

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CRA 576 OF 2014

SK. BABUA @ SARIFUL SK

VERSUS

THE STATE OF WEST BENGAL

For appellant : **Mr. Habibur Rahaman, Adv.**
Mr. Jaideep Basu, Adv.
Mr. Archisman Singh, Adv.
Mr. Kaustav Chatterjee, Adv.

For the State : **Mr. Avishek Sinha, Adv.**
Ms. Sreetama Das, Adv.

Heard on : **28.01.2026**

Judgment on : **06.04.2026**

Uploaded On : **06.04.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. The instant appeal has been filed against an judgment and Order dated August 27, 2014 passed by the learned Additional Sessions Judge, Fast Track Court-II, Howrah in ST No. 217 of 2009 arising out of Sankrail PS Case No.231/08, dated June 23, 2008, under Section 417/120B/376/506

of the Indian Penal Code, whereby convicting the present appellant under Section 376 of the Indian Penal Code and to suffer Rigorous Imprisonment for seven years and to pay a fine of Rs.10,000/- in default to suffer Simple Imprisonment for six months .

Brief Resume of the Case:-

2. Victim being the daughter of the Gorai Sk of village Kannamuni, PS. Sankrail District, Howrah lodged a written complaint dated June 23, 2008 before the Sankrail PS alleging inter-alia that on May 29, 2008 at about 18:30 hours Akash Sk, son of her younger Uncle informed her that she was called by the present appellant, S/o Musa Sk of village Gondhorbapur, PS Sankrail, District Howrah for engaging her for some Jori work. Without any hesitation the victim proceeded to meet with the appellant and found him standing in a vacant place at the side of a ditch. She further alleged that initially the accused tried to outrage her modesty by tearing her apparels and on her raising hue and cry Ajmira Mistri, Jahanara Begum, Anjura Begum and many other villagers rushed to the place of occurrence and the accused fled away. It was also her case that after the incident all the villagers went to the house of the accused where it was agreed by his father Sk.Musa that she will be married with him. The victim being a poor lady was influenced by such assurance given by the father of the accused in presence of the villagers, but one month after when Sk. Musa and Sk. Moidul went for negotiation of such marriage they were denied and

refused of any commitment. Accordingly, there is delay in lodging the complaint.

- 3.** On the basis of such complaint the Sankrail PS Started the case and on completion of investigation submitted the charge sheet against the accused person being C.S No.07/09, dated January 15, 2009, under Section 417/120B/376/506 of the Indian Penal Code.
- 4.** The learned Chief Judicial Magistrate, Howrah took cognizance on February 12, 2009 and on commitment the matter went before the learned Sessions Judge, Howrah on March 19, 2009, wherefrom it was transferred to Fast Track Court for trial.
- 5.** The learned Trial Court on considering the materials on record and hearing the parties framed the charge on December 10, 2009 under Section 376/417 of Indian Penal Code against the present appellant and separate charge under Section 417/120 B of Indian Penal Code were framed against the other two accused wherein all pleaded not guilty and claimed to be tried.
- 6.** The learned Trial Court on considering the evidences as adduced before him as well as considering the submissions made by both the learned Prosecution as well as the defence Counsels passed the order of conviction against the appellant and acquitted the other two accused from the charges under Section 417/120 B of the Indian penal Code. Being aggrieved thereby this appeal has been filed.

Submissions:-

7. The learned Advocate appearing on behalf of the appellant argued, that the other two accused being Sk. Musa and Sk. Saidul are the father and elder brother of the present appellant were acquitted by the learned Trial Court when it was Akash who allegedly introduced the victim with the present appellant due to lack of evidence and the prosecution has not filed any appeal challenging the same.
8. Learned counsel for the accused-appellant submits that there are material contradictions in the statement of the complainant regarding the incident. It is argued that there is a gross delay in lodging the FIR, which has not been explained by the complainant when the delay was of more than one month. It is glaringly evident that there was a claim of Rs. 40,000/- and when the appellant refused to fulfil such demand the victim herself lodged the complaint. It is further argued that the victim admitted that the appellant proposed her to marry and hence it is proved that they had a relationship which turned sour giving rise to filing of this complaint.
9. It was further argued that the wearing apparels were not mud stained when it was the specific contention of the victim that she was taken into a ditch/pit which had mud inside it. P.W.4 the only independent witness and PW.6 (Bhabi) turned hostile, PW.5 the cousin sister was a hearsay witness. PW.9 is the villager and it was not explained as to how she could see from her Varandha that the victim girl with torn wearing apparel when it was dark night with no electricity.

