

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. 682 of 2016
CRAN 2 of 2022

Samir Majhi
-Vs-
State of West Bengal

For the Appellant : Mr. Moinak Bakshi, Adv.
For the State : Ms. Sreyashee Biswas, Adv.
Heard on : 13.01.2023
Judgment on : 13.01.2023

Joymalya Bagchi, J. :-

1. Appellant has assailed the judgment and order dated 16.06.2014 and 17.06.2014 passed by learned Additional District & Sessions Judge, Fast Track Court-I, Purulia, in Sessions Trial No. 19 of 2013 arising out of Sessions Case No. 350 of 2012 convicting the appellant and co-accused Wasinghton Kumar for commission of offence punishable under Sections 458/376(2)(g) of

the Indian Penal Code and sentencing them to suffer rigorous imprisonment for 5 (five) years and a fine of Rs. 2,000/-each, in default, to suffer rigorous imprisonment for six months more for committing offence under Section 458 IPC and to suffer rigorous imprisonment for 12 (twelve) years and to pay a fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for one year more for the offence punishable under Section 376(2)(g) IPC. Both the sentences to run concurrently.

2. Prosecution case, as alleged against the appellant, is to the effect that 28.08.2012 at around 7:30 P.M. while the victim was cooking in her house, three persons came into her house and committed rape on her. Thereafter, they inserted stone in her private parts. Due to pain, she lost her senses. She was shifted to hospital where she was treated. She lodged written complaint at police station resulting in Kashipur Police Station Case No. 65 of 2012 dated 28.08.2012 under Sections 448/376(2)(g) IPC.

3. During investigation she made statement before the Magistrate disclosing the identity of the appellant. Appellant and Wasinghton Kumar were arrested.

4. Charge was framed under Sections 458/376(2)(g) IPC. Appellant pleaded not guilty and claimed to be tried. Prosecution

examined 9 witnesses to prove its case. Defence of the appellant was one of innocence and false implication.

5. In conclusion of trial, the trial Judge by the impugned judgment and order dated 16.06.2014 and 17.06.2014 convicted and sentenced the appellant and Wasinghton Kumar, as aforesaid.

6. Mr. Bakshi, learned Counsel for the appellant submits that victim (PW1) did not name the appellant in the FIR. His name also did not transpire in the medical papers. On the other hand, victim referred to the miscreants as unknown persons. Implication of the appellant is an afterthought and he ought to be acquitted.

7. Ms. Biswas, learned Counsel for the State submits victim disclosed the identity of the appellant during her examination under Section 164 of the Code of Criminal Procedure. In her subsequent statement before Magistrate, she explained that the appellant and Wasinghton Kumar had threatened her. As a result, she was fearful to disclose their identity.

8. P.W.1 is the victim girl and the de-facto complainant in the instant case. She deposed on 28.08.2012 at 7:30 P.M. she was cooking meal. Three persons entered the kitchen. One of them gagged her mouth. They tied her hands. Then appellant and Wasinghton Kumar committed rape on her. They inserted stones

in her private parts. She became senseless. None of the family members were present at the time of occurrence. Local people untied her hands and took her to hospital. She was treated in the hospital. She made statement before the police. She made two statements before the Magistrate. She proved her signature on the statement.

9. PW2, PW5 and PW8 are medical officers.

10. PW2 (Dr. Sourav Das) was attached to Kalloli BPHC as medical officer. He treated the victim. He found three stones inside her vagina. He recorded history of assault. The patient was referred to Purulia Sadar Hospital for better treatment. He proved the referral card. He signed on the seizure list. He also proved the injury report.

11. PW8 (Madhumita Bhattacharjee) was also attached to Kalloli BPHC. She deposed the victim was admitted in the hospital at 11 P.M. She is a signatory to the seizure list.

12. PW5 (Dr. Hari Mohan Dey) was a Gynecologist attached to Purulia Sadar Hospital. He deposed victim was admitted in the hospital on 29.08.2012. He treated the victim. Victim was discharged on 31.08.2012. He proved the treatment report. Husband of the victim a neighbour son are examined as PW3 & 6 respectively. They corroborated the victim.

13. From the aforesaid evidence it appears that on 28.08.2012 appellant and others had trespassed into the house of the victim. She was cooking in the house. No one else was in the house. They forcibly tied her up. Appellant and another accused committed rape on her. Thereafter, they inserted stones in her private parts. Victim was admitted to hospital. Stones were brought out of her private parts. Her deposition is corroborated by PW2 and PW8 who treated her at the hospital.

14. Mr. Bakshi strenuously argues the appellant was not named in the FIR. Victim described her assailants as 'unknown persons' in the FIR and on the medical papers. Hence, his implication is an afterthought. Soon after the incident, victim had been examined under section 164 of the Code of Criminal Procedure. In her statement before Magistrate she disclosed the name of the appellant as one of the rapists. In her subsequent statement, she explained the appellant and Wasinghton Kumar had threatened her. It is likely due to fear she had kept quiet earlier. Non-disclosure of the name of the appellant at the earliest opportunity is clearly explained. Prosecution case levelled against him is proved beyond reasonable doubt.

15. Conviction and sentence of the appellant is upheld.

16. The appeal is accordingly, dismissed.

17. In view of disposal of appeal, connected application stands disposed of.

18. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon him in terms of 428 of the Code of Criminal Procedure.

19. Copy of the judgment along with L.C.R. be sent down to the trial court at once.

20. Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)