

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 131 of 2002

Mahadeb Hazra

-Vs-

The State of West Bengal & Anr.

For the Appellant : Mr. Mujibar Ali Naskar
Mr. Siddharth Sankar Deuty
Mr. Seema Lahiri

For the State : Mr. Avishek Sinha

Heard on : 03.10.2023, 08.01.2024

Judgment on : 22.03.2024

Ananya Bandyopadhyay, J.:-

1. This instant criminal appeal is preferred against the judgment and order dated 22nd March, 2002 passed by the Learned Additional Sessions Judge, 2nd Court, Murshidabad in connection with Sessions Serial No. 53 of 2001 corresponding to ST-1 of October, 2001 convicting the appellant under Section 376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for seven (7) years and to pay a fine of Rs.10,000/- and in default to suffer rigorous imprisonment for six (6) months and further directed that the fine if realized to be paid to the respondent no. 2.

2. The prosecution case precisely stated a complaint to have been lodged by the victim who was admitted in a nursing home near Laldighi on 01.04.97 at about 10 hrs. At 10 O' clock in the night, Dr. K. K. Majumder had given an electric shock on her uterus. At about 12 O' clock in the night, the accused Mahadev Hazra asked her to follow him to a room for application of an ointment and accordingly she went to the room where she was operated and reclined on the bed as instructed. Thereafter the accused committed rape upon her at the pretext of applying ointment. She cried aloud but her mouth was grasped by the accused threatening to kill her by injecting poison. Being intimidated, she was silent. On the next date, i.e. 02.04.97, in the morning the doctor came to her bed and on further enquiry, she was discharged. The victim narrated the facts to her husband on her return from the hospital and, therefore, filed the written complaint in the police station.
3. Based on the aforesaid complaint, Berhampur P.S. Case No. 187/97 dated 10.04.97 under Section 376 of the Indian Penal Code was initiated.
4. On the completion of investigation, charge-sheet was submitted whereupon charges were framed to which the appellant pleaded not guilty and claimed to be tried.
5. The prosecution in order to prove its case cited seven witnesses and exhibited certain documents.
6. The appellant was placed on trial before the Learned Additional Sessions Judge, 2nd Court, Murshidabad in connection with Sessions Serial No. 53 of 2001 corresponding to Sessions Trial No. 1 of October, 2001 to answer a charge under Section 376 of the Indian Penal Code.

7. Learned Advocate for the appellant submitted that there was a variance in the statement of the victim with regard to the written complaint as well as her evidence.
8. It was further submitted that the charge was framed without following the provisions of Section 212 of the Code of Criminal Procedure. It was submitted that the patients apart from the victim of the said nursing home were not examined. The doctors or the other nursing staff of the nursing home were also not examined. The delay of nine days to lodge the complaint was not explained.
9. The Learned Advocate for the appellant relied upon the decisions in ***Dillu Vs. State of Orissa***, reported in 2021 SCC OnLine Ori 689, and in ***Ram Kishan Singh Vs. Harmit Kaur and another***, reported in 1972) 3 SCC 280.
10. The prosecution has failed to prove its case and the appeal shall be allowed.
11. The Learned Advocate for the State submitted that sole testimony of the victim was credible enough to prove the prosecution case. Moreover, the defence could not prove any incident of animosity between the parties so that out of grudge, the appellant would be falsely implicated by the victim since the victim was examined after 15 days of the incident. The injury sustained by her could not be visible.
12. The prosecution was able to prove its case and the appeal shall be dismissed.
13. A circumspection of the evidence of prosecution witnesses revealed as follows:-