10. Furthermore the victim girl refused to go for medical examination and economic disparity between the parties were clearly established where an amount of Rs.40, 000/- was settled which was refused by the accused as a result the complaint was lodged. The learned Trial Court failed to consider those aspects of the matter and passed the order of conviction which is liable to be set-aside.

11. The learned Prosecution on the other hand argued that nowhere from the evidence any story of love affair between the parties can be found excepting that the accused /appellant proposed her to marry. P.W.3 is an important witness and he corroborates that there was village Salish. P.W.5 Ajmira reached there immediately after the incident who learnt from the victim about the incident which she narrated before the court and hence it can come within the definition of res-gestae of the Indian Evidence Act. The torn wearing apparels which was seized prima-facie established there was dragging. P.W.6 Jahanara, PW.7 & PW.8 corroborated the case of prosecution and P.W.9 corroborated that the wearing apparel were torn. More so the statement of the victim could not be impeached in course of trial and she withstand the cross examination and is of sterling quality hence order of conviction can be passed solely on the basis of the evidence adduced by her. However in this the prosecution adduced 17 witnesses in order to establish the case beyond the shadow of reasonable doubt and the learned Court after considering the facts and circumstances passed such order of

conviction against the present appellant and there is no reason to interfere with the same. Accordingly, prays for dismissal of this appeal.

Analysis

12. Heard the submissions of both the learned Advocates. In order to set the police in motion the complaint was lodged by the victim herself on June 23, 2008 before the Officer In-charge of Sankrail PS, alleging of commission of rape by the present appellant and was threatened to be murdered, if she shouts. She also made allegation against the son of her Uncle Sk Akash and the father of the present appellant Musa Sheikh. The complaint was in respect of the incident happened on May 29, 2008 at 6:30 PM and lodged on June 2, 2008 therefore, there has been a delay of about one month in lodging the complaint. From her complaint it is evident that she explained the delay as she waited to marry the appellant on simple faith as promise was made in presence of villagers and only after such proposal of marriage was turned down by the father of SK. Musa, Sk. Soidul and the appellant denying the incident of rape as well as any assurance of marriage, she lodged such complaint.

13. In order to prove the case, the prosecution has adduced 17 (seventeen) witnesses and proved the documentary as well as material exhibits. . In order to arrive at a logical conclusion, it is necessary to scan the evidences adduced before the Court by the said witnesses. The victim deposed as P.W.1 and prima-facie her name appears to be different than the name mentioned in the written complaint. From her evidence it could be

gathered further that she got married with Mosia Rehman Laskar about one year back while adducing and therefore when she lodged the complaint she was a married lady. It could be gathered further her brothers namely Musolin Sk, Nuruddin Sk and Sarabuddin used to reside with her and she used to work as 'Jori worker' at that time. Akash was her cousin brother being the son of her youngest Uncle. According to her the incident happened about two years back in the evening when she was in front of her house and met with Akash. Akash told her that he arranged a job under the present appellant and requested her to wait there till his return. Thereafter, Akash informed her that appellant was calling her and initially she hesitant to go as it was late evening and asked the appellant to come to her place, but as Akash assured her that he would accompany her to the appellant, she accordingly went with Akash to the area and found the accused standing by the side of a ditch at a distance from the road. There were discussion regarding her work and it was settled that the appellant would place order of work on the following day and . She refused to wait further as asked by the accused but in spite of that the accused insisted to talk further with her and then she noticed that Akash had disappeared from that place. After that the accused caught hold of her hand and expressed his love towards her and as she raised protest that his father being a rich man and it would never materialize, the accused did not pay heed to her request and then caught hold of her ,embraced her and torn her wearing apparel and cohabited with her and then she

pushed him away. He left the place by threatening her not to disclose the incident to anybody and as she tried to raise alarm at that time when the accused gagged her mouth by pressing his hand. On hearing her cry her elder brother and his wife reached there and Anjura Begum, Jahanara Begum being the wives of her brother along with her elder sister Ajmira Begum also reached there, then the accused fled away. After that her brothers went to the house of the accused, but he denied the incident. She heard that a proposal was given for her marriage with the accused after the incident, but about one month the father of the accused declared that he was no more willing to go for the marriage and thereafter, she lodged such complaint.

