

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 135 OF 2009

ALI SHA

VS

THE STATE OF WEST BENGAL

For the Petitioner : Mr. Arijit Bhusan Bagchi, Adv.

For the State : Mr. Md. Adil Badr, Adv.

Last heard on : 04.02.2026

Judgement on : 16.04.2026

Uploaded on : 16.04.2026

CHAITALI CHATTERJEE DAS:-

1. This criminal appeal is filed against the judgement dated 10th September, 2008 passed by the Learned Additional District and Session Judge, Fast Track Court, Paschim Medinipur, Jhargram convicting the accused appellant under Section 376 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 6 months more.

Factual matrix of the case

2. In order to set the police in motion the complaint was lodged by the de facto complainant before the Court of Learned SDJM at Jhargram, against the

accused persons alleging that on 16th September, 2001 the complainant went to bed along with family members and his daughter at 10 P.M., after completing their dinner. About 11 P.M. the minor girl went to attend nature's call at the courtyard house but did not return after 20 to 25 minutes and then the complainant and his wife started searching for their daughter and called their neighbours and when they reached near the house of Sk Kadu, on hearing the screaming of his daughter, they entered in the house and found the accused persons committing rape on the minor daughter. They also found the accused person being completely naked and trying to remove the wearing apparel of the daughter of the complainant . The other witnesses also reached at the spot of occurrence and rescued the minor girl and apprehended the accused persons. They came to learn from the minor girl that when she went to attend the nature's call in the courtyard at about 11 P.M. The accused person came from her back and held her and after covering her mouth with cloth forcibly took her in his bed at his house with a bad intention. Further the accused person raped the minor daughter of the complainant. The accused was taken by the witnesses to the Binpur Police Station and on assurance by the O.C to lodge appropriate case and the Opposite Party assured them of lodging appropriate case but later did not lodge any case of the accused person and released the accused person.

- 3.** On the basis of this complaint received on October 4, 2001 at 10.25 hours the Binpur P.S, case no 44/1 dated 4.10.2001 under Section 376 of Indian Penal Code was started against the accused person. On completion of investigation the charge-sheet was submitted and the matter being exclusively triable by the Sessions Court was committed to the Learned Session Judge and

subsequently transferred before the Learned Fast Track Court, Jhargram where the charge was framed under Section 376 of the Indian Penal Code against the present accused person after considering the materials.

Submission

4. The learned Advocate appearing on behalf of the appellants argued that there is a prolong delay in lodging the complaint without any explanation .The complaint was lodged under Section 156(3) of the Code of Criminal Procedure on the ground that though a complaint was lodged before Binpur Police Station and assurance was given to start a case they did not do that but the evidence of the recording officer discloses that no complaint was lodged before the police station. It is further argued that there are severe inconsistencies in the evidence regarding the time of alleged incident .The I.O. of the case was not examined to contradict and corroborate the prosecution case. The injury report was prepared on a white paper without the seal of the hospital . The evidence further disclosed that a complaint of kidnapping was lodged against the defacto complainant by the father of the appellant so as a counter blast to the same this complaint was lodged. No blood was found from the body of the victim as claimed and the opinion of the doctor suggest she was used to with sexual intercourse . The only independent witness could not recollect whether he was examined by the I.O. or not. There was no seizure list of the wearing apparels of the victim or the accused. The age of the victim was not ascertained. More so the appellant was a thalassemia patient.

5. On behalf of the prosecution it is argued that the prosecution adduced evidence of 7 witnesses and proved the documents being exhibit 1 to 11 and the Learned Court after considering the same arrived at a conclusion that the accused committed such offence. Accordingly prays for dismissal of this appeal.

Analysis

6. Heard the submission. From the materials on record as well as considering the submissions advanced by both the Learned prosecution as well as the defence counsel the seminal issue required to be ascertained is whether the prosecution proved the case beyond the shadow of all reasonable doubt before the Learned Trial Court or not and or whether the judgement and order of conviction passed by the Learned Trial Court warrant any interference.

