

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 333 of 2019

***Bikash Das
versus
The State of West Bengal***

For the Appellant : Mr. Sourav Chatterjee.
(Legal Aid)

For the State : Mr. Prasun Kumar Datta,
Mr. Subrato Roy.

Heard On : 11.09.2024 & 12.09.2024.

Judgement On : 12.09.2024.

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgement and order of conviction and sentence dated 30.04.2019 and 28.05.2019 passed by learned Additional District and Sessions Judge, Fast Track Court, Kalna in Sessions Trial No. 46 of 2015 arising out of G.R. Case No. 288 of 2011 wherein the learned trial court was pleased to convict the appellant under Sections 376/511 of the Indian Penal Code and

sentenced him to suffer rigorous imprisonment for three years and pay fine of Rs.5000/-, in default, to suffer further simple imprisonment for six months.

The genesis of the present case relates to Purbasthali Police Station Case No. 139 of 2011 dated 09.05.2011 under Sections 376/511 of the Indian Penal Code wherein the complainant “Y” being mother of the victim reported to the Inspector-in-Charge, Purbasthali Police Station to the effect that her daughter “X” aged about 18 years is an inborn deaf and dumb girl. It was alleged that on 08.05.2011 which was Sunday at about 4 p.m. when she went for bath and her daughter was at the house being alone, one Bikash Das entered the house and attempted to rape her daughter forcibly. Her daughter was outraged of her female modesty as extreme physical force was applied to her daughter at the instance of the accused. When she returned home, the accused Bikash Das having heard the sound went in a corner of the room thereby hiding himself. The victim was there in the room and when the complainant entered, she found the accused was standing in a corner of the room and when she raised her voice, at that time, the accused pushed her and fled away. The victim thereafter started weeping and trembling in fear and became senseless. When her husband returned, she informed the entire incident to her husband and thereafter both of them went to the

house of father of Bikash Das viz. Jogesh Das to inform the incident, but they were threatened not to inform the matter to the police station. As such, under such circumstances, the complainant requested the police authorities to take action against the accused.

On the basis of the aforesaid complaint, the criminal case was registered under Sections 376/511 of the Indian Penal Code and the Investigating Officer on conclusion of investigation, submitted charge-sheet under the same Sections being Sections 376/511 of the Indian Penal Code. The case was thereafter committed to the court of sessions and the proceedings were thereafter transferred to the court of the learned Additional District and Sessions Judge, Fast Track Court, Kalna. The learned trial court on or about 17.11.2015 was pleased to frame charge under Section 376 of the Indian Penal Code read with Section 511 of the Indian Penal Code against the accused/appellant. The contents of the charge were read over to the accused to which he pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon eight witnesses which included PW-1, "X" the victim girl; PW-2, "Y" mother of the victim girl; PW-3, Kartick Das, scribe of the FIR; PW-4, Tapan Das, a resident of the locality; PW-5, Motilal Das, a resident of the locality; PW-6, Sanjit Das, a resident of the locality; PW-7, Kanchan Das, a resident

of the locality; PW-8, Dr. Anup Kumar Bhole, doctor who examined the victim.

PW-1, "X", the victim girl as she was deaf and dumb, the court sought the assistance of an interpreter named Stuti Debi. It was apprised to the court by the interpreter that the witness was 100% hearing impaired and at the time of inserting the requirements so far as the introduction of the witness/victim is concerned, it was stated by the mother of the victim that she was aged about 24 years. It was recorded that the victim stated that she was alone in her house when her mother was absent. At that time, the accused entered their house, came to her room, pushed her on a bed, embraced her and pressed her breast and thereafter put off her undergarment. The accused thereafter climbed over her body and removed his trouser. However, the accused did not commit the offence of rape. She thereafter deposed that her mother went for a bath and after returning when she saw the incident, the accused concealed himself. The accused was identified by the witness. In cross-examination, she deposed that her mother understood her gesture and posture and therefore, she was able to explain her mother as to what the accused committed to her. At this stage, it is reflected in the cross-examination that the learned trial court has recorded the witness/victim could not hear the word 'mother' and also could not express as to how

many brothers or sister she had. She also replied that the accused was working in the nearby field as there was a vacant land beside their house.

