

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRA (SB) 88 of 2023

IA No. CRAN 3 of 2024

**Sk Mojiful @ Mojibar
Vs.
The State of West Bengal & Anr.**

For the petitioners	:	Mr. Kaji Safiullah
For the defacto complainant	:	Mr. Uttam Kr. Shaw
For the state	:	Mr. Debasish Roy Mr. Arijit Ganguly Mr. Koushik Kundu
Heard on	:	01.05.2025
Judgment on	:	13.05.2025

Dr. Ajoy Kumar Mukherjee, J.

1. This appeal is directed against the impugned judgment and order of conviction dated 28.03.2022 passed by learned Additional Sessions Judge, 1st court Malda, in Sessions Trial no. 20 of 2022, arising out of Sessions case no. 55 of 2022. By the impugned judgment learned Court below convicted the appellant herein and sentenced to suffer rigorous

imprisonment for one year for committing offence punishable under section 323 of the IPC and also sentenced to suffer rigorous imprisonment for 7 years and also to pay fine of Rs. 10,000/- for committing offence punishable under section 376 IPC. The prosecution case as projected in the FIR by the brother of the victim is that on 25.09.2021 at 1.00 noon, the victim who is a deaf and dumb woman, went to the field for work, which is about 1 k.m. away from her house. The convict/appellant seeing her alone had proposed her to marry and offered her money and pulled her to the bush. When the victim refused to go there with him, the appellant pressed her throat and had thrown her on the ground and assaulted her with kick, fist and blows and with lathi and thereafter undressed her and then committed forcible penetrative sexual assault upon her. After the occurrence the victim returned to the house and narrated the incident with gesture and poster. The convict previously also did illegal things with the victim. After such incident she was taken to hospital and was treated.

2. After receiving the FIR Manicktala P.S. Case no. 377 of 2021 dated 25.09.2021 under sections 323/325/376 IPC was started. However after completion of investigation charge-sheet was submitted against the appellant herein under section 376(2)/323 IPC.

3. In order to substantiate the case as made out in the written complaint, the prosecution has examined 11 witnesses. After closure of prosecution evidence, the appellant herein was also examined under section 313 Cr.P.C., where he simply pleaded innocence. The appellant did not adduce evidence nor proved any document.

4. Being aggrieved by the judgment of conviction, Md. Kazi Safiullah learned Counsel appearing on behalf of the appellant submits that the deposition of the prosecution witness does not establish the essential ingredients of the offence punishable under sections 323 or 376 of the IPC and the learned Trial judge without applying his judicial mind, convicted the appellant herein. Mr. Safiullah argued that court below failed to appreciate that as per FIR, the incident took place on 25.09.2021 at about 13.00 hrs. but the victim girl in her deposition stated that the incident took place at the time of evening which clearly shows the contradiction regarding the time of alleged occurrence. Moreover, the victim lady as pw-1 admitted in her cross examination that she did not tell anything to the doctor but in the medical paper the doctor recorded her statement through an interpreter that at about one and half months ago, appellant did sexual intercourse with the victim and threatened her and on 25.09.2021 again raped her against her will. Thus the version of interpreter is not at all the version of statement of the victim girl and the interpreter stated a modified version of the actual statement of the victim girl. He further argued that the trial court failed to appreciate that the victim girl stated in her cross examination that the police had told her to tell the fact to magistrate which clearly goes to show that the statement of the victim made before the magistrate was not at all voluntary and on the compulsion of the police authority, she had to make her statement. Moreover, the court below did not consider that PW-2 who is the interpreter was not interrogated by the police and the interpreter put signature on the recorded statement without mentioning any date.

5. Mr. Safiullah strenuously argued that the trial court failed to appreciate that the PW3/complainant stated in her deposition before the court that her sister/victim went to cut grass and she picked up a stick from the branches of a mango tree of the garden of the appellant and assaulted her with it. Thereafter victim had fallen on the ground and thereafter returned home and told him what happened to her and this version of PW-3 has been corroborated by the PW-4, PW-5, PW-6, PW-7 and PW-8 which clearly shows that there is no whisper of sexual assault and the only allegation against the appellant is that appellant physically assaulted the victim. Accordingly Mr. Safiullah argued that if for the sake of argument, it is accepted that allegation under section 323 of the IPC has been established against the appellant, then also it should be taken into account that the appellant has been convicted and sentenced for one year for committing offence punishable under section 323 IPC and the convict is in custody for about 4 years.

