

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 903 OF 2013

YAAD ALI DHALI @ YEAD ALI DHALI

VS

THE STATE OF WEST BENGAL

For the Appellant : Mr. S.K Moinuddin, Adv.

For the State : Mr. Anand Kesari, Adv.
Mr. Atanu Ghosh, Adv.

Last heard on : 27.08.2025

Judgement on : 04.11.2025

Uploaded on : 04.11.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This is an appeal filed against the judgement and order of conviction passed by the Learned Court of Additional Sessions Judge, Fast Track, 5th Court, Alipore, 24 parganas South in Sessions Trial No. 2 (8)12 under Section 376 of the Indian Penal Code whereby the appellant was sentenced to suffer rigorous imprisonment for a period of 5 years and to pay a fine of Rs .5000/- and in default to suffer simple imprisonment for a period of 1 month.

Genesis of the case

- 2.** Briefly stated the prosecution case arises on the strength of a complaint lodged by XXX on April 28, 2012 against the appellant alleging commission of rape upon her on April 26, 2012. It is her case that the appellant being an acquainted person often visited victim's house during presence of her husband .On April 26,2012 Thursday a drama on goddess Manasha was being held and the accused came to watch the same in their village but the victim did not go there to watch the drama .In the mid of night when she was sleeping with her three children, the accused entered into her house opening the door made of Bamboo strips and threatened her with a sharp weapon not to create any hue and cry or otherwise he will kill the children. She fervently requested him not to commit any such act as it will ruin her life but he did not pay any heed and committed rape on her and she couldn't shout, out of fear .Her husband was not present and hence she informed her husband over telephone who accused her of betraying taking advantage of his absence. She was shattered and cried for the entire day on the next day of incident and after having the consent of her husband she lodged the complaint before the Officer-in-charge, P.S Basanti.
- 3.** On the basis of such complaint Basanti P.S no. 298/12 started under section 376 I.P.C .On completion of investigation the I.O submitted the charge-sheet against the accused person under Section 376 I.P.C. The case being exclusively triable by the Sessions Court was transferred to the Learned Court of C.J.M Alipore 24 Parganas South and after commitment transferred before the learned Session Judge wherefrom it was further transferred to the

Learned Court of Additional Session Judge ,5th Court Alipore for trial .The Learned Court after considering the material and upon hearing both the parties framed the charge under Section 376 IPC and the content of the same was read over and explained to the accused who pleaded not guilty and claimed to be tried .Hence the trial commenced. The Learned Court after hearing the parties and after assessing the evidences adduced by the prosecution witnesses passed the order of conviction against the accused person under Section 376 IPC and sentenced him to suffer R.I. for a period of 5 years .Being aggrieved thereby this appeal has been filed.

Submissions

4. The Learned advocate appearing on behalf of the appellant submitted written Notes of Argument. It is his specific stand that the appellant has been implicated with a mala fide intention due to ongoing dispute between the husband and the appellant herein in respect of repayment of loan amount which was procured by the husband of the de-facto complainant from the appellant herein. It is his contention that the Learned Judge incorrectly relied upon the case of the prosecution and came to the finding of guilt against the appellant. It was not considered by the Learned Judge that there is no eye witness though the de-facto complainant said that she was sleeping with three children and one of her son is aged about 12 years. The learned judge failed to consider the glaring discrepancies and despite absence of any injury as deposed by the doctor, passed the order of conviction mechanically .It is further submitted that the bamboo gate was broken by the appellant and he entered into the room forcefully and raped her has no basis since it is very

