

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 816 of 2006

**Samiul Hossain
-Vs-
The State of West Bengal**

For the Appellant : Mr. Syed Shahid Imam
Md. Khairul

For the State : Mr. Joydeep Roy

Heard on : 17.01.2024, 24.01.2024, 28.03.2024,
20.05.2024, 27.09.2024

Judgment on : 02.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against a judgment and order of conviction dated 29.11.2006 passed by the Learned Additional Sessions Judge, First Track Court – IV, Alipore, South 24 Parganas in Sessions Trial No.10(8)/05 arising out of Sessions Case No.41(7)/04 convicting the appellant under Sections 376 & 376/109 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.2000/- in default to suffer rigorous imprisonment for 2 months more.
2. The genesis of the prosecution case, as alleged unfolds with the lodging of a written complaint by PW-1 on 05.12.2003 before the officer-in-charge of

Ballygunge Police Station. It was alleged therein that the de facto complainant, owing to economic hardship, was working as a domestic help and her husband, a mason by profession, frequently resided away from home due to the nature of work.

3. One Jiten Lattu, acquainted with the complainant, purportedly offered her employment in Kolkata. Trusting the said person and driver by penury, she accompanied him to the city on 04.11.2003. At around 04:30 p.m., the said Jiten Lattu brought her to a multistoried building at Sunny Park, introducing her to the appellant, one Samiul Hossain.
4. It was alleged, upon entering a room under the pretext of introduction, the said Jiten Lattu exited the room on the pretense of fetching tea, after which the appellant bolted the door from inside and committed rape on the complainant forcibly while using protection. The traumatised complainant later narrated the ordeal to her husband upon his return home.
5. On the basis of the aforesaid complaint, the Police initiated Ballygunge P.S. Case No.159 dated 05.12.2003 under Section 376 with Section 109 of the Indian Penal Code against the appellant.
6. After completion of investigation, the Police submitted charge-sheet against the appellant.
7. The charge was framed against the accused person to whom he pleaded not guilty and claimed to be tried.
8. In order to prove its case, the prosecution examined as many as 14 witnesses and exhibited certain documents.
9. The Learned Advocate representing the appellant submitted as follows:-

- i. In the written complaint the complainant i.e., PW-1 had stated that Jiten Lattu was a local resident of her locality but in the evidence before the Learned Court as PW-1 contradicted her own statement and stated that Jiten Lattu resided by the side of her village.
- ii. In the letter of complaint PW-1 mentioned that one day she told Jiten Lattu to find her a good job in Calcutta but in her evidence before the Learned Court she stated that one day Jiten Lattu offered her a job of maid servant.
- iii. While the accused person was using force upon the alleged victim, the victim raise no voice and/or screamed while the accused person was doing such act, which created a doubt that whether such act was ever done by the accused and makes the prosecution story weak and doubtful.
- iv. Before TIP the police personnel had identified the accused person to the alleged victim on the instant case at the police station, for such reason she was able to identified the accused person during the TIP and which for such reason the identification of the accused person in TIP has become bad in law.
- v. The alleged victim claimed that she was forcibly raped by she did not protest and/or harm the accused person while such force was being used upon her.
- vi. While the alleged victim was residing in the same mess with his mother, brother and sister-in-law, she did not report about the alleged incident to them.

- vii. The alleged victim did not disclose the name of the accused to her husband at the time because no such incident ever took place whatsoever and the alleged victim didn't knew the accused persons.
- viii. As per the evidence of PW-1 matter was only reported/disclosed after about 31 days, so question of Archana Adhikary approaching to Mahila Samity on 04.11.2003, does not arises, which makes the story of prosecution under serious doubt.
- ix. PW-3 was himself an accused in a murder case.
- x. Plan of the alleged place of occurrence was not made and even the photographs exhibited didn't disclosed the premises no, so the prosecution have failed to established the alleged place of occurrence.
- xi. Pant was no seized from the alleged place of occurrence, lungi was seized and exhibited.
- xii. As per the prosecution story allegation is that accused used force upon the victim and the alleged victim did not retaliate at all, which created a doubt on the case of the prosecution.
- xiii. Pant was no seized from the alleged place of occurrence, lungi was seized and exhibited. This PW 7 corroborated with PW 5 (SI of Police) that lungi was seized whereas the prosecution is that accused was wearing pant at the time of alleged incident.
- xiv. Pant was no seized from the alleged place of occurrence, lungi was seized and exhibited. This PW 8 also corroborated with PW 5 (SI of Police) and PW 7 that lungi was seized whereas the prosecution is that accused was wearing pant at the time of alleged incident.