PW-2, "Y", is the mother of the victim and de facto complainant of the case who deposed that the victim "X" is her daughter who is deaf and dumb and she is acquainted with her gesture and posture as well as the manner in which she communicates. She stated that she lodged the complaint with the police station against the accused whom she identified in court. Additionally, she stated that the incident occurred almost six years ago at about 4 p.m. when she went for a bath and while returning, she heard that her daughter was crying and a sound was heard from the room which was closed, but unlocked. When she opened the room, she saw the accused tried to conceal himself in the corner of the room and on questioning her daughter, she by her gesture communicated that the accused tried to rape her. When she tried to question the accused, the accused pushed her and fled away. As a result of such act, her daughter was traumatized, so when her husband returned at about 5 p.m., she narrated the incident and they went to the house of the accused and narrated the incident to his father. However, Jogesh Das, the father of the accused, threatened them by stating that they are trying to falsely implicate his son. The couple thereafter

narrated the incident to the local people and her husband went to the house of Kartick Das who happens to be a teacher in the locality. The said Kartick Das wrote a complaint which was signed by her. She identified the complaint which was admitted in evidence. She also stated that she handed over the dress which her daughter was wearing at the relevant period of time. The same was identified and admitted in evidence. In cross-examination, on a specific query on behalf of the accused that whether the couple had taken a sum of Rs.50,000/- on an allegation of an affair in between Tapas Das and her daughter which was by way of a village salish, she replied to the same as correct. It was also suggested on behalf of the defence that for the purpose of squeezing money from the parents of the accused, a false narrative has been created as a counterblast as the appellant raised objection for installation of electricity at their house.

PW-3 is Kartick Das who is a resident of the locality to whom the PW-2 and her husband went for writing the complaint. The witness identified the complaint which was written by him and the same was admitted in evidence. In cross-examination, the witness categorically stated that he did not have any personal knowledge in respect of the allegations.

PW-4 is Tapan Das, a resident of the locality who stated that his house is situated at a distance of half k.m. away from the house of the victim. However, he on hearing a hue and cry, rushed to the house of the de facto complainant and heard from the de facto complainant/PW-2 that the accused fled away from her room by tearing the wearing apparels of her daughter. He identified the accused in court. However, in cross-examination, the witness replied that he did not state to the Investigating Officer that he heard from PW-2 that accused Bikash Das tore the wearing apparels of the victim.

PW-5 is Motilal Das who is a resident of the locality who deposed that on hearing a hue and cry, he rushed to the house of PW-2 and found that PW-2/the de facto complainant was shouting to the effect that the accused entered the room of her daughter when she was alone and she found that her daughter was crying. In cross-examination, the witness stated that the victim happens to be her niece.

PW-6 is Sanjit Das who deposed that when he went out from his house to a nearby tea stall, he heard an incident involving the accused and a deaf and dumb girl. In cross-examination, he stated that his residence is half k.m. away from the house of the de facto complainant.

PW-7 is Kanchan Das who denied of any knowledge regarding the incident.

PW-8 is Dr. Anup Kumar Bhole who was attached with Kalna S.D. Hospital as gynaecologist and deposed that the victim was identified to him by a lady constable. He found her to be deaf and dumb and the history was recorded as per the version of her mother. The history as recorded in the medical report is as follows :

“On 8.05.11 at about 4 p.m. after taking a bath when Tumpa’s mother was returning back to her room, she found that her daughter was crying inside of the room. She found one Bikash Das being the neighbour was tearing her dresses (Tumpa’s dress). On seeing her mother Bikash rushed away.”

The doctor did not find any injury in the medical report. He identified the medical report which was marked in evidence. In cross-examination, the doctor replied that he did not ask the mother as to whether she was acquainted with the gesture or communication made by the deaf and dumb girl. However, he volunteered that he noted down the reaction of the mother as reported to him.