unusual that none of her three children would hear any sound when it was mid of night. P.W. 3's evidence is hearsay as she came to learn from the de-facto complainant and has got no credibility. Lastly the examination of the appellant under Section 313 Cr.Pc was illegal ,violative of the principles of natural justice and fair play and has caused gross prejudice to the appellant and has rendered a mistrial in the eye of law. The learned Advocate relied upon a decision of Hon'ble Supreme Court **reported in Surjan and Ors vs State of M.P¹**, where it was held that the inordinate delay in lodging the complaint if not explained properly and no question was put to her on that long delay the Court cannot afford to act on the uncorroborated testimony of the prosecutrix unless the said evidence is wholly reliable. Another judgement relied upon in Criminal Appeal No. 587 of 2007 **Bhagbat Gorain vs State of west Bengal²** where the Learned Judge took note of several decision of the Hon'ble Supreme Court and held that the victim being a married lady can easily be a pawn to avenge family disputes and the lack of proper evidence and reliability does not give rise to preponderance of probability and set aside the Judgement passed by the Learned Trial Court.

5. The Learned prosecution on the contrary argued that in a case filed by the De-facto complaint ,the victim herself has proved the written complained and explained the delay of one day in lodging the F.I.R ,duly corroborated by the medical evidences by the treating doctor and the testimony of the victim could not be impeached by the defence counsel and hence it is settled proposition that the order of conviction can be passed on the sole testimony of the victim

¹ AIR 2002 SC 476

² 2023 SCC Cal 4735

who led a trustworthy evidence. More so in this case an incident of sexual assault has been alleged by the victim herself and hence the learned court rightly passed the order of conviction after assessing the evidences .

Hence prayed for dismissal of the appeal.

Analysis

6. On careful perusal of the materials on record and the submissions advanced by both the Learned Defence Counsel and the Learned advocate representing the state the moot question now falls for consideration as to whether the prosecution case was established beyond the reasonable doubt or not. In this case the victim herself-deposed as P.W. 1 and deposed that after giving her the threatening and without paying any heed to the request made by her to the appellant not to do any such thing he torn her blouse and pressed her mouth on her chest and breast and he removed his cloth and became naked and then slept with her and did the wrong thing and then she started weeping. After that she informed the neighbour who telephoned her husband in the morning. She also told her husband the entire facts. She thereafter reported the incident to the police. She was also medically examined. However during her cross examination she disclosed that she is an illiterate lady and cannot read the content of the F.I.R .She denied of having good relation between her family and the family of accused person.

7. According to her evidence her house is having one room and a verandah .There is one room in the house and verandah is surrounded by bamboo stick and there is one door which was locked from inside with rope. She slept on the mat but police did not seize the Mat/madur. She also said the house of Yaad Ali is

30mnts away from her house and no house of any person was adjacent to her house.

8. P.W.2 Momtazul Mullick is the son of the victim aged about 13 years.

According to his version one morning he found her mother, weeping and she told the villagers that Yaad Ali caught hold of her and raped her. He did not see the incident and at the time of incident he was sleeping. He was not interrogated by the police nor gave any statement before police. He stated in his cross that they have only one room and he along with his mother and sister slept and they closed the door from inside.

9. The P.W 3 Mithun Laskar is the brother of Nazrul Mallick the husband and the victim is his sister in law. He deposed that his bhabhi told him over telephone and thereafter he went to her place and then she narrated the entire incident . She informed him that when she was sleeping with her children the appellant entered her house and raped her on point of knife. He advised her to go to police station and he was interrogated by the police. He could not meet his elder brother when they went to police station but he met him on the next day of lodging complaint. His brother works as a labourer outside India and he could not say when his brother come and reside in that house. He had no communication with the children on this issue and they also did not say anything. He denied that he did not mention before the police that his bhabhi informed him about being raped on the point of a knife.

10. Haman Mullick deposed as P.W 4 who is the other brother of the husband of the victim and he also said that his bhabhi informed about the incident to him over telephone. He said his brother did not go to Police Station. P.W. 5 The

Judicial Magistrate who recorded the statement of the victim on 30.4.12 under Section 164 Cr.Pc .He proved the said statement recorded by him.

11. In this case the doctor adduced evidence as P.W 6 who examined the victim lady on 28.4.12 in c/w Basanti P.S case no 298 dated 28.4.12 when she was posted at canning Sub-divisional hospital as M.O Gynaecologist . On examination she found patient was co-operative and was conscious and told her that she was raped by the appellant. No injury mark was found except rapture of hymen and on several examination she found blood stained discharge. In her cross examination she deposed that if a woman is forcibly raped felling on the ground then there may be external injuries on her person.

