

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

C.R.A.637 of 2015

IA NO: CRAN/2/2016 (Old No:CRAN/3074/2016)

Sohan Singh

VS.

The State of West Bengal

For the Appellant : Mr. Soumyajit Das Mahapatra,
Ms. Jeenia Rudra
Advocates

For the State : Mr. Debasish Roy, Ld. P.P.
Mr. Rudradipta Nandi, Ld. A.P.P.
Mr. Saryati Datta
Advocates

Hearing on : 29.02.2024

Judgement on : 29.02.2024

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgement of conviction dated August 26, 2015 and order of sentence dated August 27, 2015 passed by the learned Additional District &

Sessions Judge, 2nd Court –cum- Special Court, Darjeeling in Sessions Trial No.1/14 arising out of Sessions Case No.82/2013.

2. By the impugned judgement of conviction, the learned trial Judge found the appellant before us guilty under Section 376(2)(i) of the Indian Penal Code, 1860 and Section 4 of the Protection of Children from Sexual Offences Act, 2012. By the impugned order of sentence, the learned trial Judge sentenced the appellant to rigorous imprisonment for 10 years and also sentenced the appellant to pay of fine of Rs.10,000/- and in default to undergo rigorous imprisonment for six months.

3. The case of the prosecution as against the appellant before the trial Court was that, the appellant on August 15, 2013 at about 4:30 P.M. called the victim to his house to watch television and raped her thereby committed an offence under Section 376(2)(i) of the Indian Penal Code, 1860. According to the prosecution, the appellant was guilty of penetrative sexual assault within the meaning of Section 4 of the POCSO Act, 2012.

4. Police registered a First Information Report on the basis of the written complaint dated August 16, 2013 lodged by the mother of the victim. Formal First Information Report was registered on August 16, 2013 on the basis of such written complaint.

5. On completion of the investigation, police filed charge-sheet against the appellant. Jurisdictional Court, framed charges under Section 376(2)(i) of the Indian Penal Code, 1860 and Section 4 of the POCSO Act, 2012 as against the appellant on January 31, 2014.

6. To bring home the charges as against the appellant, prosecution examined eight (8) witnesses and relied upon various documentary exhibits. Appellant in defence examined two witnesses.

7. Prosecution witness no.1 is the scribe of the written complaint. He narrated how the mother of the victim came to him whereupon, at her instruction he drafted the written complaint. He tendered the written complaint in evidence which was marked as Exhibit-1. He stated that, the written complaint was in his handwriting. He also tendered his

signature on the written complaint which was marked as Exhibit-1/2. He stated that he read over the contents of the written complaint and explained the same to the mother of the victim.

8. The mother of the victim deposed as P.W.2. She stated that on August 15, 2013 at about 4 o'clock in the evening, the victim was called by the appellant to his house for watching television. The appellant was her landlord. She narrated that, the victim came running to her and that she saw blood coming out from the private parts of the victim. She stated that, at the relevant point of time her husband was not in the house. She asked the victim the reason for the injury and cried for help. Appellant and his wife and other people came and prevented her from coming out of the house. They requested her to compromise and sort out the matter and that it should not be spread out as it could malign the reputation of the family. After few hours, she escaped from the house and sought help from her neighbour. There again she was approached for compromise. She stated that, she was alone and helpless as her husband was not there and she could not do anything and

stayed in the house. On the next date, after her husband arrived, she narrated the incident to him. They went to lodge the complaint. She explained the delay of lodging the complaint in the manner as noted above. She acknowledged that she lodged the written complaint. She identified her signature on the written complaint which was marked as Exhibit-1/2. She stated that, the victim was thereafter medically examined. She stated that, the age of the victim was six (06) years old. She identified her signature on the medical report and the consent given which were respectively marked as Exhibits- 2 and 3.

9. The defence cross-examined the mother of the victim at great length. Nothing favourable to the defence was extracted from such cross-examination. Significantly, she was not cross-examined on the aspect of the appellant and his family members making request on compromise.

10. P.W.3 is the maternal aunt of the victim. She is a seizure witness. She identified her signatures on the seizure lists. Her signature was marked as Exhibits.4 and 5.

