

**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. 293 of 2018**  
**CRAN 3 of 2020 (Old No. CRAN 4404 of 2020)**

***Rahamatulla Neye***  
**-Vs-**  
***The State of West Bengal & Anr.***

Ms. Zareen N. Khan, Adv. ... appears as *Amicus Curiae*

**For the State** : Mr. Madhusudan Sur, Id. A.P.P.

**Heard on** : 10.02.2025

**Judgment on** : 10.02.2025

**Joymalya Bagchi, J. :-**

1. Appeal is directed against judgment and order dated 04.06.2018 and 05.06.2018 passed by the learned Additional District & Sessions Judge, 7<sup>th</sup> Court, Alipore, South 24-Parganas in Sessions Case No.23 (03) of 2013 (Sessions Trial No.05 (05) of 2013) convicting the appellant for commission of offence punishable under Section 376(2)(f) of the Indian Penal Code and sentencing him to suffer rigorous imprisonment

for ten years and to pay a fine of Rs.50,000/-, in default, to suffer rigorous imprisonment for six months more.

**Prosecution case:-**

2. Prosecution case as levelled against the appellant is as follows :  
The victim was aged around ten years. She was studying in Class-IV in a primary school. On the fateful day i.e. on 07.08.2012 at 10.00 A.M. she was proceeding to her school along with her brother (PW 2) who was studying in Class-I of the said school. At that time, appellant offered Rs.2/- to the brother to buy snack (*chanachur*) and dragged the victim into his house. There he tied her hands and legs. He took off her clothes and raped her. The boy (PW 2) called for help. Mother of the victim (PW 4) and others i.e. PWs.6 and 7 came to the spot and found the victim in naked condition in the house of the appellant. Appellant was also found in a nearby bush. The matter was reported to police. Police came to the spot.

3. Victim's mother (PW 4) lodged written complaint with the police resulting in registration of Basanti Police Station Case No.494 dated 07.08.2012 under Sections 376/511 of the Indian Penal Code.

4. Appellant was arrested. During investigation, victim was examined before Magistrate. In conclusion of investigation, charge sheet was filed under Section 376(2)(f) of the Indian Penal Code read with Section 511 of IPC. In her statement before Magistrate, victim contended she had been raped. Accordingly, charge under Section

376(2)(f) IPC was framed. Appellant pleaded not guilty and claimed to be tried. In course of trial, prosecution examined ten witnesses including the victim as PW 1.

5. In conclusion of trial, learned trial Judge by impugned judgment and order dated 04.06.2018 and 05.06.2018 convicted and sentenced the appellant, as aforesaid.

**Arguments at the Bar:-**

6. Nobody appears for the appellant.

7. Ms. Zareen N. Khan is requested to assist the court as *Amicus Curiae*.

8. Ms. Khan contends the statement before Magistrate is not signed by the victim. The purported statement was recorded twenty days later. There is possibility of tutoring. PW 2's version in court is an embellishment. He had not said to police he was given Rs. 2/- to buy *chanachur* and had seen the incident through the window. PW 4 admitted police had arrived before she came to the spot and FIR was scribed at the police station. PWs.6 and 7 are related to the victim. They had also improved their versions in court. Victim was not medically examined to establish the offence of rape. She prays for acquittal.

**Evidence on record:-**

9. PW 1 is the minor victim. Trial Judge examined her with regard to her competence. On being satisfied, her deposition was recorded.

She stated she was going to school along with her brother (PW 2). Appellant gave her brother Rs.2/- and dragged her into the house. Her hands and legs were tied. Her clothes were removed. At the point of a knife, appellant raped her. Her brother brought her mother to the spot. Other people also arrived at the spot. Mother of the appellant tried to assault the victim's mother. Police was informed. She made statement before Magistrate. She was also sent to hospital for medical examination. During her cross-examination, she denied suggestion there was a case lodged against her father by Ayub Neye.

10. PW 2 is her brother. He corroborated his sister and stated appellant had given him Rs.2/- to buy *chanachur*. Appellant took his sister into the house. From the window he saw the appellant lying on top of his sister. He called the victim's mother. Local people entered the room by breaking the door.

11. PW 4 is the mother of the victim. She deposed she heard PW 2 shouting. She immediately rushed to the house of the appellant. She saw her daughter crying. Her daughter was rescued from the house by PWs.6 and 7. Her daughter disclosed the incident to her. Police came to the spot. Appellant was trying to run away but was apprehended by local people. He was handed over to police. Her daughter was taken to hospital. Thereafter she was brought back to the police station. She lodged complaint which was scribed by one Sanjit Sarkar (PW 9). She

proved her signature on the complaint. During cross-examination, she stated PW 2 was her nephew but was treated as her own son.