7. In this case the de-facto complainant being the father of the victim adduced evidence as P.W. 1. It can be gathered from his testimony that at the time of lodging of the complaint the daughter was aged about 12 years and the incident happened about 6 years ago when he deposed before the court. On that day with the help of some of his neighbours he found his daughter from the house of the accused persons and then excepting his daughter and the accused none was there. He further deposed that his daughter lost senses when rescued . He further deposed that they took the accused and the daughter to their house and from there, taken to local police station. Her daughter could not speak anything to him on that day and subsequently told him about the rape committed by the accused person. This witness said that

his daughter was medically examined. From his evidence it can be seen that in between his house and the house of accused there were 15 houses. He specifically stated that in that night the parents of the accused were not in their house. They broke down the door of the accused while entering into his house as it was locked from inside and then his daughter was in senseless condition. He did not see any blood on the body of his daughter but his daughter could not speak anything about the incident to them. It further transpires from the nature of evidence adduced that a case of kidnapping was started against the de-facto complainant and three others and they were released on bail .Other than the de facto complainant Jahangir, Sadhua and Alamgir were arrayed as an accused in such case of kidnapping. His daughter was not admitted to Hospital for her medical treatment.

- 8.** P.W. 2 is the victim who deposed that she identified the accused person . According to her version, the accused and she resided at the same village and on that night when she came out to attend the nature's call then the accused came from her back and gagged her mouth with cloth and took her somewhere. She further narrated the accused put off her pant and forcefully raped her. She wept and raised hue and cry. Her parents and neighbours rescued her. She further deposed that she was medically treated and also gave statement before the Learned Judicial Magistrate. She also said that the accused came from behind hence she could not identify him and then he lifted her to his house and she raised hue and cry then she struggled to free herself from the clutches of the accused , she raised hue and cry but none of the neighbour came from their house to rescue her. She also resisted and struggled to come out from the clutches of the accused when he forcefully

ravished her. She scratched him with nail at the back of the accused and also caught the hair of the accused to free herself from him. She sustained injuries on the backside of her to elbows but she did not show the injuries to any Doctor. She could not see whether any bleeding injuries was there in any part of her body but blood oozed out from her private part. She also said that she became unconscious when the father along with other boys of nearby house reached she could not speak anything to her father and her neighbours and also could not say the names of the neighbours who went to her. She further deposed that prior to this incident she never experienced sexual intercourse with any person. She was medically examined by a Doctor at Jhargram but she could not say the time . The family members of the accused /appellant said at their house .She denied that she is habituated in sexual intercourse with different persons.

- 9.** P.W. 3 is a neighbour who also knows the appellant/ accused of their village. It is further deposed that he heard a hue and cry about 5/6 years ago in night and he woke up and found the sound coming from the house of the accused and then found that Liakat , calling his neighbours and was moving here and there. The next door neighbour of Liakat was also called. They went to the house of the accused person and found the door locked from inside. They knocked the door but the door was not opened, then they broke down the door and found the girl lying unconscious and the accused was standing beside her and they took the accused to the local police station. He denied that the de-facto complainant is his brother or the victim girl is his niece .His house is situated about 100 yards away from the house of Liakat and Liakat did not call

him. He could not give the names of other neighbours who went to the house of Liakat.

10. He could not say whether the victim was medically treated or not and he did not go to the local police station taking the accused. He could not say who broke the door. He also could not say the time when they went to the house of accused but he was sleeping in his house.

11. The mother of the victim deposed as P.W. 3, Reshma Bibi who could not say the year or months when the incident took place. She could only say that the incident took place about 12 O' clock in the night when they were sleeping and her four daughters were sleeping in the house. She further deposed that her daughter went out to their house to urinate and within 2 minutes heard hue and cry raised by her daughter from the house of the accused person. She and her husband went to the house of the accused and they found that the door was locked from inside and they could not open the door. Then they returned to their local area and called the neighbours and went to the house of accused and broke down the door and then the neighbours took out her daughter from the house of accused. The witness further found the pants of her daughter and pants of accused were put off from their bodies and found dirt on the pant of her daughter. She sprinkled water on the face of her daughter and then asked her about the incident who told her that accused caught her chest and committed dirty act on her. She denied having any relationship with Faruk Khan. From her cross examination the presence of the father and step mother of the accused can be seen . She said that the pant of her daughter was handed over to the police and there was scratch mark on the body of her daughter. The victim was medically examined 3 days after the incident when

she was with her daughter. She further said that when her daughter narrated the incident none of the neighbours were present. Her daughter regained senses after the water was sprinkled on her face and when their neighbours were present. She did not tell her anything after she regained sense. She admitted that she did not state to the police that the door of the house was locked from inside. She also did not state that the boys of their locality went to the house of the accused and broke out the door and took out the victim. She herself did not enter into the house of the accused and could not say whether Alamgir, Sadhua and her husband took away the accused or not. She could not say whether Ali sha, brought a criminal case of kidnapping against her husband and all others. She could not say the nature of the neighbours of their locality who came to the house and took the victim from that house. Beside this witness, no other witness of the locality was examined or adduced evidence before the Court.