- xv. Original FSL report was not produced and/or exhibited before the Learned Court by the prosecution to prove its case.
 - xvi. Date of alleged incident 04.11.2003, and the husband of the alleged victim returned back after 25/26 days after the alleged incident.
 - xvii. PW-11 takes responsibility of herself that she reported about the incident to Ballygunge Police station, and from the evidence of PW-1 Archana Adhikary it transpires that she reported the incident to the Officer-in-Charge of Ballygunge Police Station and also to the Lady Police Officer of Ballygunge Police Station, which makes the prosecution case under serious doubt as to who informed about the alleged incident to Ballygunge Police Station.
 - xviii. PW-1 did not state about the time, date and place of occurrence to the Learned Magistrate at the time of TIP, which created a doubt on the prosecution case.
 - xix. As per the evidence of PW-13 Dr. U.P Ghosal it transpired that there was no sign of forceful intercourse upon the alleged victim PW-1 and no complaint about rape was made by PW-1 to PW-13.
 - xx. There was no photograph specifying the premises no, sketch map or plan of the place of occurrence was not prepared. There was no reason or explanation given by the I.O. (PW-14) as to why there was no sketch map or a plan of the Place of Occurrence, and/or photographs of the premises.
10. The Learned Advocate representing the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution

witnesses supported by the medical evidence and the appeal shall be dismissed.

11. A circumspection of evidence of the prosecution witnesses stated as follows:-

- i. PW-1 the prosecutrix deposed to have been brought to Ballygunj as aforesaid by one Jiten Lattu under the pretext of securing her as a domestic help. After about a month of her arrival, she was allegedly raped by an aged man assisted by Jiten. The act of rape as described by her took place in a room located at 6, Sunny Park within the jurisdiction of Ballygunj Police Station. PW-1 reported the incident to her husband after 25/26 days of its occurrence who, in turn, reported the same to Mahila Samity and Budge Budge Police Station. Her statement was recorded under Section 161 of the Code of Criminal Procedure which was marked as Exhibit-2 series. PW-1 had been medically examined by a doctor. Police had seized her wearing apparels thorough a seizure list marked Exhibit-3 and Mat Exhibit-1 series. However, in her cross-examination it was revealed that she did not initially disclose the name of the alleged offender to her husband nor did she initiate immediate steps to inform the police directly. She claimed to have submitted a written complaint to the Mahila Samity which was not produced in Court.
- ii. PW-2 recorded the statement of PW-1 under Section 164 of the Code of Criminal Procedure which was marked as Exhibit-2/2 signed voluntarily by PW-1.

- iii. PW-3 the husband of the victim deposed to have gone for work to Hooghly on 02.11.2003 and returned after 25/26 days whereupon he noticed his wife (PW-1) the victim distressed. Eventually on enquiry, PW-1 informed PW-3 that Jiten took her to Sunny Park to provide a job of a domestic help and an aged man had raped her which prompted him to report the incident to Mahila Samity and Budge Budge Police Station. However, he admitted during cross-examination that neither he nor his wife named the aged man to have allegedly raped PW-1.
- iv. Though PW-4 was infuriated by the incident however refrained to question Jiten along with his friends who were acquainted to him prior to the occurrence of the incident. Moreover, his testimony was silent to the efforts being exercised for an immediate and direct approach to the police station. PW-4 being a police photographer posted at Photography Section, Detective Section, Lalbazar went to the aforesaid spot of incident on 11.12.2003 and clicked three photographs of the entrance and the inside of the room where the offence was allegedly taken place, however, in his cross-examination he mentioned of absence of any bedding found on the cot. Such absence undoubtedly weakened the prosecution case as to whether the room was utilized for residential or habitual purpose on the date of incident. The snaps taken by him were marked as Exhibit-4/1 and 4/2. Moreover, the photography marked as Exhibit-4/1 revealed partition in the room constructed by wood.