12. It is trite law that in a case of sexual assault if the version of a victim is truthful and inspires confidence, mere delay in reporting the incident would not be a ground to disbelieve the prosecution case. At the same time, the court cannot be oblivious of the situation where the pre-existing inimical relation exists between the accused and the victim or her family members and the allegation of sexual assault is made against an accused, such allegation must be subjected to deeper scrutiny and examined with due care and caution before it is relied upon. In this case it can be found that the victim denied the suggestion that the relation between the family of the accused and the victim was good.

13. In a case of rape it is difficult to have any eye witness and the court is to assess the circumstantial evidence corroborating the version of victim if the testimony of the victim is not found to be enough trustworthy and in the instant case also the court is left with only one witness to rely upon that is the victim herself along with the medical evidence, to dig out the truth. At the

outset it is admitted that she alleged the incident occurred on 26.4.2012 at 12 o'clock and the complaint was lodged on 28.4.12 at about 13.05 hrs. The delay explained that she had to wait for the consent of her husband and she took the entire next day as she was in a state of confusion and on Saturday her husband gave the consent and she lodged the complaint. So far this testimony is concerned there is no corroboration as the husband was not cited as witness. That apart no neighbour to whom she alleged to have informed the incident and who in turn informed the husband has been cited as witness. The brothers of the husband said their bhabhi informed them about the incident but they were not shown as neighbours. On the contrary said Yaad Ali in his examination denied that persons of such names being the resident of that area or locality. The question remained unanswered why she did not call her husband after the incident and why she did not mention about the name of the neighbour to whom she divulged the incident for the first time. She stated that one Swarup Mondal is having his house at the backside of her house and on the left side house of Tusar Mondal is situated. None of them is cited as witness.

- 14.** The medical report suggests no injury mark and only ruptured hymen. The victim is a married lady having three children so in this case rupture of hymen only would not be the factor for consideration as to whether the rape was committed or not. The learned Trial Court also dealt with this issue and observed it would be natural that her hymen would be in ruptured so that fact is of no such importance. It is important that no injury mark was found by the doctor and the circumstances narrated by the victim would manifest that he threatened her with a sharp weapon for keeping her mouth shut or he would

kill her children so obviously the alleged incident occurred without application of such force which can cause injury in other part of the body. Before The statement under Section 164 Cr.Pc was recorded by the Learned Magistrate on the same date when she lodged the complaint but, she failed to give any specific date and said about 11/12 night on Thursday the incident occurred. The scribe Anusua Baidya wife of Swapan Baidya wrote the complaint as per instruction of the victim but her relation with the victim has not been disclosed .The victim/de-facto mentioned in the written complaint about the consent given by her husband but he was not present with her before the Police station. The I.O, P.W 9 who also recorded her statement and searched at P.O tried to seize any article but did not find anything and the V.G did not hand over her wearing apparels. V.G did not tell him that the accused threatened to kill her child or that accused removed her clothing and then slept with her. Peculiar enough, her husband was not examined by the I.O when the brother of the husband of the victim lady P.W. 3 in his evidence said he met with his brother on the next day of lodging complaint. The other brother P.W. 4 said that his brother did not go to police station while lodging complaint. From the evidence of P.W. 7 it is evident that the victim herself did not inform her husband directly but she informed to her neighbour who informed her husband. Such neighbour has not been examined to corroborate the same. The brothers of the husband of the victim on the contrary said that their bhabhi informed them over telephone which was never disclosed by de-facto. The I.O. did not try to verify the call data when glaring inconsistencies were found. The absence of the husband and or his evidence certainly creates a suspicion regarding the delay in lodging the written complaint as the same

was lodged only after his consent as alleged. The other unexplained circumstances which are found glaring that she used mosquito net and was sleeping at verandah with her two children and one is to enter the verandah after opening the bamboo door which was locked from inside with rope and there is no electric connection at her house .The victim mentioned about a sharp weapon in the hand of the accused but in the statement before Learned Magistrate she did not mention the said fact nor before the I.O .Interestingly the brother of her husband P.W 3 divulged this fact for the first time as he was informed by his bhabhi when the prosecution has miserably failed to establish that this witness was at all called by the victim.

