

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB) 305 of 2023

With

IA No.: CRAN 2 of 2024

Gopal Pandit

Vs.

The State of West Bengal & Anr.

For the Appellant : Mr. Debangsan Bhattacharjee, Advocate
Mr. Mahiul Islam, Advocate
Mr. Sudipta Mahapatra, Advocate

For the State in the appeal : Mr. Sanjay Banerjee, Advocate
Ms. Nandini Chatterjee, Advocate

For the State in CRAN application : Mr. Antarikhya Basu, Advocate
Ms. Paromita Sahoo, Advocate

Hearing & Judgment on : June 19, 2025

MD. SHABBAR RASHIDI, J.:-

1. The appeal is directed against the judgment of conviction dated March 23, 2022 and order of sentence dated March 24, 2022 passed by the learned Additional Sessions Judge, Baruipur, South 24 Parganas in connection with Special Sessions Trial No.22 of 2021 arising out of Spl (CIS) No.152 of 2020.

2. By the impugned judgment of conviction, the appellant was convicted of the offences punishable under Sections 363/366/376(3) of the Indian Penal Code, 1860 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012.
3. By the impugned order of sentence following the aforesaid conviction, the appellant was sentenced to suffer rigorous imprisonment for four years and to pay a fine of Rs.2,000/- and in default of payment of fine, to suffer further imprisonment for three months for the offence punishable under Section 363 of the Indian Penal Code. The appellant was also sentenced to suffer rigorous imprisonment for five years with a fine of Rs.5,000/- and in default of payment of fine, to suffer further imprisonment for three months for the offence punishable under Section 366 of the Indian Penal Code. The appellant was further sentenced to suffer rigorous imprisonment for twenty years and to pay a fine of Rs.10,000/- and in default of payment of such fine, the appellant was directed to undergo further imprisonment for six months for the offence punishable under Section 376(3) of the Indian Penal Code. All the sentences were directed to run concurrently.
4. Learned Advocate appearing for the appellant submits that there are material contradictions between the statements of the witnesses examined on behalf of the prosecution. It has also been submitted that the victim herself was examined as P.W.2 and she has not supported any case, any prosecution as made out in the First Information Report.

5. Referring to the evidence led at the trial, learned Advocate appearing for the appellant submits that the evidence does not make out a case under Sections 363/366/376 of the Indian Penal Code. It is submitted that the evidence of the prosecution does not justify a conviction of the appellant.
6. On the other hand, learned Advocate appearing for the State submits that the prosecution witnesses have proved the case beyond all reasonable doubts sufficient to convict the appellant. It is further submitted on behalf of the State that the statement of the victim recorded under Section 164 of the Code of Criminal Procedure was duly proved at the trial and is sufficient evidence to bring on the charges levelled against the appellant.
7. On December 6, 2020, the mother of the victim lodged a written complaint with Baruipur Police Station. It was submitted that on December 4, 2020 around 7 P.M. in the evening, the daughter of the de facto complainant was passing by a pathway on her way to her friend's house. At that time, the appellant forcibly took her daughter from the pathway and dragged her to a hut situated in a nearby place. She further stated that in the hut, the appellant forcefully laid the daughter of the de facto complainant down and stripped her, committed sexual assault against her will at her private parts and physically tortured her for some time. When the victim was not able to bear the torture, she tried to escape by pushing the appellant. The appellant beat her

threatening if she disclosed the incident to her parents or anyone else, she would be tarnished and her social reputation will be blemished in the society by circulating the images of the incident over facebook. After the incident, the daughter of the de facto complainant fell seriously ill. The de facto complainant also stated in her written complaint that the appellant thereafter brought the daughter of the de facto complainant at her house at about 9 PM in the night over cycling. The victim did not disclose anything in the night out of fear. However, on the next morning, that is, on December 5, 2020 at around 6 AM, the victim disclosed the incident to the de facto complainant.

8. On the basis of such written complaint, Baruipur Police Station Case No.2392 dated December 6, 2020 under Section 4 of the POCSO Act was started against the appellant. After conducting an investigation into the case, the police submitted charge sheet in the case. On the basis of materials in the case diary charges under Sections 363/366/376(2)/376(3) of the Indian Penal Code and Section 6 of the POCSO Act were framed against the appellant on March 26, 2021. The appellant pleaded not guilty to the charges and claimed to be tried.
9. In order to bring home the charges, the prosecution examined five witnesses in all. In addition, prosecution also relied upon certain documentary as well as material evidence.
10. The de facto complainant herself deposed as P.W.1. In her deposition, she stated that the victim was her daughter. The incident happened at

about 7 PM and one and half years ago (from February 4, 2022). Although, the P.W.1 was an illiterate lady being not able to read and write, proved the written complaint which was admitted in evidence and marked as Exhibit-1. She identified the appellant in Court. She further stated that her daughter was returning from her friend's house and on her way, the appellant kidnapped her and took her forcibly. However, she stated in her examination-in-chief itself that she was not able to recollect what was caused upon her daughter by the appellant . She also proved the birth certificate of the victim. In her cross-examination, P.W.1 admitted that she was an illiterate and was not able to understand the contents of the written complaint. She also stated that when she went to the police station to lodge the written complaint, she was accompanied by some political persons. She admitted in her cross-examination that the complaint was lodged by her as her brother Swapan Mondal told her to lodge.