14. From her evidence it can be seen that at the time of incident she wore white salwar and blue pajama, which were in torn condition and she identified her wearing apparels which were placed before her at the time of her evidence. She also made statement before the learned Magistrate. From her evidence it is evident that a proposal of marriage with the accused did not materialize and the father of the accused proposed to settle the dispute by paying Rs.40, 000/- to her, after which the complaint was lodged. She refused to medical examination and she identified the accused persons in the Court.

15. It further transpires from her evidence that her father used to work in Coal factory and used to earn Rs.40/- to Rs.50/- per day. Though, she denied that their financial condition was not good, the victim used to work

as Jori work in her house and had her own machine for that purpose. She never collected any order of Jori work from the accused and his father. She admitted prior to the incident, negotiation of marriage was going on with one person and the prospective bride groom visited their house in connection with such marriage. They demanded much more money and the proposal of marriage could not be materialized. At that time her brother was searching for bride groom, who would demand less money and her brother was not willing for the marriage to be solemnized with the accused person.

The location of the place of occurrence /ditch was at a to her evidence the said ditch was at a distance of 15 minutes' walk from her house and there were no residential house by the side of said Khadan (ditch). She could not say whether Amiruddin Sk or Nasiruddin Sk or Basiruddin Sk were the owner of the said Khadan or not. However, a grocery shop of Murad and a Tailoring shop of Amiruddin were situated near the said grocery shop near the khadan . A marshy land (Jola) was situated in between the said Khadan and the shops and it was a big Jola and the grocery shop of Murad was situated at the side of a metal road. The house of Ajmira Mistri, her elder sister was situated near their house and there is a Katccha path way running from her house towards Jola (Khadan).

- 16.** She also deposed that the bed of Khadan (soil) was wet though it was not rainy season, and the soil was not soft. She resisted the accused person while he was committing the offence of rape and she raised alarm after

being released by the accused and then the accused fled away from that place. She further deposed that during her resistance her wearing apparels were stained slightly with mud and police seized her wearing apparels in that condition. However the wearing apparels when produced by the Court which was identified by her, did not have any mud stain which was admitted by the witness. She sustained injuries on her elbow as she tried to resist the accused. She did not show her injury on her elbow to the Doctor, when produced before the Hospital. She did not show her private part to the Doctor at the time of examination and did not disclose the incident to the Doctor.

17. PW.2 Jiad Mallick is a resident of village Gondhorbapur under PS Sankrail and the house of the victim situated at a distance of 15 minutes' walk from his house. He stated before the Court that the incident happened about two years back at about 7:00 PM when he was returning from Nalpur market and found a gathering near field in front of his house and then learnt that it relates to an incident of outraging modesty of the daughter of Gorai by a boy of their locality. He gave the name Rajab Ali, Jahangir and others, the persons who assembled there along with others. This witness was not examined by the police as he left home.

18. P.W.3 Rajab Ali Sk is a resident of Gondharbapur, who knows the father of the victim being the father-in-law of his daughter deposed while he was returning home after attending Namaj on that particular day near his house, he found a gathering on a field near his house and came to learn

that the victim had been raped by the son of Musa Sk. A village Salish held subsequently over the issue and a proposal of marriage took place between the victim and the accused as well as to pay the compensation and it was settled in presence of the villagers that an amount of Rs.40,000/- would be paid by Musa Sk., but it could not be settled as the money was not paid within the stipulated time. He also deposed that after three weeks of the incident this witness was examined by the police. He did not know whether the accused actually committed rape of the victim or not and cannot remember the name of the persons who were there amongst the said gathering, but victim was not present at that time.