- v. PW-5 the S.I. of Kolkata Police deposed to have prepared the seizure list with his signature thereon marked as Exhibit-5, MAT Exhibit-4 series and MAT Exhibit-5.
- vi. PW-6 the S.I. of Ballygunj Police Station deposed to have helped the Lady S.I. Dipika Mitra during investigation in connection with the instant Ballygunj Police Station case examining the crime scene.
- vii. PW-7 had been a resident of UP State Guest House at Sunny Park whose signature on the seizure list was marked as Exhibit-5/1. He confirmed of the presence of a security guard at the entrance of the ten storied building at Sunny Park. He further stated of existence of a gap in-between the roof and wooden partition of the room of Samiul Hossain and any shout, if at all occasioned, could be heard from the said room.
- viii. PW-8 a police personnel attached to Ballygunj Police Station corroborated the seizure of one *lungi*, one shirt and one bed-sheet through a seizure list signed by him marked Exhibit-5/2.
- ix. PW-9 claimed to have arrested Jiten Lattu from his house at Ramchandrapur, Budge Budge on the direction of the Officer-in-Charge Ballygunj Police Station. He had no personal knowledge of the facts beyond the arrest.
- x. PW-10 the Assistant Director Forensic Science Laboratory deposed to have received the parcels and items on 13.12.2003 and prepared the forensic report marked as Exhibit-6. However, he admitted that the FSL Report was not produced in Court and he had only certified the

Xerox copy to be true copy. Moreover, there was no note about the questionnaires.

- xi. PW-11 the member of Mahila Samity deposed that PW-11 informed her about her acquaintance with Jiten Lattu subsequent arrival at Kolkata for the purpose of her job and, thereafter, being raped by an aged man after one month. PW-11 escorted PW-1 and her husband to Budge Budge Police Station and was subsequently referred to Ballygunj Police Station.
- xii. PW-12 the Judicial Magistrate conducted the Test Identification Parade at Presidency Correctional Home on 12.12.2003 during which PW-1 identified Samiul Hossain to be the offender. The Test Identification Parade was marked as Exhibit-7.
- xiii. PW-13 deposed to have been posted as ACMOH Medico Legal, South 24-Parganas and had clinically examined the appellant Samiul Hossain to be capable of sexual activity though he suffered from venereal disease. The medical report was marked as Exhibit-9. PW-13 also examined PW-1 and noted the prosecutrix to have been habituated to sexual activities without recent injury to her private parts. PW-13 ruled out the possibility of forceful sexual activity committed upon her in absence of external injuries detected by him on examination. Moreover, if the patient had complaint to him to have been subjected to rape, he would have noted it in his medical report. PW-4 the Investigating Officer deposed in detail about registration of the FIR, recording of statements of the available

witnesses, seizure of the articles, the Test Identification Parade and medical examination to have been conducted. She acknowledged of non-examination of local witnesses either from Sunny Part or from the proximate locality. She arrested Jiten Lattu on 05.12.2003 and had collected the FSL Report with regard to the wearing apparels of both Samiul and the victim woman (PW-1) and, thereafter, on completion of investigation, she submitted the charge-sheet.

12. Certain notable flaws in the prosecution case erode its evidentiary quotient.

Admittedly, there had been a delay in disclosing the incident of rape. The victim lady had the opportunity to raise an alarm and seek for help. The inmates of the ten storied building at a relatively popular locality were not informed or even examined. The victim did not disclose the incident even to whom she was rendering domestic help for her assistance. Such an incident of magnitude and enormity should not have prevented her to expose the culprit immediately, where her body had been ravaged, her conscience deprecated, dignity depraved. Such condemning act could not have been secretly diffused only to be unraveled to her husband after nearly a month, who recourse the incident to a Mahila Samity to garner strength for reporting it to police station. The sole evidence of the victim of a heinous offence can be reliable barring an iota of corroboration provided the same is free from inconsistencies and contradictions.

13. In the instant case, delay in filing the complaint, absence of medical evidence of recent forcible intercourse, lack of proper documentation of forensic evidence, non-examination of independent witnesses pertaining to the

building to allot the place of occurrence, vitiated the prosecution case, with serious doubts failing to inspire confidence to consider the evidence of the victim to be of 'sterling quality'.

14. In view of the above discussions, the prosecution could not be able to prove its case beyond reasonable doubt and as such the instant criminal appeal being CRA 816 of 2006 is allowed.
15. Under such circumstances, the judgment and order of conviction dated 29.11.2006 passed by the Learned Additional Sessions Judge, First Track Court-IV, Alipore, South 24 Parganas in Sessions Trial No.10(8)/05 arising out of Sessions Case No.41(7)/04 is set aside.
16. Accordingly, the instant criminal appeal being CRA 816 of 2006 is disposed of.
17. There is no order as to costs.
18. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)