

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.A. (SB) 75 of 2023

Kartick Mondal

Vs.

The State of West Bengal & Anr.

For the Appellant

:Mr. Navanil De, Adv.

Mr. Rajeshwar Chakraborty, Adv.

Mr. Srinjan Ghosh, Adv.

Mr. Subhrajit Dey, Adv.

Ms. Monami Mukherjee, Adv.

Ms. Shoumilya Majumdar, Adv.

For the State

:Mr. Rana Mukherjee, Ld. PP

Mr. Anand Keshari, Adv.

Hearing on

:16.10.2023, 05.12.2023, 21.12.2023,
24.01.2024, 07.03. 2024

Judgment on

: 19th March, 2024

Bibhas Ranjan De, J.

1. Allegation of this case was put into motion by lodging of a complaint by the mother of the victim X addressed to the Officer-in-Charge of Kalna Police Station, Purba Bardhaman stating inter alia that on 17.08.2018 at about 8 a.m. the father of the victim X, being a priest, on his way to perform puja dropped his daughter/victim X to her school and also, the complainant and her mother-in-law went out in order to prepare 'bhog' for puja. The victim X, being a student of class III, aged about 9 years came back to her house on that relevant day at 12 noon as the school was closed early on account of the death of former Prime Minister. Resultantly, she was all alone in her house at that point of time on that relevant day. One neighbor, namely Kartick Mondal in absence of the guardians of the victim X in order to take advantage of the loneliness of the victim girl entered into their house and with an ulterior motive sexually assaulted the victim X by touching different parts of her body and also tried to forcibly kiss her. Feeling embarrassed, victim X tried to resist the accused and threatened him to disclose the same to her parents if he did not leave their house immediately. Thereafter,

the victim X somehow managed to rescue herself from the clutch of the accused and entered into the bathroom and locked the door of the bathroom from inside and stayed there until she was sure that the accused left their house. Thereafter, when the parents of the victim X returned, she narrated the whole incident to her mother and complainant after having discussion with her husband and mother-in-law decided to report it to the jurisdictional Police Station.

2. On 24.08.2018 the complainant lodged a written complaint with the Officer-in-Charge of kalna Police Station and accordingly, Kalna Police Station Case no. 414/2018 dated 24.08.2018 under Section 448/354B of the Indian Penal Code (for short IPC) read with Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act) was started. After completion of investigation charge sheet was submitted against the accused under Section 448/354B of the IPC read with Section 12 of the POCSO Act.

3. Thereafter cognizance of this case was taken by the Ld. Special Court under POCSO Act, Kalna, Purba Bardhaman against the accused and accordingly charges were framed

under Section 448/354B of IPC read with Section 8 of the POCSO Act.

4. In course of trial prosecution examined as many as 8 witnesses namely one Paresh Manna (neighbour) as PW1, Bikash Mondal (another neighbour) as PW2, Mother of the victim X as PW3, the victim X herself as PW4, father of the victim X as PW5, Arabindo Mondal (neighbour) as PW6, Ms. Dalia Bhattacharya (Ld. Magistrate) as PW7 and Digbijoy Nandy (Sub Inspector/I.O of this case) as PW8.

5. During evidence few documents were admitted in evidence those are as follows:-

Exhibit a series – written complaint along with signature therein.

Exhibit 2 series – seizure list along with signatures therein

Exhibit 3 – Zimmanama

Exhibit 4 – statement recorded under Section 164 Code of Criminal Procedure (for short Cr.P.C.)

Exhibit 5 – formal FIR

Exhibit 6 – rough sketch map with index.

6. Thereafter, accused was examined under Section 313 of Code of Criminal procedure Code where he pleaded his innocence but did not adduce evidence.
7. Ld. Judge after hearing the argument advanced on behalf of the parties, has held that the evidence of victim X was reliable which was further corroborated by other witnesses. Ld. Judge also relied on the presumption within the meaning of Section 29 of the POCSO Act and accordingly statement of victim X was found to be truthful and inspired confidence. Finally Ld. Judge returned his finding that the prosecution has succeeded to discharge the burden but accused failed to discharge his onus within the meaning of Section 29 of the POCSO Act. Accordingly, appellant was found guilty of committing offence under Section 448 of IPC read with Section 8 of the POCSO Act and sentenced him to suffer rigorous imprisonment for 1 (one) year along with a fine of Rs. 1000/- in default to suffer rigorous imprisonment for another 1 (one) month for the offence punishable under Section 448 of IPC and to undergo rigorous for 5(five) years along with a fine of Rs. 1000/- in default to suffer rigorous imprisonment for another 1 (one) month for the offence punishable under Section 8 of the

POCSO Act with a direction to run both the above mentioned sentences concurrently.

8. Only point for consideration before this Court is that whether the judgment and order of conviction is at all sustainable in law or not.

Argument advanced:-

9. Ld. Counsel, Mr. Navanil De, appearing on behalf of the appellant has assailed the evidence on record by submitting inter alia that evidence of PW1 is nothing but hearsay in nature but relying on his evidence, it is submitted that residents of adjoining houses were not examined in this case and those houses were also not shown in the sketch map. Mr. De also harped on the string of contradiction between the evidence of mother of victim X (PW3) and her statement recorded under Section 161 of Cr.P.C. in course of investigation.

