

**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. 282 of 2019
with
CRAN 2 of 2019 (Old No. CRAN 4819 of 2019)**

***Md. Sofiqul Islam @ Md. Shofiqul Islam
@ Shafiqul @ Safikul Islam
-Vs-
State of West Bengal***

For the Appellant	: Md. Sabir Ahmed Mr. Dhiman Banerjee Mr. Ezaz Ahmed
For the State	: Mr. Debasish Roy, learned PP Ms. Zareen N. Khan Md. Kutubuddin
Heard on	: 25.11.2024
Judgment on	: 25.11.2024

Joymalya Bagchi, J. :-

1. The appellant has assailed the judgment and order dated 01.06.2016 and 02.06.2016 passed by the learned Special Judge, 2nd Court, Suri, Birbhum, in Special Case No. 18 of 2015 corresponding to

Special Trial No. 2(7)15 arising out of Bolpur Police Station Case No. 555 of 2014 dated 05.12.2014 thereby convicting the appellant under Sections 342/323/ 354B/506 of the Indian Penal Code and under Section 4 of POCSO Act and sentencing him to suffer rigorous imprisonment for life subject to the provision of Section 428 of the Code of Criminal Procedure and to pay fine of Rs.10,000/- in default to suffer rigorous imprisonment for six months for the offence as punishable under Section 4 of the POCSO Act, and to suffer rigorous imprisonment for a period of one year for the commission of the offence punishable under Section 342 of the Indian Penal Code, and to suffer rigorous imprisonment for a period of one year for the commission of the offence punishable under Section 323 of the Indian Penal Code, and to suffer rigorous imprisonment for a period of seven years and to pay fine of Rs.1,000/- in default to suffer rigorous imprisonment of six months for the commission of the offence punishable under Section 354B of the Indian Penal Code and to suffer rigorous imprisonment for a period of seven years for the commission of the offence punishable under Section 506 of the Indian Penal Code. All the sentences to run concurrently.

Prosecution case:-

2. The prosecution case as alleged against the appellant is as follows:- Victim (PW 1) is a Bangladeshi who was pursuing her education at Vishwa Bharati University, Santiniketan. Appellant was her local guardian. Five to six months prior to registration of FIR in December,

2014 appellant had taken the victim on his motor cycle to his house at Gurupally, Santiniketan and forcibly raped her. Thereafter he dropped her at her hostel, Chatri Nibas. At that time appellant showed a knife and threatened her if she disclosed the incident, she would be killed. PW-1 felt unwell and lost appetite. On the next morning appellant again contacted her and threatened to kill her. He compelled her to board his motor cycle again and he took her to his residence. Then he disrobed her and recorded her on his mobile phone. He threatened to upload the objectionable videos on social media and on such threat again raped her. Thereafter, on a number of days she was raped by the appellant. On 05.09.2014, she was physically assaulted. Unable to bear torture she informed her friend to rescue her but the appellant drove away her friend stating that he was her local guardian. Finally, she returned to Bangladesh.

3. Even in Bangladesh the appellant threatened her with dire consequences and asked not to disclose the incident to anyone. She was informed by the principal of the school that the appellant made a representation alleging that she was indulging in immoral activities. She was taken to a hotel and blackmailed that her objectionable pictures would be uploaded. Finally, she lodged complaint at Bolpur Police Station resulting in Bolpur Police Station Case No. 555 of 2014 dated 05.12.2014. She was medically treated at Bolpur SD Hospital. Her

statement was recorded before police. Her mobile phone was seized. Her birth certificate was seized by police.

4. Her father was examined as PW 2. He deposed he had come to India on 04.12.2014 when her daughter informed the incident to her. He accompanied her daughter to Bolpur Police Station and lodged FIR.

5. PW 3 is her mother. She corroborated her daughter with regard to forcible rape and threats held out by the appellant.

6. PWs 4 and 5 are co-students. They deposed that the appellant was the victim's local guardian and they had seen the victim in the house of the appellant. PW 3 stated they also saw victim and appellant quarrelled with one another.

7. PW 6 is another student. On 4th or 5th December, 2014 appellant showed him objectionable pictures/videos of the victim on his desktop. He informed the victim and told her to inform her parents. He also deposed that victim had been assaulted by the appellant on 05.09.2014.

8. PWs 7, 8 and 9, deposed that victim had been assaulted by the appellant on 05.09.2014. PW 9 also deposed she told her that she had been raped by the appellant.

