

**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. 407 of 2018

**Bappa Sinha
-Vs-
State of West Bengal & Anr.**

Judgment on : 01.05.2024

Joymalya Bagchi, J. :-

1. The appeal is directed against judgment and order dated 29.11.2017 passed by learned Additional Sessions Judge, 1st Court, Bongaon, North 24 Parganas acquitting respondent no. 2 from the charge punishable under Section 10 of the POCSO Act.

2. Prosecution case as alleged against respondent no. 2 is to the effect that respondent No. 2 was the private tutor of a seven year old boy, i.e. the victim. After some days the victim was unwilling to go to the tuition class. When questioned by his mother, he stated respondent no. 2 had shown him obscene pictures and pressed his penis. On the next date respondent no. 2 came to the victim's residence and admitted his guilt.

3. Father of the victim (PW 2) lodged FIR. In course of trial, eleven witnesses were examined.

4. Upon analysis of the evidence trial Judge by impugned judgment and order acquitted respondent no. 2.

5. Nobody appears for the appellant.

6. We have gone through the evidence on record. Victim was examined as PW 1. He stated respondent no. 2 behaved in an ugly manner with him. But he could not give the date of the incident. During cross-examination, he stated he used to attend a class comprising of 59 students.

7. PW 2 is the complainant. He stated the victim had disclosed the incident to his mother. On the next date respondent no. 2 has admitted his guilt. He lodged written complaint.

8. PW 6 is mother of the victim. She stated when the victim refused to go to tuition, she questioned him. He told respondent no. 2 had shown him ugly pictures and used to press his private parts. Other relations PWs 3 and 4 embellished the case and stated respondent no. 2 tried to rape the victim.

9. Learned trial Judge observed mobile phone of respondent no. 2 had not been seized. There was no evidence on record that respondent no. 2 showed obscene pictures to the victim. He also disbelieved the exaggerated version of the witnesses with regard to attempt to rape. Even the allegation of pressing the private parts appears to be

improbable as the victim did not attend tuition alone. He was one amongst 59 students. No student was examined. Victim was also unable to give the date on which respondent no. 2 had sexually assaulted him. Evidence has come on record respondent no. 2 was assaulted and made extra-judicial confession. A confession procured through assault is not a voluntary one.

10. For these reasons, I do not find any merit in the appeal.

11. The appeal is, accordingly, dismissed.

12. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

13. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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