12. PW 6 (Nur Hossain Sk.) and PW 7 (Moktar Sk.) rescued the victim girl.

13. PW 6 stated he was working in the field. He heard PW 2 shouting. He went to the appellant's house. Through the window he found the victim lying naked. He pushed the door to open it. At that time, appellant fled away. But he was apprehended by local people who tied him up. They recovered the victim who was in naked condition. Appellant was handed over to police.

14. PW 7 corroborated PW 6.

15. PW 3 (Manali Samanta) is the Judicial Magistrate. She recorded the statement of the victim. She proved the statement (Exhbt. 1). She admitted there is no signature or thumb impression of the victim on the statement.

16. PW 8 (Biswajit Majumder) received the written complaint from PW 1. He proved the formal FIR.

17. PW 10 (Biddu Paul) is the Investigating Officer. He deposed he went to the place of occurrence. He found the appellant had been detained and tied in a shop. Mother of the victim lodged FIR. Investigation was entrusted to him. He prepared rough sketch map with index. He arrested the accused. He examined witnesses. He sent the victim to Basanti Block Primary Health Centre but the doctor

declined to examine her. He was unable to explain why he submitted charge sheet under Section 376(2)(f) read with Section 511 IPC.

**Analysis and findings:-**

18. I have examined the evidence in light of the aforesaid submissions made on behalf of the appellant.

19. PW 1 is the minor victim. She deposed she was a student of Class IV. On the fateful day, she was proceeding to school along with his cousin (PW 2). Appellant accosted her and dragged her into the house. She was tied, disrobed and raped. Her deposition in court is substantially corroborated by her previous statement before Magistrate.

20. Ms. Khan contends the said statement is unsigned and belatedly recorded. PW 3 examined the victim (PW 1) on oath and recorded her statement. PW 1 also admits to have made statement before Magistrate. Failure to have PW 10's signature on the statement is an inadvertent error which does not go to the root of the prosecution case.

21. PW 1's version is also corroborated by her brother (PW 2). Even if one discounts the embellishment that he had seen the appellant lying on her sister inside the room through the window, his consistent version before police as well as in court establishes his presence at the time of occurrence and corroborates the victim that she had been dragged into the house by the appellant. Thereafter, PW 2 raised alarm

which brought the victim's mother (PW 4) and other witnesses (PWs.6 and 7) to the spot.

22. PWs.4, 6 and 7 have deposed coming to the spot they found the victim tied by a rope and lying naked in the house. They saw her through the open window. When PW 6 pushed the door, appellant fled away. Local people apprehended the appellant and called the police over telephone.

23. Investigating Officer (PW 10) deposed on receiving the telephone call that a person has been detained in the village, he came to the spot. He found the appellant tied in a shop. He also noted presence of the victim.

24. It is contended neither the rope by which the appellant was tied nor the wrapper which was used to tie the victim had been seized. Investigation in the instant case leaves much to be desired. Not only were these articles not seized, it belies logic why the doctor before whom the victim had been produced immediately after the incident refused to examine her. During his deposition, Investigating Officer (PW 10) was unable to answer why the victim was not sent to a higher centre for medical examination. The officer merely stated he was on probation and was unaware how the investigation was to be undertaken.

25. Failure on the part of an inept police officer cannot come to the aid of an accused. Clinching and unwavering evidence prove the

appellant had dragged the victim into the house and raped her. Victim's version is corroborated by her brother (PW 2). The child was recovered from the house of the appellant by PWs.4, 6 and 7. For reasons best known to the medical officer at the primary health centre, he refused to examine her.

26. Be that as it may, it was the duty of the police to take the victim to a higher centre for medical examination. This was not done and charge sheet was filed for a lesser offence i.e. attempt to rape. Trial Judge rightly glossed over this unfortunate remissness in investigation and relying on the convincing deposition of the victim proceeded to convict the appellant for rape.

27. I am of the opinion the conviction recorded by the learned Trial Judge is unexceptional more so, when suggestions with regard to enmity were stoutly rebutted by the prosecution witnesses.

**Conclusion:-**

28. Accordingly, conviction and sentence of the appellant are upheld.

29. Appeal is dismissed.

30. In view of dismissal of the appeal, connected application being CRAN 3 of 2020 (*Old No. CRAN 4404 of 2020*) is also disposed of.

31. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive

sentence imposed upon them in terms of Section 468 of the Bharatiya  
Nagarik Suraksha Sanhita, 2023.

32. Trial court records along with a copy of this judgment be sent  
down at once to the learned trial Court for necessary action.

33. I record my appreciation for the able assistance rendered by Ms.  
Khan in disposing the appeal.

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

I agree.

**(Gaurang Kanth, J.)**

**(Joymalya Bagchi, J.)**

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