19. P.W.4 Sk Amir a resident of Kannamuni of Manikpore, P.S. Sankrail knows Sk. Gorla of their village and his daughter, but his evidence is not of much assistance to prosecution as he could not say the name of the victim and he was not examined by the police and this witness was declared hostile on the prayer made by the prosecution.

20. Another resident of Kannamuni village is Ajmira Mistri, whose name was taken by the victim, deposed that the incident happened at about 7:00 PM in the last part of month of May, 2008, when she was in her house and on hearing her cry, she along with her children came out and found the victim crying and her wearing apparels were then in torn condition. This witness further deposed that the victim disclosed that she had been taken to marshy land/ditch near their house by Akash and then she had been handed over to the accused S/o Musa Sk. and then the accused dragged

her and torn her wearing apparel. The victim was then wearing light blue colour churidar and she saw that the upper front portion of the garments were torn.

21 .PW.6 Jahanara Begum, the other resident of Kannamuni village deposed that the incident happened in the last part of month of May at about 7:00 PM. From her evidence it can be found the victim was crying near the Jola and they came out and on asking the victim ,she disclosed that she was taken to Jola by Akash on assurance of providing Jori work and handed over to the accused who dragged her and torn her wearing apparels. She was examined by police in connection with this case. However, this witness was declared hostile on the prayer of the prosecution and from her cross examination it can be found that Akash was a cousin brother of her husband.

22. Anjura Begum deposed as P.W.7 being a resident of that village and she is the wife of the brother of the victim. She also narrated the same facts as stated by the P.W.5 and P.W.6 that the accused dragged her to a ditch in a nearby place and then raped her. She further stated on hearing her cry they came out and then the victim disclosed the above incident to them and she made statement to the police. From her evidence also it can be seen that when the victim came inside their house crying then beside them Jahanara and Rehanara Begum who are the wives of her brothers of the victim also came out. Four to five hundred local people were assembled there which includes Safiuddin Sk, Safiar Sk, Binod Sk, Rajab Ali Sk, Riajul Sk and

many other assembled there. Rajab Ali is her father who resides at Gondharbapur. She admitted that she did not state to police that she learned from the victim that she had been raped by the accused.

23. PW.8 Sarafat Sk is another resident of Kannamuni village who corroborated the case of the prosecution to that extent that she was taken by Akash on the plea of providing Jori work and then Akash fled away and then the accused forcibly torn her churidar and attempted to commit rape on her. He found the upper front part of the garments was in torn condition, but he could not remember the colour of the said churidar. He also confirmed that a proposal of marriage of the victim with the accused was given and they demanded Rs.40, 000/- from the accused and as he did not pay the said amount the case was initiated.

24. The fact of the victim being raped by the accused was further reiterated by the PW.9, Rokea Bibi being a resident of that village Kannamuni. She found from her Varandah that the victim was crying and her wearing apparels were torn and on being asked she disclosed that Akash took her to the accused for Jori work and then the accused torn her wearing apparel and touched her breast and raped by the accused. She could not say the name of the persons who assembled at that time and she did not know the accused person. At the relevant time she was in her house and it was dark night and there was no electricity. She did not disclose anything to police, though police came to their house.

P.W.10 Hafija Bibi was declared hostile who is also a resident of Kannamuni village and the mother of Akash.

25. P.W.11 is the Dr. Indranil Chowdhury who is now posted at Naihati General Hospital and on 05.07.2008 he was posted at Howrah Hospital when he examined one Safiful Sk @ Babua, S/o Musa Sk in connection with Sankrail, P.S Case No. 231 of 2008 dated 26.03.2008, under Section 376 of the Indian Penal Code. In order to ascertain his capability of making sexual intercourse, on examination, nothing adverse was found. He did not find any injury report on his private part.

26. PW.14 is the Investigation Officer who during his part of investigation examined three witnesses namely Hafiza Bibi, Amiruddin Sk and Rajab Ali Sk and recorded their statement u/s 161 of the Cr.P.C. He submitted the charge sheet against all the FIR named accused persons. PW.15 ASI Samir Kumar Singha Mahapatra, on 23.06.2008 was posted at Manikpore I.C under Sankrail PS as ASI and on 29.06.2008 one Akasi colour churidar was seized in his presence under a proper seizure list which was produced by Sk.Sarafat, the elder brother of the victim girl. The upper portion of the churidar was in torn condition. He could not found any label on Mat. Ext.I and he had no knowledge whether such pyjama (Mat. Ext.I) was sent to FSL or not.