11. The victim was examined as P.W.4. She stated that she went to the house of the landlord on August 15, 2013 when, the appellant opened his pant and committed penetrative sexual assault on her. She narrated how the appellant told her not disclose the incident and that he would be giving her sweets. She stated that, she cried and called her mother and went to her mother. Her father was not at home. She identified her statement recorded before the learned Magistrate which was marked as Exhibit- 6 collectively. She was cross-examined at great length by the defence without any material favourable to the defence being extracted.

12. Father of the victim deposed as P.W.5, he identified his signature with regard to the seizure of the undergarment and birth certificate of the victim.

13. Doctor who was posted at North Bengal Medical College and Hospital and who treated the victim deposed as P.W.6. Such doctor tabulated 9 (nine) significant aspects of the body of the victim and her wearing apparels. Doctor opined that there was an attempt of penetration occurring.

14. P.W.6 was cross-examined on his opinion as to the penetrative sexual assault. In cross-examination, Doctor also opined that, the injury found on the body of the victim may be caused by any type of penetration. Penetration may be either by fingering or inserting any hard substance into the private part.

15. The Sub Inspector of Police who received the written complaint deposed as P.W.7. He stated that, he received the written complaint and prepared the formal First Information Report which was tendered in evidence and marked as Exhibit-8.

16. The Sub Inspector of Police who conducted the investigation deposed as P.W.8. He narrated the course of investigations. He tendered various documents which were marked as exhibits. P.W.8 tendered the bed head tickets of the victim in respect of her treatment at the Siliguri District Hospital which was marked as Exhibit-11. He was also cross-examined at great length by the defence.

17. On completion of the evidence of the prosecution, the appellant was cross-examined under Section 313 of the

Criminal Procedure Code. He claimed that, the evidence as against him was false and that, the mother of the victim sells liquor. The other tenants objected to such sale. Appellant told her not to sell liquor. That is why, the mother of the victim filed the false case. He wanted to adduce evidence in support of his defence.

18. Two witnesses were introduced by the appellant as defence witness being D.W.1 and D.W.2.

19. D.W.1 is a tenant under the appellant. He stated that, on the date of the incident he was in his room and that the mother of the victim came to his residence and told his wife to come out whereupon, his wife came out when his wife was told by the mother of the victim that the appellant committed rape upon the victim. He stated that, the victim was taking tea and biscuit and everything was normal at that time.

20. D.W.1 was cross-examined on behalf of the prosecution. In cross-examination, he stated that, prior to the incident, he did not possess any knowledge nor did he witness any dispute between the appellant and the mother of the victim.

21. D.W.2 is the Doctor who was posted at Siliguri Hospital as a Gyanocologist at the material point of time. He stated that, he examined the victim on August 16, 2013 and that, the victim stated before him that, she was sexually advanced in the room of the appellant. He stated that on examination, he did not *prima facie* find any fresh injury to the private part of the victim or trauma. He, however, noticed some secretion which required further examination at a Higher Centre. He stated that, the secretion can be caused due to various reasons. In cross-examination, he stated that, the victim was sexually assaulted by fingering or similar part of the body. The secretion may be caused by handling. His report was tendered and marked as Exhibit-A.

22. The police complaint is dated August 16, 2013 in respect of an incident of penetrative sexual assault occurring on August 15, 2013.

23. Delay of one day in lodgment of the First Information Report was explained by the mother of the victim as P.W. 2 on the ground that, she was kept confined by the appellant and his family members on August 15, 2013 with a plea for

compromise and settlement. After few hours being stuck in her residence, she went out and asked for assistance from a neighbour who also insisted on compromise. Husband of such neighbour, namely, D.W.1 stated that, the mother of the victim came and met his wife and complained about the rape. D.W.1 therefore, corroborated P.W.2 when she stated that she sought help from neighbours on August 15, 2013 itself. Husband of P.W.2 was not at house at that time. She waited till her husband returned and upon her husband returning, the written complaint was lodged with the police whereupon the formal First Information Report was registered on August 16, 2013.

24. In the facts of the present case, therefore, the delay of one day in lodgment of the First Information Report was adequately explained by P.W. 2. She waited for her husband to arrive after the incident to lodge the written compliant.

