

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 337 of 2014

**Manoj Mondal
-Vs-
The State of West Bengal**

For the Appellant	: Mr. Subir Banerjee Mr. Sandip Bandyopadhyay Mr. Argha Bhattacharjee
For the State	: Mr. Narayan Prasad Agarwala Mr. Pratick Bose
Heard on	: 04.12.2023, 12.12.2023
Judgment on	: 08.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 10.04.2014 and dated 21.04.2014 passed by the Learned Additional District & Sessions Judge, 1st Court, Malda in Sessions Trial No. 29/2013 (Sessions Case No. 37/2013) thereby convicting the appellant under Section 417/376 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for one year under Section 417 of the Indian Penal code and to pay a fine of Rs. 2000/- in default to suffer further rigorous imprisonment for 2 months and sentenced him to suffer rigorous imprisonment for 7 years under Section 376 of the Indian Penal Code and to pay a fine of Rs. 5000/- in default to

suffer further rigorous imprisonment for 5 months and both the sentences will run concurrently.

2. The prosecution in order to prove its case examined 13 witnesses and exhibited certain documents.

3. Learned Advocate for the appellant submitted that –

- i. The Learned Judge erred in law and in fact convicting the appellant under Sections 417/376 of the Indian Penal Code without considering that the victim herself stated before the Learned Judicial Magistrate in her statement recorded under Section 164 of the Code of Criminal Procedure that she had love relation with the appellant for a period of last 2 years and she used to cohabit with the appellant at least 4 times in a month.
- ii. The Learned Judge ought to have considered that in view of the specific statement of the victim girl before the Learned Judicial Magistrate in her statement recorded under Section 164 of the Code of Criminal Procedure about the love relation and regular cohabitation with the appellant no offence under Section 376 of the Indian Penal Code was made out for which the appellant be convicted and in view of the said specific statement the Learned Judge should have acquitted the accused/appellant of the charge.
- iii. The Learned Judge ought to have considered that the victim girl at the time of her examination by Doctor i.e. Dr. Anita Das (PW-10) stated before the said Doctor that she loved Manoj Mondal for last 2 years and there was physical relation between them.

- iv. The Learned Judge should have considered the statement of the victim girl before the Learned Judicial Magistrate (PW-7, Smt. Keya Sarkar) and the statement made before the Doctor (PW-10) who examined the victim girl. In view of the statements made before the said Doctor and the Judicial Magistrate no case under Section 376 of the Indian Penal Code was made out against the accused for which the Learned Judge ought to have acquitted the accused/appellant of the charges.
- v. The Learned Judge failed to take into her consideration that the victim girl was aged about 20/21 years at the time of the purported offence and the age of the victim girl evident from the First Information Report, the age given by the victim girl at the time of her examination by the Doctor and at the time of recording of her statement by the Learned Judicial Magistrate under Section 164 of the Code of Criminal Procedure.
- vi. The Learned Judge ought to have taken into her consideration the medical report of the victim girl and the evidence of PW-10, Doctor Anita Das who examined the victim girl after the alleged occurrence of offence. The said Doctor deposed before the Court that the said Doctor did not find any injury in the private parts of the victim girl. According to Doctor's opinion the patient was habituated in intercourse. From the said report it was also found that no foreign body was found in the vagina.
- vii. The Learned Judge after going through the medical report and the deposition of PW-10 i.e. Doctor Anita Das and the deposition of PW-7

i.e. the learned Judicial Magistrate Smt. Keya Sarkar should have held that the prosecution failed to prove that the victim was raped by the accused inasmuch as it was provided that the victim girl was a consenting party and was major at the time of the purported occurrence.

- viii. The Learned Judge failed to take into her consideration about the Exhibit-7 from which it is proved that no semen (spermatozoa) could be detected in the contents of the items send for examination i.e. vaginal swab of the victim girl.
- ix. The Learned Judge erred in law and in fact in convicting the appellant under section 417 of the Indian Penal Code without considering that the victim girl herself admitted that she had love affair with the accused for a period of about 2 years and she used to cohabit with the accused at least 4 times in a month before alleged occurrence of offence.
- x. The Learned Judge failed to take into her consideration that from the evidence it is evident that the victim girl of her own went to the Mango garden and there was not force exerted by the accused / appellant upon her.
- xi. The Learned Judge ought to have considered that no ingredients of offence for convicting the accused under Section 417 and/or 376 of the Indian Penal Code was proved.
- xii. The Learned Judge erred in law and in fact is not relying upon the opinion of the Medical Officer (PW-10) and committed a gross error in relying upon the version of the victim girl and her relative.