15. Thus if the situation could be visualised it would reveal that the accused entered into the house by opening the gate of veranda which was tied with a rope from inside and the victim, instead of shouting though being in a position to understand that someone has entered in the mid of night in dark inside , she did not shout but asked who has entered and then that person went to her with a sharp weapon ,definitely pulling off the mosquito net till such time she did not shout and then the person threatened her to kill her child and then she begged and requested to leave her without identifying the person but without paying any heed the person forced her and committed rape. The victim in her written complaint mentioned that Yaad Ali went to their village to watch the drama Manashapala, but when she learnt about that fact, has not been found from her evidence and no case made out that prior to the incident the victim had an interacting with him whose residence is 30 minutes away from her house. Moreover she said Yaad Ali entered into her house then when she could identify him when there was no electric connection .None of

the child woke up despite this entire incident occurred , which further creates a doubt over the veracity of her claim. There is no such proposition that the uncorroborative testimony of the prosecutrix is not sufficient for entering conviction for an offence under Section 376 IPC but the evidence of solitary witness must inspire confidence in the judicial mind. The further inconsistency can be found in her evidence that she was sleeping with her sons at verandah when in the written complaint it was mentioned that she closed the door of their house and went to sleep. The accused during his examination under Section 313 Cr.Pc denied about any person named Mithun Laskar and Hasan Mallick who adduced evidence as P.W 3 and P.W. 4. . Therefore when the identity and relationship of the persons who corroborates that their bhabi called them and informed the incident claiming to be the brother of the husband of the victim are found to be questionable and non-presence of the husband coupled with all the facts discussed above fail to inspire any confidence in the mind of the Court.

16. Therefore on assimilation of the entire testimonies, glaring inconsistencies and unexplained circumstances are found abundantly which obviously failed to inspire confidence to that extent to pass an order of conviction on the of strength the sole testimony of the victim. The I.O did not seize the mat where the alleged offence took place .No offending weapon was seized; no sketch map was exhibited to show the place of occurrence. The learned Judge relied on the decision of the Hon'ble apex court reported in 2004 Cr.LJ 1807 where it was observed by the Hon'ble Apex court that in case of defective investigation the court has to circumspect in evaluating the evidence but it would not be right to acquit the accused on the ground of defect and thereby passed the order of

conviction solely on the basis of the testimony of the victim lady did not consider the basic tenets of criminal jurisprudence that before pronouncing a judgement holding a person guilty the court must be satisfied that the prosecution has been successful to bring home the charges beyond all reasonable doubts.

Conclusion

- 17.** In this case it undisputed that the investigation was hopelessly perfunctory but certainly that alone cannot be the reason for passing an order of acquittal but where the evidence of the victim herself failed to inspire confidence and there are major contradiction and significant discrepancies and also found relationship between their families not good the possibility of the victim being used as a pawn cannot be ruled out.
- 18.** Therefore in view of the above discussion the judgement and order of conviction passed by the learned trial court is liable to be set aside.
- 19.** Accordingly this Criminal appeal stands allowed. The Judgement and order of conviction passed by the learned Trial Court on July 9, 2013 is hereby set aside. In view of the above all connected applications are also disposed of.
- 20.** Let the T.C.R along with the copy of the judgement be sent to the Learned Trial Court forthwith for necessary information.
- 21.** All parties shall act on the server copy of the judgement to be downloaded from the official website of this Court.

22. The urgent certified copy, if applied by any of the parties be supplied at an earliest, subject to fulfilment of all required formalities.

(CHAITALI CHATTERJEE DAS,J)