- i. PW-1 to depose that the appellant concealed his criminal intention of ravishing her on the pretext of application of ointment and thereafter proposed to commit an illegal act which was protested by the victim and consequently she was threatened and thereafter raped against her will. PW-1 narrated the entire incident to her husband on the next morning which was conveyed by him to the doctor which prompted the doctor to discharge her from the nursing home denying her allegation. She was given a prescription for treatment bearing her signature which was marked as Exhibit 1/1.
- ii. PW-2 the husband of the victim reiterated the version of PW-1 in his examination-in-chief. During his cross-examination, he submitted to have been ousted by the doctor of being informed of the incident of rape committed upon his wife by the accused.
- iii. PW-3 was declared hostile by the prosecution and however during cross-examination stated that the nursing staff of the nursing home were women and there was no occasion for a male staff to look after the female patients.
- iv. PW-4 conducted the investigation and submitted the charge-sheet.
- v. PW-5 was the Senior Medical Officer and Gynaecologist attached to Berhampur Matri Sadar Hospital. PW-5 stated that the victim underwent a minor surgery being operated by him on 01.04.97 and was discharged on 02.04.97 as per the register marked Exhibit-7. During his cross-examination, PW-5 stated that the patient was in

good condition at the time of her release and there was no complaint that she was forcibly discharged from the hospital neither did she lodge any complaint against anybody prior to her discharge from the hospital.

- vi. PW-6 was the Judicial Magistrate, 1st Court, Berhampur, Murshidabad who recorded the statement of the victim under Section 164 of the Code of Criminal Procedure.
- vii. PW-7 was the Medical Officer who examined the victim on 15.04.97 and opined as follows:

“I found the following injuries: (1) Rape cannot be ascertained, (2) She is habituated for sexual intercourse, (3) Marks of violence – Nil and (4) No foreign body in her private parts.”

14. The victim did not complain of being in captivated after the commission of rape by the appellant, neither did she complain of being unconscious or physically incapacitated to ventilate her grievance to the occupiers of the nursing home at the relevant point of time including the nursing staff, the doctors, the patients etc. The statement recorded under Section 164 of the Code of Criminal Procedure revealed that the victim had stated that on the relevant night the female nursing assistants were not present in the nursing home. It is impracticable that the victim was not noticed to be taken to an operation theatre from her hospital bed without the notice of any third party. She was compelled to lie on the operation table at the time of commission of rape and due to weakness of her body, she could not resist. However, such feebleness would not have persisted till the morning to such an extent that

she could not inform or complain of the said incident to anybody in the nursing home. There are inconsistencies in her statement of complaint, statement recorded under Section 164 Cr.P.C. as well as her evidence before the Court. At one instance, it had been stated that she revealed the incident to her husband on her arrival at her residence contrary to the evidence of PW-2 her husband who deposed that on the next morning of the incident at the hospital premise itself PW-1 had narrated the incident of rape being committed by her. The delay to lodge the complaint after a lapse of 9 days was also not explained. The lady to have been operated on the uterus should have suffered major injury if she was ravished forcefully. The victim did not complain of any discomfort or pain suffered by her as a consequence of such an illegal and immaterial act neither did she visit any doctor subsequent thereto. It is improbable that the gynaecology department of any nursing home would be manned by a male staff in exclusion of the female staff. The prosecution failed to establish to the contrary.

15. The sole testimony of a prosecutrix is sufficient to prove the prosecution case provided it enures reliability and trustworthiness.
16. The interlude of the victim's physical status and her presence was not explained by the victim or by the prosecution. What prevented the victim to ventilate her grievance at the relevant point of time after she was released from the clutches of the appellant was not depicted. Whether she was at the operation theater throughout the night or she was found at the hospital bed was also not mentioned. It was weird in peculiar that none of the inmates of the nursing home at the relevant time came either to her rescue or to her

support being an illiterate, vulnerable, sick woman in such a miserable and hapless condition.

17. Under the facts and circumstances of the case in absence of proof of commission of the offences by the appellant beyond reasonable doubt, the prosecution has failed to prove its case and accordingly the appeal is allowed.

18. Accordingly, the instant criminal appeal stands disposed of.

19. There is no order as to costs.

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

21. 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.)