12. P.W. 6 Dr. G.M. Jana was attached to Jhargram. S.D. Hospital as a Gynaecologist on October 9, 2001, when he medically examined the victim in connection with Binpur P.S. case no. 44 of 2001. He held medical examination on V.G in presence of her lady constable and prepared the medical examination report when V.G. informed that she was a victim of rape. He further deposed that if a victim girl is examined 15 days after commission of rape the evidence of rape may not be found. During his cross examination he said that the report was prepared on a white paper and not on prescribed form and regarding his holding medical examination over the victim girl, there is a note in the relevant registrar of hospital. He had no independent recollection beyond the findings as recorded in the medical examination report.

He admitted that it was not noted in the medical examination report that the victim made allegation that she was a victim of rape. He further said that victim girl did not give any statement to him. He did not find any sign of forcible sexual intercourse on the victim girl and also did not get any foreign particles on the vaginal canal of the victim girl. He further mentioned that the victim girl is probably habituated to sexual act as the vaginal outlet is capacious early admitting two fingers. He did not receive any chemical examination report of vaginal swap and did not note if she got any mark of violence on the private part of the victim girl or marks of violence on the external part of the victim girl. He did not find any scratch mark on any part of the body of the victim girl. He did not determine the age of the victim girl but it was noted that her age is to be determined after getting the radiological finding. He further deposed that if a man forcibly causes the intercourse the woman will sustained injury on her private part.

- 13.** P.W. 7 Dr. Pranab Majumder who was attached to Jhargram SD Hospital as Medical Officer on 30.11.2001 deposed that on that day he medically examined the accused in connection with Binpur .P.S case no. 44 dated 4.10.2001 under Section 376 of the Indian Penal Code. After examination he found and opined that there is nothing suggestive that he is incapable of sexual intercourse. During his cross-examination he deposed that there was no mark of violence detected on the private part of the accused as per the report and also that no foreign hair was detected apparently. It was noted in the report that the accused was a patient of Thalassemia since birth. He referred the patient to Pathological Department for analysis of semen of the accused.

14. P.W. 5 Jibon Sankar Niyogi who was posted as C. I. of Police at Nandakumar, Purba Medinipur deposed that on 4th of October, 2001 he was posted as the Officer-in-Charge of Binpur Police Station. He received a written complaint under Section 156 (3) Cr.P.c made by Liakat Ali from the Court of Learned SDJM, Jhargram, on the basis of the written complaint received; he started the Binpur Police Station case under Section 376 against the accused person. This witness was re-examined on re-call deposed that on 4th of October, 2001 he was posted as the O.C. Binpur P.S. and was acquainted with the hand writing and signatures of Md. Ilahi Box who was attached to Binpur P.S. as S.I of Police of 4th of October, 2001. He also identified the signature of Md. Ilahi Box ,the I.O. who prepared the Sketch map of the place of the occurrence and the index. The charge sheet was submitted by Md. Ilahi Box on 13th December of 2001 under Section 376 on completion of investigation, against the accused.

15. In this case the defence did not adduced any evidence was examined under Section 313 of the Code of Criminal Procedure and he only denied the incriminating materials which were placed before him and claimed to be innocent. Therefore the original I.O. was not examined as can be found from the record.

16. The Learned Advocate on behalf of the appellant raised the point that the time of occurrence was not ascertained since P.W. 1 stated at 12 O' Clock when in complaint he said about 11 P.M. There were 15 houses in between the house of the accused none of them did not adduce evidence before the Court. No blood was found in the daughter's body and she was not treated medically immediately after the incident. On the other hand, it was argued that against

de-facto complainant and others a case of kidnapping was started for kidnapping the present appellant by them. Nothing was seized by the I.O. and no forensic report was found to ascertain whether the accused person committed rape on her.

17. On close scrutiny of the above evidences adduced primarily it appears that the specific version of the P.W. 1 was that the de-facto complainant and his wife with the help of neighbours broke open the door and rescued their daughter and found his daughter lying unconscious who could not speak anything to them and only a day thereafter she told him about the commission of rape by the accused persons. There are certain discrepancies found as the mother of the victim girl deposed that the boys of their locality broke down the door and the victim told her about the commission of dirty act on her by the accused. However later on she deviated from such narrative and deposed she did not enter inside the room and she did not know who broke the door. The stand of the victim girl throughout maintained that she was taken forcibly to the house of the accused and rape was committed on her by the accused person and she struggled to free herself from the clutches of the accused.