10. Mr. De has further drawn my attention to the evidence of victim X (PW4) together with that of the Ld. Magistrate (PW7) and tried to make a dent qua accused/appellant. It is submitted that at the time of giving statement by the victim X

name of the accused/appellant was disclosed as kartick Ghosh instead of kartick Mondal.

11. Before parting with Mr. De has contended that there was delay of 7 (seven) days in lodging complaint before the police and the same is surely fatal to the prosecution case.

12. Ld. APP, Mr. Rana Mukherjee appearing on behalf of the State has submitted that embellishment and contradictions appearing in the evidence cannot be said to be fatal to the prosecution case as allegation of sexual assault was absolutely corroborated by all the witnesses. Mr. Mukherjee has further contended that identity of the accused was never challenged by the side of the defence during trial and moreover accused was duly identified by the victim X during trial.

Analysis:-

13. After hearing Ld. Counsels appearing on behalf of the parties and as well as musing over evidence adduced on behalf of the prosecution it has come to my notice as under:-

14. PW1 in his evidence has stated that he heard about the incident between Kartick Mondal and victim X about 8/9 months back, from his wife. From the cross-examination, I do

not find any substantial contradiction in the evidence except some questions suggesting answer are put to the witness.

15. PW2 in his examination in chief superficially stated that incident took place one year back and he heard that Kartick Mondal entered into the house of PW3. He was declared hostile by the prosecution and in course of cross- examination he denied the statement recorded under Section 161 of Cr.P.C.

16. Mother of the victim X corroborated the contents of the written complaint in her examination in chief. She has stated that victim X narrated the whole incident to her thereafter she also narrated the same to her husband (PW5). She stated about lodging of FIR and seizure of Birth Certificate by the Police.

17. On scrutiny of the cross examination of PW3 I find that on behalf of the defence some questions were put to fetch out the topography of the area including neighbouring houses along with political rivalry. Thereby, the incident narrated by her daughter (PW4) to her remained unshaken throughout cross-examination.

18. Victim X (PW4) has narrated the entire incident alleged to have been committed by the accused Kartick Mondal after

entering into their house availing the opportunity of situation while victim X was alone in the house. In cross-examination he has stated that she narrated entire incident to police as well as Ld. Magistrate.

19. During cross-examination there was an effort on the part of the defence by putting some questions regarding earlier statement given before police and Ld. Magistrate and thereby pointed out the embellishment in the evidence of victim X. on scrutiny of the cross examination of the victim X, I find that alleged sexual assault could not be disputed in spite of several questions put to the victim X. Ld. Magistrate (PW7) also ratified the incident of sexual assault which she recorded under Section 164 of Cr.P.C.

20. Embellishment and contradiction, in my opinion, is bound to appear in the evidence given by a girl of 9 (nine) years after 2 (two) years of the incident. That apart, evidence of sexual assault alleged by the victim X has not been contradicted to its root.

21. Father of the victim X (PW5) has clearly admitted that he heard entire incident from his wife (PW3). He has further

stated that at the time of alleged incident none of the family members were present.

22. Though, in course of cross-examination of PW3 & PW5 a plea of 'political rivalry' was taken on behalf of the defence but no effort was taken to substantiate the same by adducing evidence in order to discharge the liability within the meaning of Section 29 of the POCSO Act.

23. PW6 (neighbour) also supported the incident alleged to have happened qua victim X. In his cross-examination, suggestion was put to show the enmity between the witness and the accused but the same was denied by the witness.

24. Last witness of this case i.e. I.O (PW8) has in his examination in-chief stated that he examined the available witnesses and also recorded the statement of the victim X and seized the birth certificate of the victim X and prepared the seizure list accordingly and also arranged for recording of statement of the victim X under Section 164 of Cr.P.C. Thereafter, the I.O. after consultation with his superior submitted charge sheet. In his cross-examination I.O. highlighted some contradictions between the evidence on oath

and the statements of the witnesses recorded under Section 161 of Cr.P.C.

25. Mr. De on behalf of the appellant has pointed out about 7 days delay in lodging FIR. From the written complaint (exhibit 1), it is found that the delay was explained by stating that FIR was lodged after 7 (seven) days in view of security and dignity of her daughter. The explanation, in my opinion, is sufficient in terms of legislation of POCSO Act to protect the menus of the victim after sexual assault. We should also keep in our mind that a mother is not expected to disclose sexual assault qua her daughter that too against a person who is not involved, leaving aside the actual culprit and also make a false allegation at the cost of chastity of her daughter.

26. In the aforesaid view of the matter, it is proved that appellant/accused has committed sexual assault with victim X aged about 9 (nine) years after entering into the house of PW3. Therefore, Ld. Trial Court rightly relied on the testimony of victim X and held the accused/appellant guilty of committing offence punishable under Section 448 of IPC read with Section 8 of the POCSO Act.

- 27.** Thus, no interference is required in the impugned judgment and accordingly appeal being no. CRA (SB) 75 of 2023 is dismissed.
- 28.** Appellant/convict is directed to surrender before the Trial Court within 4 (four) weeks to serve out the sentence.
- 29.** Trial Court record be transmitted back immediately.
- 30.** Case diary, if there be any, be returned.
- 31.** Pending applications, if there be any, stand disposed of.
- 32.** All parties to this application shall act on the server copy of this order downloaded from the official website of this Court.
- 33.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]