

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 76 OF 2009

MITHUN PAUL

VS

THE STATE OF WEST BENGAL

For the Appellant : Ms. Tannistha Bandyopadhyay, Adv.

For the State : Ms. Sujata Das, Adv.

Last heard on : 28.01.2026

Judgement on : 27.03.2026

Uploaded on : 27.03.2026

CHAITALI CHATTERJEE DAS:-

1. This application under Section 374(2) of the Code of Criminal Procedure, 1973 is filed against the judgement and order dated November 29, 2008 passed by learned Additional Sessions Judge, Fast Track Court I Krishnanagar, Nadia in Sessions case no. 40(7) 2006 by the applicant has been convicted under Section 376 of the Indian Penal Code and sentenced him to suffer for 7 years and to pay a fine of ₹2000 in default to rigorous imprisonment for three months.

Brief resume of the case

2. In order to set the police in motion a complaint was lodged by the victim, alleging against the applicant that on July 23, 05 at 5:30 PM, the accused called her to his house with on the plea he would marry her when nobody was present in their house and then he made her lying on the court, stripped and raped her as a result she suffered bleeding from her private part. The accused washed the bedsheet with detergent powder after committing rape on her. He confined her up to July 31, 2005 on the ground of marrying her, but left to some other place, keeping her in the house. The mother of the accused also left due to fear.
3. Over the complaint, the Kotwali P.S. case no. 261 of 2005, dated August 1, 2005 under Section 376 IPC started against the accused person and on completion of in the investigation, the charge-sheet was submitted. The matter was transferred after commitment before the learned Fast Track Court 1, Krishna Nagar for trial.
4. The learned court on considering the materials framed the charge against the accused under Section 376 of IPC and the contents of the same was read over and explained to the accused in Bengali to which he pleaded “not guilty” and claimed to be tried. Hence, the trial commenced. In order to prove the case the prosecution witnesses adduced evidence. The learned Court after hearing both the learned prosecution as well as the defence counsel and considering the evidence, passed the order of conviction. Being aggrieved thereby this appeal has been filed.

Submission

5. The learned Advocate representing the appellant argued that the victim got married with the appellant which she suppressed in her complaint and disclosed only during the cross examination hence the allegation to commit rape is not sustainable. The incident took place as alleged on July 23/2005 with an allegation of false promises to marry. The victim alleged of confinement for nine days at the house of the appellant but no complaint was lodged. P.W. 4, 5 & 6 turned hostile. The marriage held between the parties on August 8, 2005 under Special Marriage Act and a civil suit is pending challenging such marriage. They lead matrimonial life for 2 months and her husband qua the appellant was kidnapped and filed a case. Admittedly, there was a love relation which subsequently turned soured, and this false case has been filed against the appellant. The P.W. 3 mother corroborates that her room was locked but admittedly though her daughter was confined in the house of accused, no one lodged any complaint against the accused person.

More so, when the victim was aged about 18 years at that point of time, the appellant, during his examination under Section 313 of the Criminal Procedure also admitted the marriage and also that he got married to a different lady as the complainant left with another boy of a different locality. The doctor could not opine that rape was committed. Therefore, the prosecution miserably failed to prove the case beyond the shadow of reasonable doubt and hence such judgement and order, passed solely on the basis of the evidence of the victim, which itself is self-contradictory and cannot sustain.

The prosecution on the other hand raised objection and argued that the prosecution witnesses gave evidence and the victim herself narrated the incident and the learned trial court rightly passed the order of conviction. Accordingly prayed for dismissal of this appeal.

Analysis

6. Heard the submissions. On careful perusal of the entire fact and circumstances of the case and the rival contentions, coupled with the evidence adduced by the prosecution witnesses, the moot question now falls for consideration is whether the learned Trial Court rightly passed the order of conviction under Section 376 of the Indian Penal Code when the marriage was admitted.
7. In this case, the victim being the de-facto complainant adduced evidence as P.W.2. From her evidence, it could be gathered that on July 23, 2005 at 5:30 PM when she was in her house, she was called by the accused and she went to his house but did not find the mother of the accused in the house though the appellant assured the presence of the mother and then she was told that the mother was inside the house. After she entered into the house, the accused forcefully took her inside a room and closed the door and window, and then forcibly flanged her on the bed and then touched her breast to which she raised protest, then he assured her to marry her and after that he committed raped on her. According to her, she never cohabited with anybody else prior to the incident and she suffered bleeding for such penetrative act of the accused. The bed cover was blood stained and was washed off by the accused. He then confined her into a room and locked with a chain. The victim then shouted and local people gathered and she informed about the incident to Ananda Ghosh,

China Pal, Apurva, Roy, and others. The mother of the accused came later on, but the local people kept her in the said house to take a decision that the accused would come and marry her. She stayed in the house of accused for nine days, but the accused did not return and the mother of the accused ousted her from the house on August 1, 2005, and left after locking the house. She then went to the police station and lodged the complaint. She was treated medically by the doctor and gave statement before the Judicial Magistrate under Section 164 of Cr.P.C. From her cross-examination, it can be seen that she was married with the accused and lived as a husband and wife for two months in her matrimonial house. The sister-in-law and two elder brother of the accused kidnapped her husband and she filed a criminal case against them for this kidnap. After that, her husband returned. She admitted her acquaintance with the accused much before the incident as she had love affair with the accused. She admitted to have filed the case so that she could live with the accused as husband and wife. She further admitted that she would not have file the case if the accused lead conjugal life with her. Her evidence further manifest that the accused did not marry her immediately after the incident, and the Local People compelled her to stay in the house of the accused on their prospective marriage. She was thereafter socially married with the accused.

