

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 624 of 2012

Abdul Rashid @ Abul Sk.

-Vs-

The State of West Bengal

For the Appellant	: Mr. Swapan Kumar Mallick Mr. Gautam Dey
For the State	: Mr. Imran Ali Mr. Pratick Bose
Heard on	: 22.01.2024, 29.02.2024, 12.07.2024, 04.09.2024
Judgment on	: 13.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 18.07.2012 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Lalbagh, Murshidabad in Sessions Serial No. 68/2009 in connection with Sessions Trial No. 8 of April, 2011 arising out of G.R. Case No.1332 of 2007 convicting the appellant for the offence under Section 354 of the Indian Penal Code and sentenced him to suffer simple imprisonment for one year with fine of Rs.1,000/- in default to suffer further simple imprisonment for one month for the offence under Section 354 of the Indian Penal Code.

2. The prosecution case precisely stated on 13.12.2007, the complainant lodged a complaint at the Islampur Police Station alleging that on 12.12.2007 at about 5 P.M. while she was coming to her house after attending nature's call from the field, one Abdul Rashid Sk. @ Abul Sk. of the same locality caught her and brought her to a banana garden by force and tried to rape her but the victim/ complainant shouted and the neighbours appeared and eventually the appellant fled.
3. On the basis of the said complaint, the Islampur Police Station initiated Islampur Police Station Case No. 144 of 2007 dated 13.12.2007 under Sections 376/511 of the Indian Penal Code.
4. After completion of investigation, police submitted charge-sheet against the appellant for the offence under Sections 376/511 of the Indian Penal Code.
5. Charge was framed against the appellant under Sections 376/511 of the Indian Penal Code to which the appellant pleaded not guilty.
6. The prosecution in order to establish its case cited 10 witnesses and exhibited certain documents.
7. The Learned Advocate appearing for the appellant submitted as follows:-
 - i. The complainant deposed at the time of occurrence, nobody came there in spite of raising hue and cry although there were several houses of the village people nearby.
 - ii. Seizure of "*churidar*" and "*orna*" were made which were torn due to an alleged incident as stated by the witnesses were not seized.
 - iii. The witnesses who were examined by the prosecution were close relatives of victim/complainant, although there were many houses

near the place of occurrence but nobody amongst them came to the spot at the time of incident which was quite unnatural and unbelievable but only relying upon the deposition made by the relations of victim the appellant should not have been convicted.

- iv. PW-10, the Doctor stated no mark of injury was detected at the private part of the victim nor any sexual mark present at her breast and those parts of the body and also her hymen was intact, such contention had not been considered.
 - v. The Investigating Officer failed to seize anything in respect of this case
 - vi. On evidence of record, the order of conviction and sentence under Section 354 of the Indian Penal Code is not maintainable in law and liable to be set aside.
8. The Learned Advocate for 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.
9. A circumspection of evidence of the prosecution witnesses revealed as follows:-
- i. PW-1 deposed that she lodged a complaint against the appellant in Islampore P.S. When she returned after attending nature's call, the appellant caught him from behind and coerced to her to the Banana field. Thereafter, the appellant tried to commit rape upon her. When she cried for help the local people arrived and the appellant fled. PW-4

wrote the complaint as per her instruction and she put her LTI upon it. She was also examined by the doctor.

- ii. PW-1 in her cross-examination stated that when she came back from latrine, the appellant caught him. At that time, she raised hue and cry but nobody came there.
- iii. PW-2 deposed that the victim was her sister-in-law. On the relevant date and time, the victim went to latrine besides their house in a field. She found it was being late and the victim did not return so she came out from her house and heard the cries of the victim. She reached there and found the appellant in the Banana field, who tried to commit rape the victim. When she saw them, the appellant fled whom she identified him.
- iv. PW-2 in her cross-examination stated after hearing hue and cry of her sister-in-law, she along with PW-5, PW-6, PW-7, PW-8 and others of their locality went to the P.O. The other locals were aware of the fact.
- v. PW-3 deposed that the victim was her daughter, who went to latrine besides their house in a field. After some time she heard hue and cry raised by her daughter. The appellant caught her daughter and took her to Banana field and tried to commit rape on her. After reaching there, she saw the appellant and the wearing apparels of her daughter was torned. Seeing the gathering, the appellant fled.
- vi. PW-4 deposed that the complaint was written by him under the instruction of the complainant. After completion of writing he read

over and explained to that complainant and then the victim put her LTI on it which was marked as Exbt.-1.