18. The victim girl recorded her statement before the Learned Magistrate which was marked as exhibit 11 on 9th of October, 2001 about the incident occurred about 20 to 23 days before the date of giving statement. Primarily from the entire facts and circumstances it can be gathered that the date of incident was 16th of September, 2001 at about 11 to 12 at night and the complaint was lodged on 4th of October, 2001 that is after 20 to 23 days. The reason assigned in the said complaint lodged under Section 156 clause (3) of Cr.P.C. manifest that it was the assurance given by the local P.S, no complaint was lodged and

the local police released the accused person who was taken by the neighbours to the Police Station. The testimony of the de-facto complainant speaks of a case lodged against him and three others for kidnapping of the appellant however they were released on bail. In the present case the I.O was not examined. P.W 5 Jiban Shankar Neogy received the complaint made by the complainant from the court of Learned S.D.J.M ,Jhargram and started Binpur case .The investigation was endorsed to Elahi Box to whom he forwarded the case and he submitted the charge sheet and this I.O retired from service and he was not examined .

19. It is settled law that the evidence of a victim of sexual offence is equated with the evidence of an injured and order of conviction can be passed on the basis of sole testimony of the victim's evidence without asking for further corroboration unless it fails to inspire confidence.

20. In this case the age of the victim was not ascertained .She herself stated her age as 12 years which was corroborated by her father .Before the learned judicial magistrate also she disclosed her age as 12 years but before the doctor no age was mentioned and he did not determine the age . The learned trial court while taking evidence did not mention the age but after assessing evidence the learned trial court did not accept the age of the victim as 12 years ,however no attempt was made to ascertain such age .

21. In this case excepting the victim, the witnesses are the parents of the victim, and Faruk Ali Khan whose house was shown in the sketch map situated within a close proximity .The defence raised a dispute regarding his strained relationship with the family of the victim as a kidnapping case was lodged against the P.W1 and other persons by the father of the accused. No date or

number of the case was mentioned by any of the witnesses and though admittedly a case was lodged alleging kidnapping . It is settled law that mere delay in lodging the complaint cannot be a factor for not accepting the victim's testimony and the delay alone cannot be a cause for acquitting the accused of rape victim if otherwise found convincing evidence against him. In the present case the reason was assigned for delay that no action was taken in respect of the complaint lodged before the Binpur Police station but the recording officer stated that no complaint was received at Binpur Police by the P.W 1 .

22. In the deposition it was stated that the house of the accused was at a stone strowing distance and the sketch map also shows the place of occurrence within a very close proximity however the P.W. 1 deposed that in between his house and the house of accused there are 15 houses. P.W 3 Faruk Ali is the neighbour who could not give any name who were present and broke the door opened by the local boys. He even could not remember as to whether he was examined by the police or not but said that he did not state the incident to police. So this fact was stated before the court for the first time. According to his version he found the accused standing beside the girl who was lying unconscious when the father found them in naked condition and the mother found after entering into the room that the undergarments of both the accused and the victim were put off and found dirt in the pant of her daughter. Later on she said that she did not enter into the room. So the entire incident narrated by her about entering into the house including sprinkling water on her face and who then disclosed the incident happened with her, loses its credibility. Further inconsistencies which are apparent from the evidence of the mother that while she narrated the incident none was present

and she did not say anything after she regained sense when according to the father she could not say anything on that day and disclose on the next day. According to the mother, her daughter was medically examined after three days of the incident and she accompanied her daughter but according to P.W 6, the doctor after 15 days the examination took place. The injury report is dated 9.10.2001 and no other injury report is produced. No seizure list is produced to show the said pant was seized from the mother as deposed or it was sent for forensic report or not. It also cannot be ascertained that the injury report was collected by the I.O from the hospital .The injury report placed before the court did not contain any seal of the hospital and was prepared on a white plain paper .The opinion of the doctor suggest no injury in her private part or any external injury and she was probably habituated in sexual intercourse. No hospital Register was produced to show the victim was treated on the relevant date at the said hospital .No explanation is forth coming as to why the previous treatment sheet or the injury report was not produced and what complaint was lodged before the Binpur Police Station immediately after the incident. Not a single person was cited as witness in order to show that on the relevant date a number of local people assembled and reached at the house of the appellant and broke the door and rescued the victim girl from there. The medical paper suggested that the appellant is a patient of thalassemia from birth and the defence raised the issue that it was not possible for a patient suffering from thalassemia to lift the victim. More so the victim was not only lifted but taken to his house crossing 15 houses and none came out from the adjacent houses when her parent could hear the crying of their child coming from that house. The P.W. 1 was with Jahangir, Alamgir, Sk.Bajudwar and

Sadhu against whom a case of kidnapping was lodged for kidnapping of the appellant and they had to surrender and obtained bail. None of the aforesaid person adduced evidence.

