

**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. 737 of 2016

Naba Kumar Banerjee

-Vs-

State of West Bengal & Ors.

Amicus Curiae : Mr. Partha Pratim Das, Adv.

For the State : Mr. Saswata Gopal Mukherji, Ld. PP
Mrs. Manasi Roy, Adv.

Heard on : 12.09.2023

Judgment on : 12.09.2023

Joymalya Bagchi, J. :-

1. The appeal is directed against judgment and order dated 30.11.2016 and 01.12.2016 passed by learned Additional Sessions Judge, 2nd Court, Bankura, in Special Case No. 21 of 2015 convicting the appellant for commission of offence punishable under Section 376(2)(i) of the Indian Penal Code and Section 4 of the POCSO Act sentencing him to suffer rigorous imprisonment for ten years and to pay a fine of Rs.25,000/- in default to suffer simple imprisonment for one year and under Section 4 of the POCSO Act to suffer rigorous

imprisonment for six months more and also sentenced with rigorous imprisonment for ten years and to pay fine of Rs.25,000/- in default to suffer simple imprisonment for one year more. All the sentences to run concurrently.

2. Prosecution case as alleged against the appellant is to the effect that on 07.05.2015 at 10.00 a.m. victim went alone to the medicine shop of the appellant at Birchandrapur More to get medicine. When she went inside the room the appellant asked her to open her dress. When she refused the appellant told her if she did not open her dress her illness would not be cured. Thereafter he forcefully undressed her and pushed his penis into her vagina. He warned her not to disclose the incident to anyone.

3. After returning home the victim informed the incident to her mother. She complained she was suffering pain in her belly and her private parts. Victim was treated at Sonamukhi Hospital and thereafter was shifted to Bishnupur Hospital.

4. Her mother lodged written complaint resulting in Sonamukhi Police Station Case No. 98 of 2015 dated 10.05.2015 under Section 376(2)(i) of the Indian Penal Code and Sections 4/6 of the POCSO Act.

5. In conclusion of investigation, charge-sheet was filed against the appellant and charge was framed under the aforesaid provisions of law. 14 witnesses including the minor victim were examined. On an analysis of the evidence on record learned trial Judge by the impugned judgment and order convicted the appellant and sentenced him, as aforesaid.

6. At the time of hearing appellant was unrepresented. He has sent a letter from the correctional home to withdraw the appeal. Under such circumstances, this Court requested Mr. Partha Pratim Das to assist the Court to dispose of the appeal.

7. PW 5 is the minor victim. She stated at 9 a.m. she went to the medicine shop of the appellant to buy medicine. She had gone on her bicycle. After going to the shop she enquired about the doctor. Appellant told her to sit inside the room. Then he opened her clothes. When she resisted appellant gagged her mouth and removed her clothes. Thereafter, he raped her. He threatened her not to disclose the incident to anyone. Upon returning home she informed the incident to her mother. She was medically treated by a doctor. She made statement before the learned Magistrate. She identified the appellant in Court. She remained unshaken during the cross-examination.

8. PW 11 (Sabitri Hansda) Medical Officer examined the victim at Sonamukhi Hospital. She deposed on 07.05.2015 she examined the victim in her chamber. She found a small abrasion at the lower part of the genitalia and referred her to Bisnupur S.D. Hospital.

9. PW 12 (Dr. Suman Kalyan Pore) was the Medical Officer at Bishnupur District Hospital who examined the victim. He deposed he examined the victim on 09.05.2015. Victim stated she was sexually assaulted on 07.05.2015. He found her hymen was ruptured. White discharge was present. He did not notice echymosis or acute bleeding.

He did not find any scar mark over the breast and face of the victim. He proved the injury report.

10. PW 6 (Dr. Biswajit Mahapatra) examined the victim at Bankura Hospital. He found her hymen was ruptured. He, however, did not notice any injury on other parts of her body.

11. PW 8 (Dr. Saptarshi Chatterjee) was an Assistant Professor attached to Bankura Hospital. He sent the victim girl to the radiological department for determination of age. He proved the x-ray report. After considering her physical, dental and radiological conditions he opined the victim was between 10 to 12 years on the date of radiological examination.

12. PW 1 (Smt. Mayna Bibi) is the mother of the victim and the de facto complainant. She corroborated the version of her daughter. She took the minor to hospital. She lodged the written complaint.

13. PWs 2, 3, 7 and 9 are the local residents. They corroborated the prosecution case as narrated by the minor and her mother.

14. PW 4 (Osman Sekh) scribed the complaint.

15. Analysis of the aforesaid evidence would show the minor victim had graphically narrated the incident in Court. Her version does not suffer from patent absurdities or inherent improbabilities. Her mother (PW 1) corroborated her version. Other local witnesses have also supported the prosecution case. All the medical officers noted that hymen of the victim was ruptured. PW 11 who first examined the victim after the incident also found a small abrasion at the lower part of the

genitalia. Other medical officers who had examined the victim later did not find the injury presumably as the same may have healed.

16. In view of the aforesaid corroboration, absence of injury on other parts of the body of the victim does not improbabilise the prosecution case.

17. Conviction and sentence of the appellant are upheld.

18. The appeal is, accordingly, dismissed.

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

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

21. I record my appreciation for the able assistance rendered by Mr. Partha Pratim Das, learned Counsel.

22. 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.)