- 8.** P.W.3, the mother of the victim deposed that the accused took her daughter in his house and when she went to that house , found her daughter under lock and key in a room. Her daughter informed her about the incident of rape. She informed the matter to Ananda Ghosh, a person of their locality, and they assured her to arrange marriage with the accused. She admitted that her

daughter stayed in that house for nine days, but the accused fled away and the mother of the accused was there who also left ousting her from the house. The above evidence prima facie appears to be contradictory as she initially denied that her daughter had a romantic relation with the accused but admitted later on as she came to learn about such affair after the incident. She also admitted that they married subsequently and lived as husband and wife, and her daughter was 18 years old at the relevant point of time.

9. The person to whom the victim stated to have informed about the commission of offence deposed as P.W.4, Apoorva Roy, who denied to hear any incident of rape on her. This witness was declared hostile. P.W. 5, Ananda Ghosh, the other person to whom both the victim and her mother narrated the incident also denied to hear about commission of rape on the victim. He also denied to have mediate their marriage and did not know anything about rape. He came to know from the mother of the victim about the marriage of the accused and the victim to be registered as they had a romantic relation. Registration of such marriage was not materialised. Another witness China Pal, P.W.6 also did not support the case of prosecution as she did not find the victim in the room of accused on July 23, 05 at 5:30 P.M. She did not know anything about incident or commission of rape on her by the accused. No other independent witness has been examined in this case. P.W.8, The medical officer who examined the victim on August 1, 2005 found her Hyman was not intact, but he could not opine whether she was raped or not. His further deposed that the victim informed him that she had sexual exposure, but did not tell him by whom it was done. Her age was informed as 18 years.

10. It is a settled law that in an offence of sexual assault, the sole testimony of the victim can be the basis for passing an order of conviction, provided her evidence inspires confidence to the mind of the Court.

11. In this case, the contents of the written complaint as well as the evidence of the victim herself manifest that such complaint has been lodged out of grudge. as after marriage, the accused did not lead conjugal life with her. The marriage between the parties is admitted by the victim herself. The accused also in his examination under section 313 of the code of criminal procedure stated about their marriage and their love affair and the registration of marriage and social marriage, after a week. The defence has set out a case that she left with a boy of Garapati and got married and became pregnant and he has been framed. The fact of subsequent marriage of the victim with another person cannot be ascertained in this case in absence of any specific evidence to that extent, but it is undoubtedly admitted marriage took place between them which was not mentioned in the written complaint and the victim did not disclosed the same in her examination in chief .The evidence further discloses that they lived as husband and wife for a period of two months and prior to that they had a romantic relationship. So she knew the accused prior to such incident as they had love affairs. No complaint was lodged by any of the family members even after having knowledge that she was kept inside the house of the accused for 9 days. No case has been made out as she was forced to stay in the house and in absence of any complaint by any family member before any authority further failed to inspire any confidence regarding the veracity of the complaint .

12. That apart none of the witnesses to whom she alleged to have communicated about the incident being locked in the house of the accused ,

supported her case. She herself lodged the complaint after eight days of the said incident, and the delay has been explained of her being locked inside the room, but such fact was not proved by any evidence.

13. Even if, for the sake of argument, the prosecution case is accepted that an incident of rape occurred on the alleged date, it cannot be inferred, in absence of cogent evidence, that there existed any intention from the very inception to deceive her by a false promise of marriage. There is nothing on record to demonstrate that such a promise was made prior to the alleged act, inducing the victim to visit the accused's house.

14. Therefore the observation of the learned Trial Court that the consent was given pursuant to a false representation as the accused intended to marry her to be recorded as a constant given under misconception do not appear to be tenable under the legal parlance and is not sustainable in the eye of law. Section 90 of the Indian Penal Code speaks of ;

"Consent known to be given under fear or misconception. A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear of misconception; or Consent of insane person. if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent ; or Consent of child.- unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."

From the fore corner of the entire evidence nothing transpires to support the case of the prosecution. The victim was aged about 18 years. Here question of misconception does not arise. Since they got married and lead a conjugal right. They had social as well registered marriage but this fact was never placed by prosecution. This court do not find any significant facts to establish any misconception of fact under Section 375 IPC.

Conclusion

- 15.** The learned court passed the order of conviction without considering the romantic relationship of the parties and that subsequently they got married and also the reason assigned for lodging such complaint by the victim. In criminal jurisprudence the prosecution is to prove the case beyond the shadow of all reasonable doubts and where the evidence of the victim , failed to inspire any confidence to the mind of court due to suppression of fact of the marriage with the accused person ,there are lack of corroborative evidence regarding her being locked in the house of accused person for long 8/9 days and absence of complaint lodged by any of the family member despite having full knowledge about her illegal confinements for such long period of time and the testimony of the victim for lodging such a complaint ,no order of conviction can be passed against the accused person and therefore the judgement and order of conviction passed by the learned trial court is liable to be set aside.
- 16.** Hence this criminal appeal stands allowed. The judgement and order of conviction passed by the learn trial court is here by set aside.
- 17.** No order as to costs .
- 18.** The appellant be discharged from the bail bond forthwith.

- 19.** The TCR be sent down to the concerned court.
- 20.** Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(CHAITALI CHATTERJEE DAS,J.)