25. Two doctors came as witnesses at the trial – one on behalf of the prosecution and the other on behalf of the defence. The victim was first medically examined by D.W. 2. D.W 2 was a Medical Officer posted as a Gynecologist at

Siliguri Hospital at that point of time. Victim was taken to him on August 16, 2013 itself. On examination, he found secretion from the private part of the victim. He prepared a bed head ticket in respect of the treatment of the victim. Such bed head ticket was tendered in evidence and marked as Exhibit-11 by the Investigating Officer, being P.W. 8. A portion of the bed head ticket was tendered in evidence on behalf of the defence and marked as Exhibit-‘A’.

26. In cross-examination, D.W. 2 opined that, if a six year old child was sexually assaulted by fingering or similar part of the body or handling the secretion as noted on the body of the victim could be seen.

27. Exhibit-A is a portion on the bed head ticket which was marked as Exhibit-11 collectively. Exhibit-‘A’ notes that there was no fresh injury on the body of the victim and that there was secretion which required examination by a higher medical facilities. D.W. 2, who is the author of Exhibit-A, noted in Exhibit-A that he referred the victim to the North Bengal Medical College and Hospital. Victim was taken to North Bengal Medical College and Hospital for treatment. P.W. 6 is

the doctor who treated the victim at such medical facilities. P.W. 6 in deposition spoke about the history of sexual assault and nine aspects of findings with regard to the victim at the time of such medical examination. P.W. 6 opined in examination-in-chief that, there was an attempt of penetration on the victim. In cross-examination, P.W. 6 stated that the injury found on the body of the victim may be caused by any type of penetration and that penetration was either by fingering or by any hard substance into the vagina etc.

28. P.W. 2 in her evidence stated that, the victim was called by the appellant to watch television on August 15, 2013 at the relevant point of time. She also stated that after sometime, the victim came to her crying when she confided as to her about the incident. P.W. 4 who is the victim stated that, she went to the house of the appellant whereupon the penetrative sexual assault took place. She described the entire incident in her testimony. Involvement of the appellant and his perpetrating the crime as deposed by P.W. 2 and P.W. 4 was not dislodged in cross-examination.

29. Penetrative sexual assault on the victim stood established by the testimonies of the two doctors treating her, being P.W. 6 and D.W. 2. Moreover, Exhibit-2, Exhibit-11 and Exhibit-A all speak in unison with regard to penetrative sexual assault on the victim. Significantly, contemporaneously both P.W. 6 and D.W. 2 recorded version of the victim that the appellant inflicted the penetrative sexual assault on her. Testimonies of P.W.2 and P.W.4 implicate the appellant in such crime.

30. In defence, pre-existing disputes as to the mother of the victim being involved in the sale of liquor and the appellant as the landlord protesting about the same, leading to the false complaint being lodged, was sought to be introduced. However, D.W. 1 who is also a tenant under the same landlord in the same locality stated in cross-examination that he was not aware and nor did he witness any dispute between the mother of the victim and the appellant at any point of time prior to the incident. Defence contention of false implication was not established at trial.

31. P.W. 2 who is the mother of the victim stated that, she was kept confined in her house at the behest of the appellant and his family members as also by another neighbour to whom, she went for help and she was asked to compromise on the incident. In cross-examination, no question was put to P.W. 2 with regard to such efforts being made to coerce the mother of the victim into a compromise. Father of the victim was not present at the time when the incident occurred.

32. Defence did not introduce any document at the trial to establish that there was any previous complaint or dispute with regard to the sale of liquor by the mother of the victim.

33. In such circumstances, the learned judge correctly disbelieved the alibi sought to be proffered by the appellant. Learned Judge, therefore, correctly returned the finding of guilt under Section 376(2)(i) of the Indian Penal Code, 1860 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 as against the appellant.

34. Learned trial Judge exercised discretion in awarding the minimum punishment prescribed for the offences proved. We

find no reason to interfere with the quantum of punishment imposed.

35. In such circumstances, we affirm the judgment of conviction and the order of sentence.

36. The period of detention undergone by the appellant be adjusted towards the total quantum of punishment imposed. The sentences should run concurrently.

37. **CRA 637 of 2015** along with all pending applications are accordingly, **disposed of**.

38. Trial Court Records along with a copy of this judgment and order be remitted to the trial Court forthwith.

39. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

40. I agree

(Md. Shabbar Rashidi, J.)