

20.02.2025
Court No.13
Item Nos. 21+22
Sp/pk/ap

C.R.A. 513 of 2016
With
CAN 2 of 2024
Moklechur Rahaman Mondal @ Pupai & Anr.
Vs.
State of West Bengal.
With
C.R.A. 573 of 2016
Rejaul Mondal
Vs.
State of West Bengal.

Mr. Niladri Shekhar Ghosh
... for the Appellants in CRA 513 of 2016.

Mr. Anjan Bhattacharya,
Ms. Anita Shaw
... for the Appellants in CRA 573 of 2016.

Mr. Debasish Roy,
Mr. Partha Pratim Das
Ms. Z.N. Khan
.... for the State.

1. The instant appeal arises out of a judgment and order of conviction dated 16th July, 2016 and 19th July, 2016 passed by the Additional District and Sessions Judge, Fast Track, 1st Court, Basirhat, North 24-Parganas in Sessions Trial No. 02(03) of 2015 corresponding to Sessions Case No 08(12) of 2014. The appellants are convicted under Section 376D of the Indian Penal Code to suffer imprisonment for life which shall mean imprisonment for the remainder of that person's natural life. They were also directed to pay fine of Rs. 20,000/- each

and in default of payment of fine, to suffer simple imprisonment for six months.

2. The prosecution case is that on 14th September, 2014, the victim, 'X' lodged a complaint that was received by the Basirhat Police Station at 5.15 a.m. stating that on the previous day, i.e., 13th September, 2014 at about 11.30 p.m., three accused persons started to destroy and wreck her husband's rickshaw van. The van was parked in front of a local school. When the husband woke up hearing a noise, he rushed to the spot and protested. The husband was assaulted with kicks and blows. He fell down and shouting for help.

3. The complainant/son, Debesh Mondal Debnath, PW/3, thereafter came out of the house to save his father. The son was also allegedly assaulted. When the victim rushed to the spot, the appellants are stated to have inflicted a blow on her eyes and took her to an open field in front of a primary school and committed rape upon her.

4. The persons who committed offence under Section 376 as per the complaint were Moklechur Rahaman Mondal @ Pupai, son of Hasan Mondal, Samsed Ali Sardar @ Guro @ Samsad, son of late Abdar Ali Sardar, the appellants in CRA 513 of 2016 and Rejaul Mondal, son of Mahadeb Mondal, the appellant in CRA 573 of 2016 was stated to be standing in guard and did not participate in the actual offence.

5. A formal FIR was registered being Basirhat P.S. Case No. 1200 dated 14.09.2014 under Section 376D of the IPC. The victim as well as the accused persons were sent for medical examination. The medical report did not indicate any injuries on the body of the victim, particularly, on the eyes or the other parts. The wearing apparel of the victim was seized.

6. The urethral swab of the accused was preserved as was the vaginal swab of the victim. They were sent to the FSL. No such report was collected. Charge sheet thereafter filed.

7. The victim 'X' PW-1, stated that on the day of the incident, i.e., 13th September, 2014, the victim and her husband were sleeping in one room of the house and the son was sleeping in the adjacent room. At about 11-11.30 p.m., her husband woke up upon hearing sounds of breaking of his rickshaw van. He rushed out of the house to find the three appellants attacking the rickshaw van and trying to destroy it.

8. On the husband protesting, he was attacked with fists and blows on different parts of his body. The husband shouted for help when their son PW-3, debesh Debnath came out of the house to rescue his father. The accused persons then started assaulting the son. The husband was removed from the place of occurrence to the house by the son. The victim thereafter reached the spot to plead with the accused to release her husband. She was detained and taken to the local school on the pretext of giving water.

9. The victim thereafter stated that all the three accused persons committed rape upon her. In cross-examination of PW-1, the victim 'X', confirmed that her wearing apparel, including undergarments, was seized by the police. She further stated in cross-examination that there were quarrels in the past in between herself and her husband. Their daughter who is now married, had relations with a village boy. The accused persons are stated to have thereafter assured the victim and her family that the said village boy would not be allowed to harass the daughter any further.

10. The victim further confirmed that there were several fisheries on the road near the school and the house of the victim. There were several street lights. She also confirmed that assembly elections were held in the village on the said day and the school was a polling booth. She stated in cross-examination that the assault on her occurred in a vacant land of the school. She also confirmed that she was assaulted in the vacant land inside the said school. She further stated that on hearing the shouting of the husband and her son, the accused persons fled away from the scene. She also stated that thereafter she, her husband and their son returned home. She further stated that after returning home, her husband went to the house of one Ranjit Debnath, P.W.-4, a relative. She also stated that on the same night, police took her to the police station.

