PW-5 and PW-6 took her to Badartala Hospital. He stated at the time of handing over the apparels, PW-6 and PW-4 was there.

13. PW-6 stated that PW-7, PW-11 and many others were present there. PW-6 and PW-2 and many others took PW-1 to Ghoshpur Hospital and most likely on Monday in the morning PW-1 was taken to Badartala Hospital by PW-6 and PW-5. PW-1 stayed at the hospital for 12-13 days and after 5 days the police came to the house of PW-1 to collect the apparels PW-1 was wearing at the time of the incident. The articles were handed over to the police and PW-6 signed on the seizure list which was prepared at the Police Station. She, however, could not say what was there in the seizure list. In cross examination, PW-6 stated she could not say the names of the other seizure witnesses. She stated she was capable to sign but could not read. She could not say the actual date of the incident. She informed the Investigation

Officer that primary treatment of PW-1 was done by her by pouring water, coconut oil and an ointment which was given to her by a neighbour and she did not know the name of the ointment. She stated that 'Bazbaruner Atha' had a poisonous effect and created scars on the skin however no such scar was visible as it was washed off with water. She stated that the wearing apparel which PW-1 wore at the time of the incident was taken from her and she was given different clothes before being taken to Ghoshpur Hospital. She stated that she was a frequent visitor of courts for her own purpose.

14. PW-7, a neighbour of PW-1 was a post occurrence witness, and her evidence is based on hearsay. In cross examination she stated that she did not converse with PW-1 on the date of the alleged incident.
15. PW-8 is the Doctor at Basirhat Hospital examined the appellant and prepared the report. In cross examination, she stated that during the time of forceful penetration, trauma is likely to be caused however such had not been noted in her report. If such trauma was detected, the same would be mentioned in the report.
16. PW-9 was the Doctor was attached to Basirhat Sub-Divisional Hospital as a gynecologist and examined PW-1. In examination in chief, she categorically mentioned there was no mark of injury on her private parts.
17. PW-10, the Investigating Officer stated that only the wearing apparel were seized. He also stated that efforts were taken to collect the bed head tickets and the discharge certificates, but he was unable to collect them. Vaginal swab could not be collected for sending to the Forensic Science Laboratory. In cross examination he stated that nothing was mentioned in the F.I.R.

that L.T.I was made by PW-1 and was taken by the Officer in Charge. He also stated that he prepared the seizure list at the place of occurrence. A copy of the seizure list was supplied to him and the original seizure list was different in nature. There were no spot marks on the 'saya' with regards to any concentration of liquid. He did not seize the saree or the mat. He stated that he did not verify the documents as to the ownership of the place of occurrence and in the sketch map the detailed description of the house was absent.

18. PW-11, a co-villager's evidence was based on hearsay.
19. PW-12 is the Officer in Charge and he deposed that he obtained the L.T.I of PW-1 and the statement of PW-1 was recorded by Sub Inspector S.K. Chakraborty, who was not examined.
20. PW-1, the victim deposed to have identified the appellant in the light of a "temi" and to have been ravished at the point of a knife. The prosecution did not seize either the "temi" or the knife. The victim was admitted at the Badartala Hospital for 12 days. However, the prosecution failed to produce any document with regards to her admission and subsequent discharge from the said hospital. PW-1 during her cross examination stated that the doctor had collected her swab for examination after 7-8 days of the incident. The doctor did not handover the discharge certificate to her and she could not recollect the date of her discharge from the hospital. The prosecution did not examine the doctor responsible for the admission and discharge of PW-1 from the hospital. There are inconsistencies with regard to the seizure

of wearing apparels of the victim owing to its time and date in the evidence of PW-1 and her husband PW-5.

21. PW-9, the gynecologist did not witness any mark of injury on the private parts of the victim. PW-9 further stated that the vaginal swab of the victim was preserved and sent for forensic examination. During his cross examination, PW-9 opined a reaction could occur if any foreign object was poured on the vagina and there was no tangible proof in his report resting on which it could be possibly ascertained that the victim was raped by strangers.
22. PW-10 the Investigating Officer stated that despite efforts, he could not obtain bed head ticket and discharge certificate from the hospital which proved his slackness and inefficiency or rather a motive to abdicate his duties. His lackadaisical attitude in discharging his duties was evident from his deposition where he stated *“nothing is found about the collection of the vaginal swab for sending to F.A Cell. I did not make any prayer for recording the statement of v.g under Section 164 of the Cr.P.C. I filed CS later under section 326/376 of the IPC.”*
23. During his cross examination PW-10 stated that copy of the seizure list supplied to him and the original seizure list was different in nature. He further stated he did not seize the saree or any mat. He could not state the date on which he examined the victim and the place where the victim was examined. He further stated that the sketch map did not delineate the proper description of the place of occurrence.

24. PW-12 stated to have recorded the statement of the victim at Basirhat Hospital in between 8.25 hours and 15.15 hours. However, the document did not mention the respective Ward Number and Bed Number of the patient to have been admitted in the same hospital with regards to the Exhibit marked as 7. Contrary to the evidence of PW 9, with regard to the collection of vaginal swab, PW-10 did not send the same for examination denying its collection. On the basis of contradictions in the evidence of the prosecution witnesses, the serious lapses on the part of the prosecution, the evidence of the partisan witnesses admittedly endorsing to an acrimony between the appellant and the family of the victim over a plot of land, it cannot be exclusively concluded that the prosecution was not successful in establishing its case. Medical report did not justify the private part of the victim to have been affected by the administration of a poisonous substance. The victim stated to have been ravished for fifteen minutes where she did not try to resist or raise an alarm. The sole testimony of the prosecutrix can be relied upon in case the evidence is free from bias, enmity, harassive and coercive consideration. In the instant case, most of the villagers to have been named in the evidence of PW-1 were not examined. Lapses on the part of the investigating agency are not fatal to the prosecution case if the essence of the same is intact and incredible. However, in the instant case, the instigating agency from the inception faulted at every step. The place of occurrence was not properly depicted through the rough sketch map. The hospitalization of the victim was not proved. The wearing apparels of the victim were not seized. The vaginal swab was not sent for FSL examination.

Independent witnesses were not examined. The medical report suggested contrary views to the commission of the offence as alleged.

25. Under such circumstances the instant appeal is allowed.

26. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.

27. Under such facts and circumstances, the judgment and order of conviction dated 26.10.2006 & 27.10.2006 passed by Learned Assistant Sessions Judge, Basirhat, North 24 Parganas in Sessions Trial No. 3(7)01 arising out of Sessions Case No. 16(4)2000, thereby convicting the appellant under Section 376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 7 years is set aside.

28. The instant criminal appeal being CRA 833 of 2006 stands disposed of.

29. There is no order as to cost.

30. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

31. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)