

**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. (DB) 63 of 2023

with

CRAN 3 of 2024

with

CRAN 4 of 2024

Ratan Halder

-Vs-

State of West Bengal & Anr.

For the Appellant

: Mr. Giasul Islam

For the State

**: Mr. Debasish Roy, learned PP
Mr. Saryati Datta
Ms. Chandreyi Dutta**

Heard on

: 07.03.2025

Judgment on

: 07.03.2025

Joymalya Bagchi, J. :-

1. The appellant has assailed the judgment and order dated 12.05.2022 and 13.05.2022 passed by the learned Special Court under POCSO Act, Basirhat, North 24-Parganas, convicting the accused

appellant in Special Case under POCSO Act, No. 31 of 2017 arising out of Baduria Police Station Case No. 264 of 2017 dated 23.04.2017 under Sections 376(2)(n)/506 of the Indian Penal Code and Section 6 of Prevention of Children from Sexual Offences Act and sentenced him to suffer rigorous imprisonment for ten years for committing offence under Section 376(2)(n) of the Indian Penal Code and to pay a fine of Rs.30,000/- only in default to suffer imprisonment of three months for committing offence under Section 6 of the POCSO Act. The appellant is further sentenced to suffer rigorous imprisonment for one year for committing offence under Section 506 of the Indian Penal Code. Both the sentences to run concurrently.

Prosecution case:-

2. Prosecution case as alleged against the appellant is to the effect that at 8.00-8.30p.m. when the victim was returning from tuition appellant dragged her to the first floor of his shop and raped her. Out of fear victim kept mum. One week later appellant again raped the victim. Thereafter appellant repeatedly raped the victim.

3. On 23.04.2017 she became ill and was taken to a nursing home where she was found pregnant. FIR came to be registered at Baduria Police Station being Baduria Police Station Case No. 264 of 2017.

4. During investigation appellant was arrested. Charge-sheet was filed against the appellant under Sections 376(2)(n)/506 of the Indian Penal Code and under Section 6 of the POCSO Act. Supplementary

charge-sheet enclosing DNA profile was placed. During trial prosecution examined 14 witnesses and exhibited a number of documents.

5. PW 1 (victim girl) was found to be 16 years at the time of the incident. Her birth certificate issued by the Gobordanga Municipal Office was marked as Exbt.-1. Her deposition discloses appellant had repeatedly raped her on a number of days. As a result she became pregnant and a female child was born.

6. P.W. 1's deposition is corroborated by her relations i.e. PW 2, (Anima Halder), mother of the victim, PW 4 (Alo Bachar), aunt of the victim and PW 5 (Moumita Halder), elder sister of the victim and PW 6(Probhat Halder), uncle of the victim.

7. PW 11 (Dr. Soma Roy), scientific officer of CFSL, Kolkata, proved DNA profile of the appellant, victim girl and her newborn female baby. Report shows that the appellant is the biological father of the girl child.

Arguments at the Bar:-

8. Learned Counsel for the appellant submits PW 1 is not a reliable witness. Her deposition is improbabilised by DW 1. PW 1 is corroborated by her relations. They proved beyond doubt that the appellant had repeatedly raped the minor. Minor had become pregnant. DNA profile shows the appellant is the father of the child of the victim. DW 1 claims he had no knowledge that a rape took place at the mango garden. Other defence witnesses are relations of the appellant. They deposed the victim had not been raped.

Analysis and findings:-

9. Learned Judge rightly observed no incident of rape had taken place at a mango garden. DW 1's deposition does not improbabilise the victim. DWs 2,3 and 4 are the relations of the appellant. Their depositions improbabilise the act of rape on the first floor of the appellant's shop room. It is trite that witnesses may lie but circumstances may not. CFSL report unerringly establishes the appellant is the father of the child. This proves sexual intercourse between the appellant and the minor victim. In view of her minority, consent of the victim is irrelevant.

10. In light of the aforesaid discussion appeal is dismissed.

11. In view of dismissal of the appeal connected applications are also dismissed.

12. In such view of the matter, I uphold the conviction of the appellant.

13. Copy of the judgment along with Trial Court Records be sent down to the trial Court at once for necessary compliance.

14. Urgent Photostat Certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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