6. Mr. Safiullah also pointed out that in the cross examination, complainant/PW3 has categorically stated that the contents of FIR was not read over and explained to him. Accordingly from the deposition of PW-3 /FIR maker it is clear that the FIR maker was not aware about the actual fact narrated in the FIR and therefore, the FIR is nothing but a concocted story. He also pointed out that PW-9 (Medical officer) who examined the victim stated that vaginal penetration cannot be ruled out and as such PW-9 failed to give any firm opinion regarding alleged assault and on the contrary from the evidence of PW-3, it is evident that the appellant assaulted her with a stick made from branch of a tree, which might be the reason for PW-9 to

observe that there are signs of use of force and if the evidence of the prosecution witnesses are scanned, the allegation of sexual assault against the petitioner has not been proved beyond reasonable doubt and as such appellant is liable to be acquitted for alleged commission of offence punishable under section 376 IPC.

7. Ld. Counsel appearing on behalf of defacto complainant argued that the victim in her evidence has clearly stated about the offence of penetrative sexual assault which remained unshaken during cross examination and relying upon the evidence of the victim the court below was justified in convicting the accused and to sentence him to suffer imprisonment for committing offence punishable under section 376 of the IPC.

8. Having heard the arguments and perusing the trial court records the following points have arisen for consideration.

- (i)** Whether the prosecution proved the guilt of the accused punishable under section 376 of the IPC
- (ii)** Whether the judgment and order of conviction passed by the trial court is perverse/erroneous or arbitrary.

Decision

9. It is to be noted that the victim girl is a deaf and dumb lady who immediate after the alleged occurrence returned home and narrated the incident to his brother by gesture and poster. It further appears that on the self-same date of the occurrence i.e. 25.09.2021, the FIR was lodged by the brother of the victim, where it has been specifically alleged that the appellant assaulted her by kick, fist and punch and then undressed her and

committed rape upon her. The victim was thereafter brought to Dr. Ankur Bhattacharya, Assistant Professor of Malda Medical College who after examination opined

“there signs of use of force, however vaginal penetration cannot be ruled out. Sexual violence cannot be ruled out. Further opinion of any will be given after receipt of FSL report”.

10. Said Medical officer also recorded in column No. 15, under the heading “statement of person being examined” that on 25th September, 2021 the alleged accused again did vaginal sexual intercourse with the survivor against her will and consent. In column no. 18 of said medical report the Medical officer also noted the visible external sign of injury on the body other than genital stating that bruish mark (8cm x 1cm) was found present over the right scapular region and another bruish (1cm x 1cm) over left of thenar eminence. This examination was done on 27.09.2021.

11. As per FIR on the date of occurrence i.e. on 25.09.2021 victim was brought to hospital and was also treated by medical officer and said injury report dated 28.09.2021 states that the victim was examined on 25.09.2021 at about 9.00 p.m. and she was admitted in the hospital and in the history of injury, sign of physical assault all over hands back, chest both thighs and legs and bruise over back and nail scratch mark over the body was noted. On the medical examination of the appellant, medical officer opined that there is nothing to suggest that the appellant herein is incapable to perform sexual intercourse as on the date of medical examination.

12. The victim was brought before Magistrate for recording her statement with the help of an interpreter on 26.10.2021 when the victim clearly stated before the Magistrate that the appellant herein had physically assaulted her,

in her back side by a lathi, pushed her down and then undressed her and thereafter committed sexual intercourse with her forcibly. She also stated that police had seized her wearing apparel which also corroborates with seizure list. She also stated before magistrate that the appellant caused bite injury at her hands and neck and also threatened her not to disclose the incident to anyone. At the end she has expressed her concern that after knowing such incident by all, nobody will agree to marry her.

13. Thereafter during trial she faced the dock as PW-1 and stated before the court as follows:-

“accused assaulted me with a lathi, assaulted me and tried to pull my garments, he pressed my throat and assaulted severely all over my body and hand. He pressed my mouth and throw me on the ground and open my dress. He opened my garments and raped me forcefully the incident took place at evening. He raped me in a field when no other was present. Accused told me to keep mum”.

14. During cross examination only a suggestion was given to the victim that she was neither assaulted nor raped forcefully by the appellant. Accordingly evidence of PW-1/victim remained unshaken. It is true that PW-3 who is the complainant did not speak before the court about penetrative sexual assault and he has only stated about physical assault though in the cross examination he admitted that the police came to their house and took away the garments of her sister and that the victim also narrated the incident to the doctor. PW-4 PW-5, PW-6, PW-7 and PW-8 were declared as hostile witness by the prosecution. PW-2 is the interpreter and PW-9 is medical officer and PW-10 is an officer and PW-11 is the Investigating officer.

