

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**C.R.A.173 of 2016
IA NO: CRAN/2/2020**

**Jahangir Mondal
VS.
The State of West Bengal**

For the Appellant : Mr. Soumyajit Das Mahapatra,
Mr. Soumya Basu Roy Chowdhuri,
Ms. Madhurai Sinha
Advocates

For the State : Mr. Debasish Roy, Ld. P.P.
Mr. Rudradipta Nandy,
Mr. Jaydeep Biswas
Advocates

Hearing on : 21.02.2024

Judgement on : 21.02.2024

DEBANGSU BASAK, J.:-

1. The appeal is directed against a judgement of conviction dated February 10, 2016 and order of sentence dated February 11, 2016

passed in S.T. 38 of 2014, S.C.90 of 2013, SC 241 of 2014 by the learned Additional Sessions Judge, Fast Track Court-II, Hooghly.

2. By the impugned judgement of conviction, the appellant was convicted under Section 376(2)(f) of the Indian Penal Code, 1860. By the impugned order of sentence, the appellant was directed to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-. In default of payment of such fine he was directed to suffer rigorous imprisonment for one year.

3. Learned advocate appearing for the appellant submits that, the learned Trial Judge overlooked the delay in lodgment of the First Information Report. He points out that, the alleged incident was claimed to occur on January 18, 2012 while the First Information Report was lodged on January 25, 2012. Therefore, there was a delay of seven days in lodging the First Information Report. He points out that, the prosecution was unable to explain such delay.

4. Learned advocate appearing for the appellant submits that, no student of the class was examined by the prosecution to corroborate the claim of the victim. He points out that, the injury report does not speak of the victim suffering from any penetrative sexual assault. Moreover, the chronology of events sought to be established at the trial by the prosecution was not completed. In other words the chain of events were not completed by the prosecution for a conviction to occur.

5. Learned Public Prosecutor submits that, the prosecution was able to establish the charge as against the appellant successfully. He refers to the deposition and evidence adduced at the trial in support of such contention.

6. The father of the victim lodged a written complaint with the police on January 25, 2012 complaining of rape of the victim, who was 10 years old at that point of time, by the appellant. On the basis of such complaint, the police registered a First Information Report under Section 376(2)(f) of the Indian Penal Code, 1860. On conclusion of the investigation, police filed charge-sheet against the appellant under Section 376(2)(f) of the Indian Penal Code, 1860. Charge under such section was framed as against the appellant on August 8, 2014.

7. At the trial, prosecution examined 17 witnesses. 15 documents were marked as exhibits on behalf of the prosecution. On completion of the evidence of the prosecution, the appellant was examined under Section 313 of the Criminal Procedure Code where, the appellant claimed himself to be innocent and falsely implicated.

8. P.W.1, is the father of the victim. He stated in his evidence that, the incident occurred on January 18, 2012. He stated that, he was at the hospital for treatment of his mother when he got a phone call around 7:30/8 P.M. from his wife. His wife informed him that the victim was bleeding from her vagina. Victim went to take tuition from the appellant. Victim used to take tuition from the appellant regularly. P.W.1 stated

that he advised his wife to take victim to hospital. His wife took the victim to the Panduah Hospital where the victim was referred to Chinsurah Hospital. At the Chinsurah Hospital, the victim was admitted and was discharged thereafter. He enquired of the victim as to the incident when the victim confided in him that the appellant penetrated her vagina with his penis. The victim narrated the incident to him. He lodged the police complaint and again got the victim admitted in hospital for 10 days. He spoke about the seizure effected by the police including the seizure of the birth certificate of the victim and the Jimmanama executed by him. Documents tendered by the appellant marked as exhibits at the trial. He identified the appellant in Court. He was cross-examined on behalf of the appellant at length. Appellant was unable to extract anything favourable to him by such cross-examination.

9. Victim deposed as P.W.2. She narrated about the incident in details. She implicated the appellant in raping her. She also tendered documents at the trial which were marked as exhibits. She was cross-examined at great length by the defence. Nothing favourable was extracted by such cross-examination.

10. P.W.3 is the mother of the victim. She corroborated the statements made by the victim. The victim in fact confided in her for the first time with regard to the incident. She spoke about her calling the P.W.1, father of the victim, and informing P.W.1 as to the incident. She spoke how she took the victim to one hospital and thereafter was referred to other

hospital. She was also cross-examined at great length by the defence. Defence was unable to extract anything favourable.

11. Grand-father of the victim deposed as P.W.4. He corroborated P.W.3 with regard to the victim returning from the tuition class of the appellant on the fateful day and time. He stated how he saw the victim to be bleeding from her private part. He described how the victim was removed to the hospital where the victim was treated.

12. Paternal aunty of the victim deposed as P.W.5. She spoke about the treatment that the victim was rendered at the hospital. She corroborated P.W.3 and P.W.4 with regard to the victim suffering bleeding from her private part.

13. The husband of the P.W.5 deposed as P.W.6. He corroborated the evidence of P.W.5.

14. The police official who was a seizure list witness deposed as P.W.7. He identified his signature on the seizure list.

15. The Doctor who treated the victim at the Chinsurah Hospital deposed as P.W.8. He stated that, he treated the injury of the victim. He repaired the bleeding injury after administering general anesthesia. He also stated that such type of injury can be suffered by the victim if the victim is physically assaulted. He tendered the treatment sheet as well as the discharge certificate which were marked as exhibits.

16. Another police personnel who was a witness to the seizure deposed as P.W.9. He tendered his signature in the seizure list as exhibit at the trial.

17. P.W.10 is a police Constable who was a witness to the seizure. He tendered his signature in evidence at the trial.

18. The police personnel who took the material exhibits to forensic examination deposed as P.W.11. He narrated how he took those seized articles to the laboratory for examination.

