

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.R. 3965 of 2013**

**Bipad Taran Garai @ Gorain  
-Vs-  
The State of West Bengal**

For the Petitioner : Mr. Rupam Mukhopadhyay

For the State : Mr. Madhusudan Sur  
Mr. M. F. A. Begg.

Heard on : 13.04.2023, 17.04.2023, 14.06.2023, 01.12.2023.

Judgment on : 06.12.2023.

**Ananya Bandyopadhyay, J.:-**

1. The instant revisional application by the petitioner against the impugned judgment and order dated 23<sup>rd</sup> September, 2013 passed by Learned Additional Sessions Judge, 3<sup>rd</sup> Court at Suri, Birbhum in CR.A. No. 2 of 2004 thereby modifying the conviction passed by the Learned Additional Sessions Judge, Suri Birbhum, vide judgment and order dated 09.03.2004, in Session Case No. 43/2002 convicting the petitioner under Sections 376/511 of the Indian Penal Code, and convicting the petitioner under Section 354 of the Indian Penal Code and sentencing him to undergo

rigorous imprisonment for two years and to pay fine of Rs.1000/-, in default to suffer further rigorous imprisonment for two months.

2. The petitioner was placed on trial before the Learned Additional Sessions Judge, Suri, Birbhum to answer charges under Section 376/511 of the Indian Penal Code.

3. The prosecution case inter alia is as follows:

On 22.06.1998 one Krishna Mal of village Matiara, Police Station Sainthia, lodged a complaint at the Sainthia Police Station stating that on the same day, i.e. on 22.06.1998 she went to the field for tending cattle. Due to sudden rainfall, she was on her way to return home with her cattle by the side of a 'kandar' situated adjacent to said field. At that time the petitioner finding her alone forcibly put her down on the said 'kandar' and tore her blouse and petticoat and attempted to commit sexual intercourse with her. As the complainant raised hue and cry the petitioner escaped.

4. Upon receiving the complaint Police authority registered Sainthia Police Station Case No. 54/98 dt. 22.06.1998 under Sections 376/511 of the Indian Penal Code and took up investigation and upon completion of investigation Police submitted Charge-Sheet on 21.09.1998 under Sections 376/511 of the Indian Penal Code against the petitioner.

5. Thereafter the case was committed to the Court of Sessions and Learned Sessions Judge, Birbhum transferred the same to the Court of Learned Assistant Sessions Judge, Suri, Birbhum for trial.

6. Learned Trial Judge framed charge under Sections 376/511 of the Indian Penal Code against the petitioner to which the petitioner pleaded not guilty and trial started.
7. In course of trial prosecution examined 7 witnesses, petitioner did not examine any witness. The, petitioner was examined under Section 313 of the Code of Criminal Procedure and arguments advanced on behalf of prosecution as well as defence.
8. Defence, as it appeared from the trend of cross-examination and replies given during examination under Section 313 of the Code of Criminal Procedure, took the plea of innocence and false implication.
9. After perusing all the materials on record Learned Trial Judge was pleased to convict the accused under Sections 376/511 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 5 years and to pay fine of Rs. 1000/- in default to suffer further rigorous imprisonment for 2 months by his Judgment dated 09.03.2004 and order of sentence dated 10.03.2004 respectively.
10. Being aggrieved by the Judgment of the Learned Trial Judge, petitioner preferred appeal before the Learned Sessions Judge, Birbhum being CR. A. No. 2 of 2004 and the same was transferred to the Learned Additional Sessions Judge, 3<sup>rd</sup> Court, Birbhum for disposal.
11. Learned Additional Sessions Judge, 3<sup>rd</sup> Court, Suri, Birbhum (hereinafter referred as Learned Appellate Court), partly allowed the appeal by setting aside the conviction under Section 376/511 of the Indian Penal Code passed

by the Learned Trial Court, convicting the petitioner under Section 354 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for two years and pay a fine of Rs.1000/- in default to suffer further rigorous imprisonment for two months.

12. Learned Appellate Court was further pleased to direct the petitioner to surrender before the Trial Court within one week there from and the petitioner accordingly surrendered before the Learned Trial Judge on 25.09.2013 and prayed for release on bail for preferring revisional application before this Hon'ble Court and the Learned Trial Judge was pleased to grant bail to the petitioner till 27.11.2013.
13. Heard the submissions of the Learned Advocate for the petitioner as well as the State.
14. The prosecutrix, a 30 year old lady and a resident of village Matiara under P.S Sainthia deposed that the incident took place 4 years ago at 11 am. At that time she went to the field to tend to her cattle. It was raining at that time so she was on her way home. Subsequently, near a 'Kandar', the accused caught hold of her hand and forcibly dragged her into the said 'Kandar'. He tore her blouse and petticoat. The accused attempted to commit sexual intercourse with her forcibly without her consent and against her will. She raised an alarm and the accused left her alone. Thereafter, she returned home. She narrated the incident to P.W-2 being her mother and P.W-5, her elder brother. On that very day, she went to the Sainthia Police Station and lodged a written F.I.R. She was examined by the Investigation Officer in

connection with the case. The written complaint was drafted by P.W-4 He read the complaint and explained it to her. She deposed according to her instruction the complaint was written which she signed thereafter. The written F.I.R. was marked as Exhibition 1.