11. There are several contradictions and inconsistencies in the evidence of PW-1. She firstly stated in her complaint that only two of the appellants, namely, Moklechur Rahaman Mondal @ Pupai and Samsed Ali Sardar @ Guro @ Samsad committed rape upon her and Rejaul Mondal stood in guard. In course of evidence, however, she stated that all three of the accused persons committed rape upon her. In the complaint, she stated that the accused inflicted a blow on her eyes and took her to a field in front of the local school. In the evidence before the trial, she stated that she was taken to a ground inside the boundary of the school.

12. In cross-examination-in-chief, she stated that her son, after hearing the cries of the father took away the father by picking him up to the house. In cross-examination, however, she has stated that she, her husband and son returned to the house together. In cross-examination a version is indicated that she was taken the same night by the police to the police station which is contradicted by the fact that they were returning home together. If one considers the injury reports on the victim, prepared by PW-7, Dr. Monimala Das, there were no injuries found on any part of the body of the victim. The complainant had stated that the accused inflicted blows on the eyes of the victim which is not reflected in the injury report.

13. PW-2 is the husband of the victim, Gopal Debnath. He stated that on 13th September, 2014 Assembly Elections had

been held. The school was a voting booth for the Assembly Elections. After hearing the sound of the Cycle Van being broken he went out to assemble the broken materials of the Van when accused assaulted him from behind with wooden batam (stick). When he shouted for help, his son came out. He was unconscious at the time when son brought him inside the house. He further stated that the accused persons thereafter entered his house and threatened them stating that they would hurl bombs and destroy the house. They came out of the room and thereafter held the victim by her mouth and took her outside the house to a corner of a school. When his wife did not return, the husband and the son rushed to the school and found the victim. Upon seeing her husband, the victim is stated to have told that there is no value of life anymore and that the accused have destroyed her life. The accused are stated to have committed rape on the victim.

14. After having taken his wife back home, he stated that he went to the house of his brother-in-law, Ranjit Debnath. He then went to the house of the Commissioner thereafter, who did not take any step. He then went to the local police station and narrated the incident. His wife lodged the complaint.

15. The police did not seize the broken rickshaw van. He denied the suggestion that the accused persons were threatening a boy at a local club who is stated to have an affair with the victim's daughter. He also denied that he had grudge

against the accused persons. The evidence of PW-2 is at substantial variance with the evidence of PW-1, particularly with regard to the description of the incident and the circumstances under which the alleged offence took place.

16. PW-3, Debesh Debnath was the son of the victim. He stated that his father was assaulted by kicks and blows when both he and his father had come out of the house together upon hearing the sound of the broking of the rickshaw van. His father was assaulted first and on the intervention of PW 3 he was also assaulted. He stated that his father had become senseless after the assault.

17. There is no reference by PW 3 of any weapons used in the assault on the father. He stated that he took his father to the house to nurse him. He stated that his mother was also at the spot and the accused assaulted the mother. After his father regained his consciousness in the house, he came out of the house looking for the mother who was not there at home. The mother is stated to have come to the PW-2 and PW-3 and told her that she was raped in the school ground. They went to the police station thereafter.

18. The complaint was scribed by PW-4, Ranjit Debnath on the dictation of the mother. He denied that the accused were trying to intimidate the boy who was allegedly having an affair with his sister. He further denies that there was any assault on his brother and sister-in-law.

19. PW-5, Dr. Amal Bikash Mondal was the Medical Doctor, who examined the three accused persons. His report indicated that the Urethral swab of the accused was obtained by him and there was no foreign body or injury marks on the private parts of the accused. He identified his own report.

20. PW-6, Nirmal Baidya was the SI of Police, who received the complaint from the victim.

21. PW-7 Dr. Monimala Das was the doctor who performed the medical examination of the victim. She found no injury whatsoever on the body of the victim particularly on the eyes and the private parts. The medical report was exhibited. Vaginal swab was taken and handed over to the police. Urine was obtained for conducting pregnancy test.

22. PW-8 Pratik Basu was the IO. He confirmed that he seized the wearing apparels of the victims and sent for medical test. He thereafter arrested the accused and sent them for medical examination.

23. The victim's statement under Section 164 of the Cr.P.C. was recorded.

24. Vaginal swab of the victim, her wearing apparel and Urethral swab of the accused was sent for FSL. The reports were never collected or exhibited in Court.