19. Gynecologist who treated the victim at Chinsurah Hospital deposed as P.W.12. He described the treatment of the victim. He stated that, the victim was admitted with the history of sexual assault. He described the injury suffered by the victim and the treatment tendered to the victim. He tendered the medical documents in relation to the treatment of the victim in evidence at the trial.

20. A Psychiatrist who treated the victim at the Chinsurah Hospital deposed as P.W.13. He described the diagnosis conducted on the victim. He tendered the treatment slip in evidence which was marked as exhibit.

21. The owner of the vehicle who took the victim to the Panduah Hospital and the Chinsurah Hospital for treatment deposed as P.W.14.

22. The Medical Officer posted at Panduah Rural Hospital deposed as P.W.15. He stated that, the victim was brought to the hospital with injury on her private part. He gave the victim first aid treatment and referred

her to the Chinsurah Hospital. He tendered the referral card in evidence which was marked as an exhibit.

23. The Doctor who examined the appellant at the Chinsurah Hospital deposed as P.W.16. He stated that, the appellant was capable of sexual intercourse and that there was no injury on his private part and that the appellant was not suffering any sexual disease. He tendered the medical examination report in evidence which was marked exhibits at the trial.

24. Investigating Officer of the police deposed as P.W.17. He described the nature of investigation carried out. He tendered the various documents which were marked as exhibits at the trial. He was cross-examined at great length by the defence without any avail.

25. In his examination under Section 313 of the Criminal Procedure Code the appellant acknowledged that the victim used to come to him for tuition. He claimed that, the complaint was false and that he was innocent. He declined to adduce any evidence in his defence.

26. The victim used to take tuition from the appellant. The victim went to the house of the appellant for the purpose of taking tuition on the fateful date. She came back to her residence with bleeding injuries on her private part. She initially confided as to the incident with her mother, P.W.3.

27. P.W.3 spoke about the same to the father of the victim being P.W.1. P.W.1 was in Kolkata at that material point of time attending to

the treatment of his mother. P.W.1 advised P.W.3 to take the victim to the hospital.

28. With the bleeding injuries, the victim was taken initially to the Panduah Rural Medical Centre where, she was treated by P.W.15. P.W.15 stated that the victim came with bleeding injuries on her private part and that he administered first aid and referred the victim to the Chinsurah Hospital. Medical officers treating the victim at the Chinsurah Hospital in unison stated that the victim suffered penetrative sexual assault. They described how the injury on the victim was treated by them.

29. Victim was taken to Panduah Rural Medical Centre and then to Chinsurah Hospital on January 18, 2012 where all doctors treating her stated that she suffered from penetrative sexual assault. None said that the injury was old when they treated her on January 18, 2012. Therefore that the victim suffered penetrative sexual assault on January 18, 2012 was established at the trial.

30. The incident occurred on January 18, 2012 with the first information report being lodged on January 25, 2012. The victim was being treated from January 18, 2012 initially at Panduah Rural Hospital and thereafter at Chinsurah Hospital. The victim was discharged from the hospital on January 21, 2012. She was admitted for 10 days. The police complaint was lodged, on January 25, 2012. The delay in lodgement of the first information report in the facts and circumstances of the present case is not fatal. It was explained by P.W.1 on the ground

of the time consumed in extending treatment to the victim as she was suffering from serious injuries. Moreover, time was taken to approach to the police.

31. Statement of the victim inspires confidence. She narrated in her evidence, in great detail as to how she was subjected to the penetrative sexual assault by the appellant. Prosecution witnesses deposing on behalf of the prosecution, corroborated each other, at the trial, with regard to the events occurring subsequent to the victim returning to her residence and confiding about the incident with her mother, P.W.3.

32. Medical evidence established that the victim suffered penetrative sexual assault. Victim implicated the appellant in such penetrative sexual assault. Appellant acknowledged that the victim came to him for tuition at the material point of time.

33. P.W.16, the medical officer who examined the appellant deposed that the appellant was capable of sexual intercourse. Such opinion was not dislodged by the defence in cross-examination of P.W.16.

34. At the trial, the birth certificate of the victim was tendered in evidence and marked as an exhibit. Birth certificate will establish that, the victim was a minor at the date of the incident.

35. In such circumstances, we are of the view that the learned trial judge correctly assessed the evidence brought on record and convicted the appellant under Section 376(2)(f) of the Indian Penal Code, 1860.

36. In such circumstances, we uphold the impugned judgment of conviction of the appellant.

37. The appeal is of 2016 and is pending since then. Appellant was awarded a sentence of 10 years rigorous imprisonment along with a fine of Rs.10,000/-. Appellant spent time in prison in excess of 10 years. In fact, the excess period spent comes to round about 70 days.

38. Appellant is yet to pay the fine of Rs.10,000/- imposed by the impugned order of sentence in view of the subsisting order of the High Court while admitting the appeal of staying the realisation of the fine.

39. In the facts and circumstances of the present case, in our view, interest of justice would be subserved by altering quantum of sentence imposed in view of the period of detention suffered and the non-payment of fine due to order of Court. We, therefore, modify the sentence imposing imprisonment for one year in default of payment of fine to the period already undergone in excess of the substantive sentence towards default in payment of fine imposed by the learned trial judge.

40. The appellant is directed to be released if not wanted in connection with any other criminal case.

41. **CRA 173 of 2016** is **disposed of** accordingly.

42. A copy of this judgment and order along with the lower court records be transmitted to the jurisdictional Court forthwith.

43. In view of this judgment and order, all pending applications stand disposed of.

44. Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on compliance of usual formalities.

(Debangsu Basak, J.)

45. I agree.

(Md. Shabbar Rashidi, J.)