Mr. Chatterjee, learned advocate appearing for the appellant submitted that the de facto complainant had a history of squeezing money which would be evident from the cross-examination. To that effect learned advocate drew the attention of the Court to the relevant part of the cross-examination of PW-2 wherein she admitted that she accepted a sum of Rs.50,000/- from a person named Tapas Das

with whom at the relevant point of time, she alleged that her deaf and dumb daughter had a relationship. It was also contended on behalf of the appellant that because of supply of electricity, a dispute arose between the de facto complainant and the accused. As such, having regard to the previous conduct of the de facto complainant, the factum of falsely implicating the present appellant cannot be ruled out. The learned advocate also drew the attention of the Court to the medical evidence and submitted that in the medical report, there is nothing to suggest that there was any attempt committed for ravishing the victim as has been alleged. Attention was drawn to the relevant part of the statement of the mother of the victim which was recorded in the form of history in the medical report wherein it was stated that the accused was tearing the dress of the victim. Lastly, it was submitted on behalf of the appellant that having regard to the vindictive attitude of the mother of the victim, there is every possibility of the appellant being falsely implicated and as there is not even any injury as is reflected in the medical report, the appellant should be acquitted of the charges.

On the other hand, Mr. Datta, learned advocate appearing for the State resisted such submission of the appellant and submitted that in cases of such nature, the offences are committed in seclusion and as such, there is hardly any witness who can narrate the incident in detail,

more so in a case where the victim happens to be a deaf and dumb girl. It was also submitted on behalf of the State that there is corroboration in the statement of the victim and her mother and having regard to the manner in which the victim has narrated the incident, the principles on which the sole testimony of the prosecutrix is to be relied upon for convicting an appellant in cases of sexual assault should be applied in the present case. The learned advocate for the State emphasised that the reasons so assigned by the learned trial court are cogent and acceptable and as such, no interference should be made in the judgement and order of conviction and sentence so passed.

I have considered the evidence of the witnesses and having considered the plea taken by the State that the sole testimony of the prosecutrix can be relied upon in a case of sexual offence, I would express my dissatisfaction particularly with regard to the manner in which the cross-examination has been recorded in this case. The learned trial court while recording the cross-examination, has categorically stated that the witness could not hear the word 'mother' and the witness could not express how many brothers or sister she has. As such, it was incumbent upon the learned trial court to test the capacity of the interpreter who was brought in to interpret the gesture/communication of a deaf and dumb witness who happens to be a victim.

In this case, I find that the victim is a deaf and dumb girl and so far as the mother, PW-2, is concerned, she has exaggerated the version particularly by introducing facts of tearing the wearing apparels which is not reflected from the seizure list and she having accepted the fact that there was a dispute with the accused with regard to installation of electricity and she has already taken a sum of Rs.50,000/- from another person who she claimed had an affair with her daughter.

Having considered the aforesaid facts and the medical evidence which do not reflect that any form of injury was committed on the girl, I am of the view that so far as the version of the victim is concerned, the same can be extended to the fact that the accused tried to outrage the modesty of the victim and not beyond the same. Having regard to the said factum, I am of the view that the order of finding of guilt, conviction and sentence so passed by the learned trial court under Sections 376/511 of the Indian Penal Code be converted to Section 354 of the Indian Penal Code.

The accused, therefore, is convicted under Section 354 of the Indian Penal Code.

Records reflect that the accused/appellant was in custody from 21.06.2011 to 03.09.2011 during the stage of investigation and/or at the pre-trial stage and was again taken into custody on 25.04.2019. The

accused continued in custody till 04.02.2020 when the appellate court was pleased to release the appellant on bail on certain terms and conditions during the pendency of the appeal. I find, therefore, the appellant has already served out a sentence of more than eleven and a half months. Having considered the period of sentence so undergone by the appellant, I am of the view that the offence so committed at the instance of the appellant be reduced to the period of detention already undergone by the accused.

With the aforesaid observations, the appeal being CRA 333 of 2019 is partly allowed.

Pending connected application, if any, is consequently disposed of.

Department is directed to send back the lower court records along with a copy of this judgment immediately to the learned trial court.

All concerned parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)