- xiii. Assuming that the prosecutrix was raped by the accused, but not admitted the same. It was evident from the facts and circumstances of the case and also from the evidence on record that the prosecutrix was a consenting party to the said alleged incident.
 - xiv. The Learned Judge should have held that the deposition of the victim girl does not inspire any confidence if other materials are taken into consideration that the victim girl was raped by accused.
 - xv. The Learned Judge erred in law and in fact was not taking into consideration the defence case.
 - xvi. On a total assessment of the evidence on record the Learned Judge ought to have held that the prosecution had not been able to bring home the charge beyond all reasonable doubt.
 - xvii. The Learned Judge over-looked the contradiction amongst the prosecution witnesses which goes to the very root of the prosecution case and makes the same untrustworthy.
 - xviii. The evidence of the prosecution witnesses in Court differed substantially from the statement made before police during the investigation and only on minor details but also on important aspects and the same had made the entire prosecution case untrustworthy.
4. The Learned Advocate for the State submits that the evidence of rape was committed by the appellant on the promise to marry the victim which was proved through corroborative evidence and accordingly the appeal shall be dismissed.
5. The prosecution case precisely stated that:-

On 02.03.2012 the PW-1 (the victim lady), aged about 21 years, daughter of Mangni Mondal, lodged an FIR that on 01.03.2012 at about 6:30 p.m. to 7:00 p.m. the appellant Manoj Mondal aged about 26 years, son of Late Haran Mondal of Village- Sagardighi, Police Station- English Bazar, District- Malda, residing in the next door, promising to marry, took her to the garden and committed rape upon her against her will and fled away. Thereafter, narrating the incident to her mother (PW-4), the PW-1 along with PW-4 went to the house of the appellant when the appellant refused the incident and also refused to marry the PW-1. Some local people also went to the house of the appellant but the appellant refused to marry the PW-1. On the basis of the said FIR, the English Bazar Police Station Case No. 167/12, dated 02.03.2012 under Sections 376/417 of Indian Penal Code, dated 02.03.2012 was started against the appellant. After investigation charge-sheet was submitted against accused under Sections 417 / 376 of the Indian Penal Code and after the case was committed charges were framed under Sections 417 and 376 of the Indian Penal Code against the appellant on 05.04.2013 to which the appellant pleaded not guilty and claimed to be tried.

6. The assessment of the evidence on record reveals the following circumstances:-

i. Age of the victim lady :-

a. The PW-1, the victim lady, herself in the written complaint, disclosed her age as 21. FIR was lodged on 02.03.2012.

- b. The victim stated her age as 20 years while she was examined by the Judicial Magistrate (PW-7) under Section 164 of the Code of Criminal Procedure. The statement was recorded on 03.03.2012 (Exhibit-2).
- c. The victim during her examination before the Learned Trial Court, gave her age as 19 years as on 21.05.2003.
- d. The victim during her cross-examination as PW-1 admitted that she had love affairs with the accused Manoj for last two years before the incident.

During the said cross-examination, PW-1 also deposed that perhaps she has stated to doctor that she had love affairs with Manoj and they had physical relation.

- e. The Learned Judicial Magistrate of 2nd Court, Malda recorded the 164 statement under the Code of Criminal Procedure of the victim lady on 03.03.2012. In the said statement under Section 164 the victim lady stated before the said Learned Magistrate that she was in love with the accused Manoj Mondal for last 2 years and were involved in physical relationship for 4 times in a month. The said statement under Section 164 of the Criminal Procedure Code had been exhibited during the trial as Ext.-2, while the said Learned Judicial Magistrate was examined as PW-7.
- f. The victim lady was medically examined by the Dr. Anita Das on 02.03.2012. While the victim lady on examination stated

before the said doctor that she loved Manoj Mondal for last 2 years and was physically involved with him.