9. PW 10 is the Principal of the school and PW 11 is the Senior Assistant, Academic Research Section of Vishwa Bharati University, Santiniketan. They deposed victim was a Bangladeshi national pursuing her education at the University. Appellant is also a Bangladeshi national.

10. PW 13, Somnath Mal, is an employee of Riya Lodge. He deposed a register was seized by police and he proved the entries on pages 32 to 37 and 57 of the register.

11. PW 14, Dr. Soumitra Sinha, is a medical officer who examined the victim.

12. PW 15, Dr. Kanailal Das, medical officer examined the victim.

13. PW 16, Sanghamitra Poddar, Additional Chief Judicial Magistrate, examined the victim.

14. PWs 18 and 19, Ashoke Sinha Mahapatra and Nandita Saha Majumder are the investigating officers.

15. PW 1 was a Bangladeshi student at Vishwa Bharati University, Santiniketan. She deposed five to six months prior to registration of the case in December, 2014 appellant took advantage of his status as her local guardian and forcibly raped her. He threatened her with dire consequences. He had also taken objectionable videos and had blackmailed her. Out of fear and shame victim kept quiet. However, torture on her increased and on 05.09.2014 she was physically assaulted.

Arguments at the Bar:-

16. Mr. Ahmed, learned Counsel for the appellant submits no electronic evidence with regard to the objectionable videos shown to PW 6 was seized from any electronic device of the appellant or otherwise. He further submits prosecution case of blackmailing the appellant by threatening to circulate her nude videos has not been proved.

17. Learned Public Prosecutor submits appellant was her local guardian and had repeatedly raped her. Owing to her vulnerable status she was unable to disclose the incident earlier. Appellant had shown the objectionable videos to PW 6.

Analysis and findings:-

18. We have considered the evidence of victim (PW-1) in the light of the aforesaid submissions. Admittedly at the time of the incident victim was a minor. She was a student of Vishwa Bharati University and appellant was her local guardian. While PW-1 deposed he had forcibly raped her, Mr. Ahmed, would suggest no such incident occurred and even if sexual intercourse is proved the same was not through coercion or blackmail. PW-2 was above 17 years and had almost reached the age of consent. Her version is corroborated by other evidence on record. PW-4 and 5 deposed victim was seen going to the room of the appellant. This corroborates PW-1 that she had been taken to the room of the appellant where it is alleged she was raped. Subsequently on 05.09.2024 victim was assaulted which is corroborated by PWs 7 to 9. PW 6 deposed in December, 2014 appellant had shown her objectionable videos to him. He informed this to the victim and told her to contact her parents. Thereafter victim informed her father and FIR came to be registered. However, no electronic evidence with regard to objectionable videos of the victim has been proved during trial. Prosecution merely relies on PW-6 to prove this fact. In the absence of the primary evidence i.e. electronic records of the nude videos, we do not

consider it prudent to rely on the mere *ipse dixit* of a co-student (PW 6) that the appellant had shown nude videos of the victim.

Conclusion:-

19. Even if one discounts this part of the prosecution case, there is ample evidence on record to show that the appellant had taken advantage of the young and vulnerable age of the victim and had repeated sexual intercourse with her. It is relevant to note, at the time of occurrence, she was a minor and her consent was immaterial.

20. In such view of the matter, I uphold the conviction of the appellant.

21. Coming to the issue of sentence imposed on the appellant we note that prosecution has not been able to prove that the appellant had blackmailed the victim by threatening to circulate her objectionable videos. No such video had been produced in Court. It is possible that appellant had seduced the victim, a 17 year old girl, and cohabited with her.

22. Keeping in mind the aforesaid factors and as appellant himself was in his twenties and a student of the University at the time of occurrence, I am inclined to modify the sentence imposed on him and direct that he shall suffer rigorous imprisonment for twelve years and pay a fine of Rs.10,000/- for the offence punishable under Section 4 of the POCSO Act. Other sentences imposed upon the appellant shall remain unaltered. The sentences shall run concurrently.

Conclusion:-

23. Appeal is accordingly disposed of. In view of disposal of the appeal connected application is also disposed of.

24. Appellant is a Bangladeshi national. After serving the sentence, Correctional Home Authorities shall intimate the appropriate authorities including the Bangladesh High Commissioner to take steps for his repatriation to his own country.

25. Copy of the judgment along with Trial Court Records be sent down to the trial Court at once for necessary compliance.

26. Urgent Photostat Certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)