11. The victim deposed as P.W.2. She stated in her deposition that in the year 2020 she was returning home from her friend's house. She stated that the appellant was her para people and that she had no love affair with the appellant. She categorically stated in her examination-in-chief that the appellant did not misbehave with her. She recorded a statement before the learned Magistrate which she proved. She was interrogated by police in connection with the case. She identified the appellant in Court. In her cross-examination, P.W.2 stated that, she

did not make any statement to the police to the effect that the appellant took her in a hut in the jungle. She, however, stated to have made a statement to the police as well as before the learned Magistrate that the appellant forcibly committed rape upon her. The P.W.2 was declared hostile by the prosecution. In her cross-examination by the defence, she stated that, Swapan Mondal was her maternal uncle and her statement to the police was tutored by said Swapan Mondal. She further stated in her cross-examination that her statement before the learned Magistrate was what the police told her to make.

12. The Medical Officer was examined as P.W.3. She stated that on December 6, 2020, she examined the victim when the victim complained that she was sexually assaulted on December 4, 2020 at around 7 PM lying on the ground. On examination, P.W.3 found the hymen of the victim was ruptured. She also found abrasion over her right forehead and right knee. She proved the report prepared in her pen and signature. In her cross-examination, P.W.3 stated that abrasion on the right knee and right forehead may be caused by falling down on hard substance. She also pointed out that the hymen may be ruptured due to the cycling, swimming, athletics, etc.
13. Another Medical Officer deposed as P.W.4. He stated that on December 7, 2020, he examined the appellant. On such examination, P.W.4 did not find any injury on the body or genital organ of the appellant. However, the appellant was found capable of performing

sexual intercourse in ordinary course of nature during his examination. P.W.4 proved his report.

14. The Investigating Officer of the case deposed as P.W.5. He stated about steps taken by him in course of investigation of the case. He visited the place of occurrence and examined available witnesses. He sent the victim as well as the appellant for medical examination. On completion of investigation, he submitted charge sheet against the appellant.
15. On conclusion of the evidence on behalf of the prosecution, the appellant was examined under Section 313 of the Code of Criminal Procedure. In such examination, the appellant claimed himself to be innocent having no knowledge about the incident. He, however, declined to adduce any defence witness.
16. According to the case made out by the prosecution, the appellant is said to have kidnapped the victim while she was moving on the pathway. There is, however, a little contradiction in this regard. According to the case made out in the written complaint, the victim was going to her friend's house at the relevant point of time, however, in the depositions, P.W.1 and P.W.2 have stated that, the victim was returning from her friend's house at the time of the incident. According to the case submitted by the prosecution, the victim was kidnapped by the appellant and was taken to a nearby hut where the appellant forcibly committed rape upon the victim.

17. However, the de facto complainant, P.W.1 detracted from her statement in the written complaint. In the written complaint, she detailed the incident in so many words. But at the time of deposition, she categorically stated in her examination-in-chief itself that, she would not recollect what was caused upon her daughter by the accused. Not only that, in her cross-examination, she admitted that, while going to police station for lodging written complaint, she was accompanied by political persons. She also admitted that, the written complaint was lodged by P.W.1 as her brother, Swapan Mondal asked her to lodge.
18. Similarly, the victim, P.W.2 did not disclose any overt act on the part of the appellant in her examination-in-chief. She candidly stated in her deposition that, she met the appellant while on the way but the appellant did not misbehave with her. She also denied any kind of love relation between her and the appellant. Besides that, victim, also admitted in her cross-examination that, she narrated the incident before the police as tutored by her maternal uncle Swapan Mondal. She also admitted that, whatever she stated before the learned Magistrate was told by the police. Therefore, the incident of kidnapping or committing any sexual assault upon the victim as made out in the written complaint has been destroyed by P.W.1, P.W.2. Moreover, both P.W.1 and P.W.2 however, stated that the written complaint was lodged with the police at the instructions of one Swapan Mondal. The said Swapan Mondal has not been examined by the prosecution.

19. So far as the medical evidence is concerned, P.W.3 has admitted in his cross-examination that, hymen of a lady may be ruptured by many ways including cycling, swimming, athletics etc. He also stated that, the abrasion from the right knee and right forehead of the victim might be caused by falling down on hard substance. Although, First Information Report discloses illness of the victim but it does not specifically mention the kind of injuries on the knees and forehead as found on the body of the victim.
20. In the case reported in **2021 SCC OnLine Cal 2007 (Swapan Mondal versus State)** it was held by a coordinate Bench of this Court that ocular evidence of the victim will prevail from any scientific examination report.
21. In the case at hand, the victim has not supported the case of prosecution as made out in the First Information Report. Again she has not disclosed any criminal overt act attributed to the appellant as against her. Moreover, it is admitted on the part of both P.W.1 and the victim, P.W.2 that, written complaint was lodged at the instruction of the brother of P.W.1 that is, Swapan Mondal who has not been examined as a witness in the present case.
22. In such circumstances, we are not in a position to sustain conviction and sentence of the appellant as imposed by the learned Trial Court.
23. The impugned judgment of conviction and order of sentence are set aside.

24. **CRA (DB) 305 of 2023** is **allowed**.
25. IA No.: CRAN 2 of 2024 is disposed of accordingly.
26. The appellant be set at liberty forthwith, if not warranted in connection with any other case, subject to bail bond to be executed by the appellant under Section 437A of the Code of Criminal Procedure corresponding to Section 481 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 within six months.
27. Copy of the judgment and order along with the Trial Court Records be transmitted to the learned Trial Court forthwith.
28. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

(Md. Shabbar Rashidi, J.)

29. I agree.

(AD/CHC)

(Debangsu Basak, J.)