- g. PW-12 was the I.O. of the case who deposed before the Court the fact that the victim stated to him that victim and Manoj consummated as husband and wife. The said PW-12 also stated the fact that PW-2 Panchu Roy stated to him that he heard that the appellant had love affairs for 2 years with the victim.
- h. The victim lady in her written complaint stated that after the incident the accused refused to marry her. During her examination as PW-1 the victim also deposed that after the incident the accused refused to marry her.
- i. But PW-2 Sri Panchu Roy, the neighbor of the victim and the accused, during his examination deposed before the court that while they were in front of the house of the accused on 01.03.2012 at about 7:00 to 7:30 p.m. Manoj Mondal's uncle refused the marriage of Manoj with the victim while the PW-2 asked the said uncle to arrange for the marriage.
- j. PW-3 the father of the victim girl in his deposition before the court stated that they told Manoj's uncle to make arrangement for their marriage but the said uncle drove them out.
- k. The mother of the victim lady was examined as PW-4 the said PW-4 in her examination in chief deposed before the Court

that they made a proposal for marriage of their daughter with Manoj but Manoj's uncle refused that proposal.

1. During her cross examination before the Court said PW-4 (Mother of the victim) denied the suggestion that it was not a fact that she made a proposal of marriage of her daughter with Manoj and as Manoj was unemployed the said proposal was not accepted.

- m. The PW-1 the victim in her statement recorded under Section 164 of the Cr.P.C. by the Learned Judicial Magistrate, stated that Manoj told her that he would not get any employment now and after getting the employment, he would marry the victim. She further stated before the Learned Magistrate that Manoj told her that he would marry her after 2 months.

- n. So it was evident that the accused appellant never refused to marry the victim girl.

7. A lady having been ravished and tormented both physically and mentally suffers inexplicable trauma which seems to destroy her entire being with deep-rooted impact affecting her existence and acceptance in the society and such a stigma intended to be cast upon the lady cannot be generally considered to be invited by the lady to demean herself taking advantage of any unwarranted situation. Therefore, the evidence of a lady subjected to rape is considered to be that of a sterling witness who will generally preclude from falsely implicating a person at the stake of defaming herself.

8. In the instant case, the victim lady was admittedly in relationship with the appellant and in her statement recorded under Section 164 Cr.P.C. as well as in her deposition before the Court she narrated the manner in which she was ravished by the appellant on the promise of marrying her on several occasions. Ultimately on refusal to marry her, the victim lady has lodged the complaint. The victim lady along with her parents PW-3 and PW-4 stated that the appellant destroyed the life of the victim after exploiting her physically over a considerable period of time and were insulted and driven out by the family members of the appellant from their house on the proposal of an arranged marriage.
9. The evidence of PW-2, PW-5 and PW-6 was based on hearsay. PW-8 had examined the appellant in terms of his potency. The vaginal swab of the victim was handed over to PW-8 on the production of the victim before the doctor at Malda District Hospital for medical examination.
10. PW-10 the doctor opined the victim to have been habitual in intercourse.
11. PW-12 the Sub Inspector during investigation arrested the appellant, got the statement of the victim girl recorded under Section 164 Cr.P.C., seized the Alamats for expert opinion and filed a supplementary charge-sheet after collection of F.S.L. The F.S.L. report marked as Exhibit-7 stated that "*blood was detected on the contents of the items marked A (vaginal swab of victim girl Bandana Mondal), B (Panty) and B1 (Churidar).*"
12. A contradictory evidence of the victim at variance in examination-in-chief and cross-examination, the facts and circumstances of the case and the F.S.L. report establish a consensual relationship between the victim lady and

the appellant wherefrom the appellant cannot be convicted for the charges framed against him.

13. Prosecution has therefore failed to establish the guilt under Sections 417/376 Indian Penal Code since the elements to constitute an offence of cheating under Section 417 of the Indian Penal Code as well as the offence under Section 376 of the Indian Penal Code could not be proved by the prosecution beyond reasonable doubt.

14. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the instant criminal appeal is allowed.

15. Accordingly, the criminal appeal being CRA 337 of 2014 stands disposed of.

16. There is no order as to costs.

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

18. 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.)