

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 226 of 2010

**Puspa Shaw
-Vs-
The State of West Bengal**

For the Appellant : Mr. Moloy Bhattacharya
Mr. Pradip Paul
Mr. Subhrajyoti Ghosh
Ms. Madhubonti Das

For the State : Mr. Bidyut Kumar Roy

Heard on : 06.02.2024, 21.03.2024, 26.06.2024

Judgment on : 19.08.2024

Ananya Bandyopadhyay, J.:-

1. The instant appeal is preferred against the judgment and order dated 25.03.2010 passed by the Learned Additional Sessions Judge, Fast Track 4th Court, Paschim Medinipur in Sessions Trial Case No.2/3/09 arising out of Sabang P.S. Case No.18 of 2008 dated 23.03.2008 under Section 376(2)(f) of the Indian Penal Code thereby convicting the appellant for commission of offence punishable under Section 354 of the Indian Penal Code and sentencing the appellant to suffer rigorous imprisonment for 2 years and to

pay a fine of Rs.1000/- in default to suffer rigorous imprisonment for 6 months more.

2. The prosecution case precisely stated on 20.03.2008 at about 11:00 a.m., as the sister of the de-facto complainant (victim girl) aged about 14 years was collecting tamarind beside Desobрати Atheletic Club at his village, appellant allegedly dragged her into club room and sexually assaulted her. In the meantime, the victim girl raised alarm and on hearing the same one Rabindra Nath Bhowmick, PW-4 and his wife Binarani Bhowmick, PW-3 reached the spot and rescued victim girl. Thereafter the villagers intercepted appellant who eventually fled. The brothers of the victim girl on instruction of the local Prodhan lodged the written complaint at the Sabang Police Station on 23.03.2008 against the appellant.
3. On the basis of the aforesaid complaint lodged by PW-1 Sabang Police Station Case No.18 of 2008 dated 23.03.2008 under Section 376(2)(f) of the Indian Penal Code was registered for investigation against the appellant.
4. On the conclusion of the investigation, the Investigating Officer of the case, PW-12 submitted a charge-sheet being charge-sheet no.55 of 2008 dated 31.08.2008 under Section 376 of the Indian Penal Code against the appellant.
5. Charge was framed against the appellant on 01.04.2009 under Section 376 of the Indian Penal Code, to which he pleaded not guilty and claimed to be tried.

6. During the course of trial, the prosecution cited 12 witnesses and exhibited certain documents.
7. Considered the submissions of the Learned Advocate representing the appellant as well as the State.
8. PW-1, de-facto complainant, brother of the victim girl in his cross-examination categorically stated that he did not describe the decipetude of the club room in the written complaint.
9. PW-2, victim girl recounted that she went to collect tamarind, the appellant came to her and took her inside the club room through the side of the broken wall as the front side of the club room was under lock and key, but in her statement made before the Learned Judicial Magistrate under Section 164 of Cr.P.C., she stated that the appellant forcibly took her inside a temple and thus, she shifted the place of occurrence from club room to temple and such deviation in the place of occurrence rendered, the testimony of the victim girl, PW-2, to be untrustworthy inasmuch as the younger sister of the victim girl who accompanied with her was not examined as a prosecution witness.
10. The evidence of PW-3, Binapani Bhowmick, PW-4 Rabindra Nath Bhowmick, PW-5 Radharani Bhowmick and PW-6 Jyotsna Bera categorically reflected their ignorance of the occurrence being declared hostile by the prosecution.
11. PW-7 the mother of the victim girl. PW-8 and PW-1 being the brothers of the victim girl were interested witnesses with conflicting and contradictory testimonies.

12. PW-11, Dr. Prakiti Ranjan Sasmal attached to the Sabang Rural Hospital examined victim girl who stated to have been assaulted sexually on 23.03.2008 by the appellant after tying her hands and mouth, as a result of penetration there was bleeding in her private part at that time, but on examination he did not detect any external genital injury or bleeding of private parts or other injury.
13. In his cross-examination. PW-11 stated that he did not observe any symptom of rape and if any victim would be raped by anybody forcibly against a rough surface and if she raised any sort of resistance for a considerable period then external injury on her person including nail mark would have manifested.
14. Although the victim girl was examined by Dr. Subhen Kumar Pandey, he was not examined by the prosecution as witness.
15. PW-12, the Investigating Officer of the case, Sri Mohanta Deb Mondal, stated in his cross-examination that he did not examine any member of Desh Pratim Club during investigation and even he did not examine any panchayat member nor did he examine the younger sister of the victim during investigation and it was mentioned in the case diary that he seized the wearing apparels of the victim girl after washing the same by herself and her actual age was above 16 years inasmuch as the entire evidence of PW-12, Investigating Officer of the case did not support the prosecution case altogether.

16. PW-1, the elder brother of the victim, lodged the complaint having heard from his mother the incident of his sister being ravished by the appellant. PW-1 narrated the sequel of events to the police officer who visited the spot after 2 to 3 days of the occurrence. PW-1 further submitted that the appellant had confessed his guilt amongst the localites. PW-1 in his complaint did not describe the dilapidated club room with broken wall being under lock and key named 'Desh Pratim Club'.
17. PW-2 the victim deposed to have been in the proximity in their local club to collect tamarind at about 10:00 a.m. in the morning. The appellant tied her mouth and lifted her and took her inside the club room through the side of a broken wall. Thereafter removing her wearing apparels raped her and subsequently the appellant escaped. Her tied-up mouth prevented her to raise an alarm. Contrarily PW-2 stated the witnesses Rabi Bowmik and Mina Bhowmik appeared at the place of occurrence at her clamour and the appellant fled. The aforesaid witnesses accompanied her to their house. She disclosed the incident on her way back home. She informed of the same to her mother at home. Subsequently the brothers of the victim and the localites too were intimated of the incident. On 09th of Chaitra, a meeting was supposed to be held at the residence of the appellant; however, he abandoned the village. PW-2 was medically examined by a doctor. Her wearing apparels were seized by the police under a proper seizure list which she had washed prior to such seizure and her statement was recorded under Section 164 of the Code of Criminal Procedure by the Learned Judicial

Magistrate. During her cross-examination, contradicting her statement in the examination-in-chief, PW-2 stated to have been accompanied by her younger sister while she calculated tamarind.

18. The younger sister of the victim was not examined or even referred to by the other prosecution witnesses.
19. It is weird, uncanny and unbelievable that the appellant tied the mouth of the victim, lifted her into the club room in the presence of the younger sister of the victim who did not object or even inform any other person in the locality immediately.
20. The mother of the victim being PW-7 narrated to have reached the spot and observed her daughter lying undressed contrary to the deposition of the victim PW-2 to have been rescued as aforesaid and reaching home all by herself along with the other two witnesses. In her examination-in-chief the victim stated to have been solitary sitting at the club premises, however, contradicted her own statement during her cross-examination to have been in the company of her younger sister.
21. The evidence of the prosecution witnesses including the victim owing to the inconsistencies, contradictions and deviations rendered the same to be discretised.
22. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.

23. Accordingly, the instant criminal appeal being CRA 226 of 2010 is disposed of.

24. There is no order as to costs.

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

26. 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.)