- vii. PW-4 in his cross-examination stated that he had no personal knowledge about the incident.
- viii. PW-5 deposed that he knew the victim. After hearing the cries of the victim he went to the spot. He heard from the victim that the appellant brought her from latrine to the P.O. by force and tried to commit rape her, however when she cried the appellant fled from the spot.
- ix. PW-6, the father of the victim deposed to have seen her daughter lying unclad and his wife and daughter-in-law covering the bare body of the victim. He had seen the appellant seated on the victim's chest who incidentally fled at the arrival of PW-6. The victim being a 16-year-old girl was gant with a muffler by the appellant. In his cross-examination PW-6 contradicted himself by stating that he did not stated presence of the appellant at the place of occurrence.
- x. PW-7 denied of any knowledge regarding the incident.
- xi. The evidence of PW-8 is based on hearsay.
- xii. PW-9, the Investigating Officer on the basis of the complaint registered the formal FIR, visited the place of occurrence, prepared rough sketch map with index, which was marked as Exhibit 3 collectively, arranged for conducting the medical examination of the victim girl and collected the medical report, failed to apprehend the appellant despite repeated search and subsequently filed charge-sheet

against the appellant under Section 376/511 of the Indian Penal Code showing the appellant to be absconding. During cross-examination PW-9 stated his failure to seize anything in respect of the instant case.

xiii. PW-10, the Doctor who conducted the medical examination of the victim deposed of absence of marks of injury on the private parts of the victim as well as “sexual mark” present thereon. The hymen of the victim was intact. The medical report was marked as Exhibit 4.

10. Apart from the relatives of the victim none of the locals who had been claimed to have arrived at the spot having heard the clamour raised by the victim was cited as a witness. The victim had sufficient time to raise an alarm while she was dragged to the banana clove. The torn wearing apparels had not been seized. The Medical Examination Report did not support the prosecution case. The inconsistencies and contradictions in the evidence of the prosecution witnesses raised sufficient suspicion of their presence at the spot of incidence and the identification of the appellant. The victim and the appellant resided adjacently within the periphery of the local people in the neighbourhood who would have surely protested to such a sordid and deprecable incident as alleged if they had been aware of.

11. An offence charged under Section 376 of the Indian Penal Code cannot be converted into an offence charged under Section 354 of the Indian Penal Code, if sufficient evidence existed on record to constitute offence under Section 376 of the Indian Penal Code.

12. Again an offence charged under Section 376 of the Indian Penal Code can be converted to an offence charged under Section 354 of the Indian Penal Code provided adequate evidence of record reveal apart from sexual assault and penetration of any kind there had been proof of criminal force to have been exerted to outrage the modesty of the victim. In absence of elements to prove the commission of rape owing to failure on the part of the prosecution it should not automatically and presumably without substantial and valid evidence be converted into an offence under Section 354 of the Indian Penal Code.
13. In the realm of the evidence of record in the instant case the prosecution has failed to prove the ingredients to constitute either of the offences under Sections 376/511 of the Indian Penal Code as well as Section 354 of the Indian Penal Code. The embellishments, exaggeration on the part of the prosecution witnesses could not form a credible evidence to establish a charge under Section 376 of the Indian Penal Code and the same evidence could not instill confidence due to its inherent flaws to comprise an offence under Section 354 of the Indian Penal Code.
14. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such the instant criminal appeal being CRA 624 of 2012 is allowed.
15. Under such facts and circumstances, the judgment and order of conviction dated 18.07.2012 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Lalbagh, Murshidabad in Sessions Serial No. 68/2009 in

connection with Sessions Trial No. 8 of April, 2011 arising out of G.R. Case No.1332 of 2007 is set aside.

16. Accordingly, the instant criminal appeal being CRA 624 of 2012 is disposed of.
17. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
18. 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.)