23. In the light of the above glaring inconsistencies and without having any corroborating evidences , found to establish that the girl was rescued from the house of the appellant after the parents searched her out, hearing her cry from the house of the appellant and the door of the house had to be broken with the help of the local people. More so the father of the victim along with the others allegedly accompanied him at the house were made accused in connection with a kidnapping case. The mother though found dirt in the pant of her daughter didn't mention about blood in the pant when the victim said blood oozed out from her private parts. The father clearly deposed he did not find any blood in the body of his daughter .

24. However it is time and again reiterated by the Hon'ble Supreme Court that mere delay in lodging the F.I.R, Absence of any injury in her private part or the procedural laches cannot be a factor to be considered when the victim of sexual exploitation adduce evidence and her testimony remained unchallenged. From the statement of the prosecutrix, it clearly emerges that she was abducted and forcibly subjected to sexual intercourse by the appellant without her consent and against her will. The question of age of the prosecutrix in this situation would pale into insignificance however, in the present case, from the evidence on the record prima facie her age on the date of the occurrence, was below 16 years . The offence was committed in the year 2001 before promulgation of POCSO Act otherwise the case could have been registered under the said Act. The victim's testimony of ravishing her in the

middle of night lifted from the outside of her premises from her back and gagging her mouth remained unchallenged. In all possibility the case of kidnapping might have been filed against the father of the victim immediately after the appellant was confined by them and probability of lodging the complaint thereafter seems justified. It is trite law that the defence cannot take the advantage of the procedural laches in the case of sexual exploitation. Even if it is considered that the appellant was a patient of thalassemia the doctor's report clearly discloses that nothing found to show he was not capable of doing sexual intercourse .The victim girl appears to be an illiterate as gave her thumb impression and she recorded her statement before the learned Magistrate and throughout maintained her narrative about the commission of rape on her.

Conclusion

- 25.** Therefore from the above facts and circumstances this court does not find any reason to interfere with the order passed by the learned sessions court on the basis of the sole testimony of the victim.
- 26.** Hence this criminal appeal stands dismissed. The judgement and order of conviction passed by the Learned Session Court is hereby affirmed. The bail bond in favour of the appellant stand forfeited with immediate effect.
- 27.** The learned Sessions Court after considering the gravity of offence did not gave the benefit under Section 3 & 4 of the Probation of Offender's Act. However it transpires that no provision was made for victim compensation by the learned court. The provisions of 357A of the Code of Criminal Procedure, 1973 was not in place at the time of occurrence of the incident being a beneficial legislation was inserted in the year 2009.

28. In the case of **Piyali Dutta vs State of west Bengal¹**, it was held;

“The provision does not say that a crime occurring prior to a specified date is not covered thereunder .As noted that it is not introducing a criminal liability. It is time neutral that is to say ,that, it does not distinguish between victims of a crime happening prior to introduction of the section to the statute with those incidents of crime happening post its introduction in the statute book. The section itself not making any distinction between victims on the basis of the time of occurrence of the crime, the same cannot be read into it .The plain reading of the section does not permit one to interpret the same to mean that, it contemplates differential treatment of the victims of the specified crimes on the basis of time of occurrence of each crime. Such a difference if sought to be read into section 357A of the code it would do violence to it. It would not be an intelligible or a reasonable differentia or distinguish between victims of crime on the basis of time of occurrence more so when prosecution itself be silent on time.”

29. Therefore in this case the incident happened prior to 2017 when the victim compensation scheme is given effect and in the order no reflection was there but in view of the above observation the petitioner being a victim of sexual assault is entitled for the said compensation. Hence, the Member Secretary, State Legal Services Authority will take appropriate step and extend such benefit of scheme in accordance with law.

30. Let a copy of this judgement along with the trial court record be forthwith sent before the Trial Court

¹ (2017) CriLJ 4041

31. Urgent certified copy of this order, if applied for, is supplied expeditiously after complying with all necessary legal formalities.

(CHAITALI CHATTERJEE DAS, J.)

