

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 183 of 2009

**Swapan Kumar Bhanja @ Swapan Bhanja
-Vs-
The State of West Bengal**

For the Appellant : Mr. Prabir Kumar Mitra

For the State : Ms. Faria Hossain
Mr. Sandip Chakraborty

Heard on : 26.07.2023, 28.07.2023, 22.02.2024,
02.05.2024

Judgment on : 18.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 25.02.2009 passed by the Learned Additional Sessions Judge, Fast Track, 3rd Court, Paschim Medinipur in connection with Sessions Trial Case No. X/January/2007, arising out of Sabang P.S. Case No. 25/2005 and G.R. Case No. 502/2005, whereby convicting the appellant under Section 354 of the Indian Penal Code and sentencing him thereunder for a rigorous imprisonment for 1 year and to pay a fine of Rs.2000/- in default to suffer further rigorous imprisonment for 6 months.

2. The prosecution case emanated on the basis of a complaint lodged by the victim at the Sabang Police Station, District – Paschim Medinipur on 7.4.2004 which, inter alia, stated that on 6.4.2005 at about 7 p.m. when the victim was returning home from tuition class of her son the appellant coercively grabbing her, dragged her behind the fertilizer go-down of one Sudhangshu Samanta of Bagchara village and physically molested her in order to ravish her. The victim screamed at such an act and the appellant fled from the spot after outraging her modesty.
3. It was further stated that the appellant on earlier occasion indecently proposed the complainant to marry him which was declined by the victim. The complainant narrated the incident to her husband and neighbours. As a result, of this scuffling the victim suffered injury on her left leg.
4. Based on the aforesaid complaint Sabang P.S. Case No. 25 of 2005 dated 7.4.2005 under Sections 376/511 of IPC was registered. On completion of investigation charge-sheet was filed against the appellant under Section 376/511 of the Indian Penal Code.
5. Charges were framed to which appellant pleaded not guilty and claimed to be tried.
6. The prosecution in order to prove its cases cited 8 witnesses and exhibited certain documents.
7. Heard the rival submission of the Learned Advocate for the appellant as well as the State.
8. A circumspection of evidence of the prosecution witnesses revealed as follows:-

- i. PW-1 was the complainant-victim, reiterated her statement in the complaint in her deposition before the Court. It was further submitted that her clamour had drawn her husband to the spot and witnessing the approach of her husband the appellant escaped. The victim went to the house of the appellant to enquire the reason of committing such mischief and was rebuked by the uncle of the appellant who incidentally expelled her from her house. Subsequently, she filed a complaint written by one Swapan Maity at her direction and she put her L.T.I. on it. During cross-examination, the victim could not recollect the name of the private tutor from whose house the victim was returning. She further failed to recollect as to whether she stated to the scribe that during the course of the incident her husband arrived at the place of occurrence having heard her cries. PW-1 did not mention the incident of assault by the appellant to the medical officer who treated her. She stated to have received scratch injuries on her left hands, legs, front and back side of her body. The police officer did not seize her wearing apparels. The version of PW-1 before the Court was contradictory to her narrative in the complaint with regard to the presence of her husband at the spot on her cries.
- ii. PW-2 had been the scribe of the complainant.
- iii. PW-3 the medical officer who examined the victim alleged to have been assaulted by the appellant observed to have sustained scratch mark over left foot probably by nail which was simple in

nature without any other external injury detected on the body of the victim.

- iv. PW-4 deposed to have heard the incident from the tea stall of their village. During his cross-examination, he deposed of a political enmity and mentioned about a 'salish'.
- v. PW-5 the husband of the victim deposed the incident to have taken place behind 'pacca ghar' of Himangshu Samanta of their village. PW-5 further stated the appellant had picked up his wife forcefully and took her behind the fertilizer go-down with an intention to ravish her contrary to the statement of PW-1 in her examination-in-chief. It was further stated that Nabakanta Pal and the father of PW-5 went to the place of incident in contradiction to the statement of PW-1 that her husband appeared at the spot of incident having heard her cries. PW-5 stated to have learnt the incident from PW-1, his wife. During his cross-examination PW-5 stated that he accompanied his wife along with his father, Nabakanta Pal and his sister-in-law to the house of the appellant at 7 p.m. and waited there till 9 p.m. The relatives of the appellant assaulted his wife at a distance of 5 cubits from the place where other members assembled. The version of PW-5 appeared to be exaggerated and incomplete contradiction to that of PW-1.
- vi. PW-6, the father of the victim reiterated the narrative of PW-5 and PW-1.
- vii. The evidence of PW-8 was based on hearsay.

9. The course of the evidence of the prosecution witnesses revealed that the Investigating Officer in the instant case was not examined. There were inconsistencies in the deposition of PW-1 the victim and PW-5 the husband of the victim with regard to the presence of the husband immediately after the occurrence of the alleged incident. PW-3 the doctor did not detect the injuries on several parts on the body of the victim as claimed by her barring a scratch mark on her left foot possibly a nail mark.
10. The prosecution did not cite any witness from the locality or from the adjacent tea stall. The owners or the inhabitants of the go-down were not examined. The incident to have occurred at 7 p.m. on 6.4.2005 allegedly serious in nature involving the outrage of modesty of a woman coupled with an attempt to commit rape upon her was not instantly reported to the police station. The victim termed the incident to be a mischief and went to the house of the appellant to enquire about the same to her dismay was an unacceptable act on her part along with her family members. PW-1 the victim claimed to have shouted at the act of molestation on the part of the appellant which was weirdly heard only by her husband in exclusion to other local people. PW-5 stated that his father and one Nabakanta Pal went to the spot. PW-5 further stated that he later on came to know about the incident from his wife, i.e., PW-1.
11. The false implication of the appellant owing to enmity between the parties cannot be ruled out.
12. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.

13. Accordingly, the instant criminal appeal being CRA 183 of 2009 is disposed of.
14. There is no order as to costs.
15. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
16. 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.)