

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

C.R.A. 199 of 2018
with
C.R.A.N. 2 of 2018 (Old CRAN 1753 of 2018)

Suklal Hembram
-Vs-
The State of West Bengal

For the Appellant : Mr. Bibaswan Bhattacharya Adv.

For the State : Mrs. Amita Gaur, Sr. Govt. Adv.

Heard on : 27.11.2024

Judgment on : 27.11.2024

Joymalya Bagchi, J. :-

1. Nobody appears for the appellant.
2. Mr. Bhattacharya, learned Advocate empanelled of High Court Legal Services Committee is directed to appear on behalf of the appellant. Secretary, High Court Legal Services Committee is requested to regularise his appointment.

3. Appeal is directed against judgment and order dated 30.01.2014 and 31.01.2014 passed by learned Additional Sessions Judge, Fast Track Court No.5, Barasat in Sessions Trial No.2(4)13 arising out of the Sessions Case No.4(2)13 convicting the appellant for commission of offence punishable under Section 376(2)(f) of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.20,000/-, in default, to suffer imprisonment for six months.

Prosecution case as against the appellant is as follows:-

4. Appellant is the step father of the victim. Her mother (PW 2) married the appellant and started residing with him along with his two daughters i.e. victim (PW 1) and another. A son was born to the couple. On 13.10.2012 while PW 2 had gone to work, appellant had raped her daughter. Initially the victim suppressed the fact out of fear. Subsequently, she disclosed the incident to her mother and the latter lodged written complaint resulting in registration of Electronic Complex Police Station Case No.96 of 2012 dated 14.10.2012 under Section 376(2)(f) of the Indian Penal Code.

Proceedings before the trial Court:-

5. In course of investigation, statement of the victim and her mother were recorded before Magistrate. Victim was medically examined. Appellant was arrested and charge sheet was filed against the

appellant. Charge was framed under Section 376(2)(f) of the Indian Penal Code. Appellant pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 10 witnesses to prove its case..

6. In conclusion of trial, learned trial Judge 30.01.2014 and 31.01.2014 convicted and sentenced the appellant, as aforesaid.

Arguments at the Bar:-

7. Mr. Bhattacharyya for the appellant submits during cross-examination victim (PW 1) did not support the prosecution case. Her mother had also not supported the case. Hence, he prayed for acquittal.
8. Mrs. Gaur for the State submits appellant is the step father of the victim. He took advantage of his position and subjected the victim to rape on a number of occasions. Initially, victim remained quiet. Finally she disclosed the incident to her mother and other relations. Due to fear and economic distress, victim's mother has not supported the prosecution case. Accordingly, she prayed for dismissal of the appeal.

Evidence on record:-

9. PW 1 is the victim. She deposed appellant is her step father. He subjected her to penetrative sexual assault. She cried out in pain. She disclosed the incident to her mother. She was taken to the

doctor. She also made statement before police and Magistrate. She also stated her mother told her not to disclose the incident in court. Naturally, during cross-examination she resiled from her deposition in chief and stated she had good relation with the appellant.

10. PW 2 is the mother and the complainant. She turned hostile and was cross examined in respect of her previous statement to police.
11. However, the version of the victim (PW 1) in-chief is corroborated by her friend (PW 4) and neighbour (PW 5). PW 4 stated that she is the victim's friend and the victim told her that she had been raped by her step father i.e. the appellant.
12. PW 5 is more explicit. She stated victim told her that appellant had committed rape on her using soap and oil. Neighbouring people had surrounded the appellant and informed the incident to his wife. Thereafter, on the urging of the female members, her mother lodged complaint.
13. Santi Das, ACP (PW 10) is the investigating officer. He stated he had seized wearing apparels from the place of occurrence. He recorded the statement of the victim. He forwarded the victim and her mother for recording statement before Magistrate. He arrested the appellant and submitted charge sheet.
14. Mr. Bhattacharyya contends the vital witness i.e. victim during cross-examination had resiled from her deposition in chief and gave out a different version. Appreciation of evidence of a minor victim of sexual offence must be done with due care and sensivity. During

her examination-in-chief the victim stated her mother had told her not to state the facts in court. This exposes the pressure exerted on the victim to withhold the unpalatable truth and protect her step father.

15. Desperation of the mother to support the appellant is also evident when during cross she stated that in his absence the family is suffering from economic distress. Economic distress and allegiance with her own husband had prompted the lady to dissuade the minor from stating the truth in court. However, neighbours and her friend came to her aid. PW 3 and PW 5 have resoundingly corroborated the victim with regard to the predatory role of her step father.

Conclusion: -

16. In light of the aforesaid discussion, we are inclined to uphold the conviction of the appellant.
17. Coming to the issue of sentence, we note that the appellant has been awarded the maximum sentence of life imprisonment. He was the step father of the minor victim and undoubtedly his heinous act of preying on the minor child who was his step daughter is deplorable. However, the family comes from an extremely poor background and the appellant was the sole earning member. Entire family is suffering from extreme economic distress. While the grave and diabolical act points to deterrent sentencing, socio economic circumstances and the impact of indeterminate sentence leading to

severe economic distress and victimisation of entire family of the appellant is a relevant ameliorative consideration.

18. Balancing the aggravating and mitigating factors, we are inclined to modify the sentence of life imprisonment imposed upon the appellant and direct that he shall suffer rigorous imprisonment for twenty years and pay a fine of Rs.20,000/-, in default to suffer further imprisonment for six months more.
19. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon them in terms of Section 428 of the Code of Criminal Procedure.
20. With the aforesaid modification as to sentence appeal is disposed of.
21. In view of the aforesaid, connected application is also disposed of.
22. Trial court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.
23. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

as/pa