15. After careful perusal of the evidence adduced by the prosecution witness and the documents available in record it is very much clear that the

allegations levelled in the FIR which was lodged immediate after occurrence that the appellant herein assaulted the victim, had undressed her and had committed rape upon her, has been fully corroborated with the statement made by the victim while she was examined under section 164 Cr.P.C. Not only that while said victim faced the dock as PW-1 she also fully corroborated the incident that the appellant assaulted her undressed her and committed rape upon her forcefully. This incident of assault and committing rape gets corroboration in the medicolegal examination of said female victim, which was done on 27.09.2021 at 3.20 p.m. and also in the injury report dated 25.09.2021 when the doctor examined the patient on the same date of occurrence at 9.00 p.m.

16. Now the question is when the other charge sheeted witnesses have not corroborated the case of committing penetrative sexual assault upon the victim by the Appellant herein, then whether the evidence of the victim which is consistent all along, is sufficient to award conviction against the appellant.

17. It is no more *res integra* that conviction can be based upon the testimony of solitary witness, if it is found to be trustworthy, without any blemish and inspires the confidence of the court. As I have stated above that since the statement made in the FIR as per narration of the victim and also since her initial statement made under section 164 (5) Cr.P.C, till her testimony during the course of trial, she was demonstrably found to be very consistent. The defence failed to record any contradiction in the statement of the victim that she was dragged and pulled and was assaulted and thereafter was undressed by Appellant and then appellant forcefully

committed sexual intercourse with the victim. Apparently there is nothing to disbelieve the credibility and/or trustworthiness of the victim's evidence and they found to be reliable and trust worthy and therefore, without any further corroboration, it is sustainable. Though the counsel for the defence have argued much that except the victim all other material witnesses turned hostile during examination but the evidence recorded by trial court discloses that all the witnesses were called for examination after a long span of time which is also required to be considered in the context of fair trial and there is no scope to deal with the matter in a mechanical way which can only result in mis carriage of justice.

18. The victim in this case is vulnerable deaf and dumb lady who fell prey to the lust of the appellant, who over powered the victim by taking advantage of the fact that she was alone at the field. The court is also entitled to presume existence of the facts in the course of natural events, human conduct in relation to the facts in this case. In ***State of Rajasthan Vs. Darshan Singh*** reported in **(2012) 5 SCC 789** it was held that a deaf and dumb person is competent witness. If such a witness is not able to read and write, her statement can be recorded in sign language with the aid of interpreter, if found necessary. In the present case the statement of the victim has been recorded with the help of interpreter.

19. That apart in the present case, the FIR was lodged promptly which clearly reported the commission of forcibly sexual assault upon the victim by the appellant herein. In ***Jayprakash Singh Vs. State of Bihar and another*** reported in **(2012) 4 SCC 379**, it has been observed that prompt lodging of an FIR is an assurance regarding truth of the informants version

and that a promptly lodged FIR reflects the first hand account of what has actually happened and who was responsible for the offence in question. In the present context evidence of PW-1 fully corroborates with regard to the core of the allegation that she was dragged and pulled by the appellant who assaulted and undressed her and also committed rape upon her.

20. In ***Rajinder @ Raju Vs. State of Himachal Pradesh*** reported in **(2009) 16 SCC 69** the Supreme Court held in para 19 as follows:-

19..“In the context of Indian culture, a woman—victim of sexual aggression—would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent.”

21. The Supreme Court also held that conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration is required unless there are compelling reasons which necessitate the court to insist for corroboration of her statement. In ***The State of Himachal Pradesh Vs. Manga Singh*** reported in **(2019) 16 SCC 759** the court held in paragraph 10 as follows.

10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.

20. In the present case also since the statements of the victim is consistent and inspired confidence, It does not necessitate any corroboration and minor contradiction should not be the ground for throwing the evidence of the prosecutrix.

21. In ***Raju and others Vs. State of M.P.*** reported in **(2008) 15 SCC 133**, observations made by the apex court in para 9 is very much relevant in this context and is applicable in the present context and as such it may be quoted below:-

9. *The observations in Gurmit Singh case [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] were reiterated in Ranjit Hazarika v. State of Assam [(1998) 8 SCC 635 : 1998 SCC (Cri) 1725] in the following terms : (Gurmit Singh case [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] , SCC pp. 395-96, para 8)*

"8. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. (emphasis supplied) Corroborative evidence is not an imperative component of judicial

credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.”

22. In view of the above discussion I do not find any reasons to interfere with the ultimate finding of the trial court and the awarding sentence. The appeal is therefore, liable to be dismissed.

23. CRA (SB) 88 of 2023 is dismissed. Send the trial court record at once where from it was called for. Connected Applications accordingly disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)