25. In cross-examination he confirmed that there were several street lights near the house surrounding the place of

occurrence. PW-2 did not state before the police that he was assaulted from behind with wooden stick. He also did not state that he became unconscious after the assault. PW-2 also did not state before the police that the accused held her by her mouth and took her away from outside the house. PW-3 also did not state to the IO that he pleaded with the accused not to assault his father.

26. Three accused persons have been examined under Section 313 of the Cr.P.C. The Trial Judge thereupon pronounced the judgment and convicted the appellants.

27. This Court has already recorded inconsistencies in the deposition of the victim in course of trial. This Court notes that the version of PW-2 differs from the version of the incident described by the PW-1.

28. PW-2 and PW-3 have not stated before the Police what they have stated in course of trial. Admittedly, on the day of the incident, the State Assembly Election had been held. While some violence in course of election is not new to the State, what is curious is that on the day of election and particularly at a polling booth where voting was held, it is unlikely that there would not be anybody present or no police personnel at all would be present on such day. Street lights are particularly lit up and bright on a day and nightfall when the elections are held. While there is huge public activity during the day time, it is difficult to believe that the incident occurred without

anybody hearing any commotion or sound as described by the PW-2 and PW-3. It is equally curious to note that the victim did not shout for protest during the alleged incident of rape on her by the accused. It is difficult to believe that PW 2 and PW 3 would not run and chase the accused when the victim was being taken away by the accused.

29. It is equally difficult to believe that nobody was around a voting booth in a school even late in the night on the election day and would not hear even the first incident of assault on the victim's husband and the second incident of rape on her.

30. This Court further notes inconsistencies in that the victim stated that she was found by her son and husband in the field in front of the school yet later said that the incident occurred in the ground of the school where her husband and son found her.

31. There is further inconsistency in the evidence of the victim in that she stated that she went to the police station along with the scribe, PW-4 and the scribe stated that he has no knowledge of the incident at all. She also stated in cross-examination that she was taken to the police station by the police constable. This further confirms the likelihood of the presence of the police at least one even late in the night at an election booth in a local school on the day of voting.

32. The most serious omission on the part of the prosecution noted by this Court is not obtaining the FSL report of vaginal

swab. The presence of the body fluids of the accused on the victim were never ascertained. The FSL report of the Urethral swab of the accused and the vaginal swab of the victim were never collected or produced in Court.

33. It is equally surprising to note that a victim of rape would not protest or shout to call for help on an election day albeit late in the night when the place of occurrence is reasonably lighted up with street lamps. The sketch map of the place of occurrence indicates they were neighbors, whose house was close to the house of the victim as also the school. Several fisheries are there in the nearby places which are often guarded. It is difficult to believe that none of the neighbours or any local persons whatsoever heard of the first incident at least if not the second incident of the alleged rape.

34. In the backdrop of the above, this Court also notes that the broken rickshaw van, which would be the first piece of evidence of the prosecution, was never seized by the police.

35. Indeed, it is true that the poor investigation will not always lead to acquittal of accused. This Court finds that the prosecution could not establish any case, given the serious inconsistencies and omissions indicated above. What is glaring before this Court is the medical report of the victim on the next day of incident which indicated absolutely no injury whatsoever on the body. It is difficult also to believe that the husband of the victim PW-2 who was seriously assaulted and

fell unconscious, would not have been taken for any medical attention at all. No such medical report was produced before the Trial Court.

36. In the backdrop of the aforesaid, this Court is of the view that the prosecution has not been able to prove the offence against the appellants.

37. These appeals are, therefore, allowed. The impugned judgment of conviction and order of sentencing dated 16th July, 2016 and 19th July, 2016 passed by the Additional District & Sessions Judge, Fast Track, First Court, Basirhat, North 24 Parganas in Sessions Trial No. 2(3)2015 arising out of Sessions Case No. 8(12)2014 are set aside.

38. The appellants shall be set at liberty forthwith from the custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the Learned Trial Court, which shall remain in force for a period of six months under Section 437A of the Code of Criminal Procedure corresponding to Section 481 of the BNSS, 2023. The order of imposition of fine shall also set aside.

39. The accused persons/appellants shall be discharged from their bail bonds after six months in terms of Section 437A of CrPC corresponding to Section 481 of the BNSS, 2023.

40. Let a copy of this judgment be sent down to the Court below for information.

41. In view of the disposal of the criminal appeal, the connected application being CRAN 2 of 2024 shall also stand disposed of.

42. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)