15. In her cross examination she deposed it was not a fact that Prasanta kidnapped Sandhya (*not listed as witnesses*) and confined her in the house of her eldest brother. She did not know whether the accused brought the police to the house of Prasanta and recovered Sandhyay from his house. She deposed that her brothers did not have any enmity with the accused. She was unable to remember the exact date of the occurrence. The place of occurrence which was the 'Kandar' was situated in the north eastern corner of her village at a distance of 1 ½ miles from their village. She deposed that to the north of the 'Kandar' was the Village of Khayerbani or Chhoto Sija. There was a road leading from Ahamadpur through Matiara to Rongaipur and the said 'Kandar' was situated near that said road. She denied that the said road was full of pedestrians and traffic at every moment. She was unable to remember the month of the occurrence however she deposed that on the very date, she started from home to the field to tend to her cattle at about 10 am. When the accused caught hold of her hand and started dragging her she started to shout. However, she had no injury or scratch on her wrist at that time. She deposed that the accused forced her to lie on the ground. He also sat on her. In an attempt to rescue herself she raised an alarm. The earth of the 'Kandar' at that time was very soft due to the rain. A

scuffle ensued and she stated that she did not sustain any injury or abrasion. She was also unable to recollect the duration of the scuffle. She returned from the field at about 1 pm. There were houses of Susanta Mal, Jiten Mondal, Ganapati Mal, Sarat Mal, (*Not listed as witnesses*) and many others up to the village from the field. At first she disclosed the fact to her mother and her elder brothers. She was unable to remember whether her father went to the house of the accused over the issue on the very date of the occurrence. On the day of the occurrence they called P.W-6 who was a Panchayat Member to the house. She deposed that Prasanta and Sadai (*not listed as witnesses*) were not supporters of the same political organisation and cannot say if the accused was a supporter of the congress party. She was unable to say the actual distance between Sainthia and her village but deposed that on the date of the occurrence she went to the Sainthia Police Station at about 2 p.m. Her elder brother, P.W 4 and her mother accompanied her to the Police Station. She narrated the entire incident to the 'Darogababu' at the Police Station and the same was reduced into writing by him. She signed the same as per the request of the 'Darogababu'. She deposed she did not hand over the torn blouse and petticoat to the 'Darogababu' at the Police Station and the 'Darogababu' never visited her village after the occurrence.

16. PW-1, the victim, gave contradictory statement in her evidence regarding drafting of the written complaint. In her examination-in-chief PW-1 stated that PW-4 Lal Mohammed wrote the complaint as under her instruction but

in cross-examination she stated to have narrated the entire incident to 'darogababu' who reduced it into writing and she put her signature on that, PW-5, brother of the victim also supported the said fact, but surprisingly prosecution remained silent about the role of 'darogababu'.

17. According to PW-1, she was accompanied by PW-2, her mother, PW-4 Lal Mohammad and PW-5, her brother to Police Station for lodging the complaint, but PW-2 never stated in her evidence that she accompanied PW-1 to Police Station.

18. The prosecution case was that the petitioner forcibly dragged P.W. 1 and made her lie down into the 'kandar', but P.W. 2 and P.W. 4 both stated that at the relevant time the 'kandar' was full with water.

19. The evidence of P.W. 4 Lal Mohammad was tainted with embellishment as P.W. 4 claimed that immediately after the incident P.W. 1 rushed toward him and narrated the incident to him in the field, but P.W. 1 did not state it in her evidence. Further, P.W. 4 also stated that he went to the house of P.W. 1 being called but did not reveal who called him, none of other witnesses also stated they called P.W. 4 to their house. How or on whose call P.W. 4 reached the house of P.W. 1 remained unanswered.

20. The evidence of P.W. 6 Sadai Das is inadmissible being hearsay. According to P.W. 6, P.W. 1 reported the incident to him in his house, P.W. 1 never stated that she reported the incident to P.W. 6, she only stated that P.W. 6 was called to their house. P.W. 2 stated that she called P.W. 6 to their house and reported the incident to him in presence of her daughter, P.W. 1, but later, in

cross-examination stated that when P.W. 6 came to their house she was not present there.

21. No step was taken for recording the statement of victim, P.W. 1, under Section 164 of the Code of Criminal Procedure.

22. Admittedly the victim did not sustain any injury on her person although allegedly she was forced to lie down on the ground and a scuffle took place as she tried to get rid of the petitioner.

23. PW-1 and PW-5 categorically stated that 'darogababu' (Investigating Officer) never visited the place of occurrence after the incident which had been further bolstered by the fact that no rough sketch was prepared by the Investigating Officer of the case.

24. The Investigating Officer also failed to seize the torn wearing apparels of the victim in course of investigation.

25. The contradictions and infirmities in the evidence of the prosecution witnesses render the same to untrustworthy, tainted and inadmissible. Prosecution failed to prove its case beyond the shadow of reasonable doubt against the petitioner.

26. In view of the above discussions, the impugned judgment and order dated 23<sup>rd</sup> September, 2013 passed by Learned Additional Sessions Judge, 3<sup>rd</sup> Court at Suri, Birbhum in CR.A. No. 2 of 2004 thereby modifying the conviction passed by the Learned Additional Sessions Judge, Suri Birbhum, vide judgment and order dated 09.03.2004, in Session Case No. 43/2002 convicting the petitioner under Sections 376/511 of the Indian Penal Code,

and convicting the petitioner under Section 354 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for two years and to pay fine of Rs.1000/-, in default to suffer further rigorous imprisonment for two months is set aside.

27. The criminal revisional application being CRR 3965 of 2013 is allowed.
28. Accordingly, CRR 3965 of 2013 stands disposed of. Connected application, if there be any, also stands disposed of.
29. There is no order as to cost.
30. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
31. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

**(Ananya Bandyopadhyay, J.)**