27. PW.16 Iqbal Mistri is the close relative of the victim and he put his LTI in the seizure list whereby the light blue colour kurta and pyjama from the house of said Sk. Sarafat was seized on 29.06.2008. He identified his

signature on the seizure list and specifically said that he did not put any LTI on the seizure list.

28. The second I.O deposed as PW.17, SI Gobardhan Dey who received the charge of investigation of Sankrail PS Case No. 231/08 dated 23.06.2008. He deposed that the victim girl refused to submit herself for medical test. The ossification test of the victim girl was done for investigation and he says the wearing apparel of the victim girl. It can be seen from his evidence that the seized pajama was produced before him in the Court and he found there is no torn portion on the front side of the seized pyjama, but is a torn portion in the back side of the said pyjama. The incriminating evidences which was placed before the accused person while examining him u/s 313 of the Cr.P.C was only denied by him and he did not intend to adduce any evidence on his behalf.

29. Therefore on marination of the above factual matrix and the nature of evidences adduced, prima-facie the facts which are found to be established is that the victim girl was taken by her own cousin brother Akash to a nearby field adjacent to a marshy land/ditch in the evening on the assurance of giving Jori work by the appellant on the relevant date in the evening and while they were discussing about such work Akash silently left the place keeping her alone with the present accused person. This fact was narrated in the written complaint and while adducing evidence by her but interestingly no case was started against said Akash. The father of the appellant and his elder brother who initially gave the assurance of marriage

and an amount of Rs. 40,000/- which they refused were also made accused. Akash, who could be the best witness to narrate, was not cited as witness for the reasons best known to the prosecution. In the written complaint the date of incident was mentioned as on May 29, 2008 at about 6.30 pm but no other witness could give any specific date of the incident. However since the incident occurred in a remote part of the village and the victim as well as the other witnesses are largely illiterate the non-mentioning of the date cannot be a ground to set aside the judgement of conviction specially when the appellant has failed to establish any alibi regarding his presence at the place of occurrence.

30. The medical evidence may not be available and in such circumstance, solitary testimony of the prosecutrix could be sufficient to base the conviction as observed by the Hon'ble Supreme Court in ***State of Himachal Pradesh vs. Manga Singh***¹, In paragraph 11 it was held:-

“The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and

¹ (2019) 16 SCC 759

circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.”

31. In the present case the version of the prosecution case is corroborated by the witnesses being P.W. 5 ,P.W. 6 , P.W.7, P.W.8, P.W.9 whose names were taken by the victim to be present when she narrated the incident immediately after the incident however there are inconsistencies in their testimonies whether it was rape or an attempt to rape or outraging modesty . Their evidence unequivocally supports the contention of the victim as narrated to them by the victim that on the relevant day in the evening she was taken by her cousin brother Akash on the pretext of giving Jori work by the employer of Akash ,the appellant herein at the open land adjacent to a ditch/khadan and then found her brother Akash living the place without intimating her and then the appellant applied force on her, hold her hands, touched her breast and torn her wearing apparel and forced her inside the khadan/ditch ,gagged her mouth with her orna and threatened not to shout, but somehow she manages to shout .

32. In the written complaint the victim averred that the accused co-habited with her and before the Learned Magistrate she described the act which primarily narrated how the appellant committed the egregious act an attempt was made by the accused to commit rape but somehow she could resist. In her examination in chief she again described the incident stating that he cohabited with her .During her cross examination she specifically

sated that the accused did sexual intercourse with her after lying her on the ground.

Ajmira Bibi P.W 5 whom she narrated while in her house disclosed about the dragging by the appellant and her wearing apparel were torn. PW 6 Jahanara Begum who found the victim coming out from Jala (marshy land) and crying, disclosed about the appellant of dragging her and to torn her wearing apparel. This witness was declared hostile thereafter and Akash was found to be the cousin brother of her husband.

33. Anjura bibi is the sister in law of the victim, P.W. 7 who gave the specific date of incident and to whom the victim disclosed after returning home in crying condition, that the accused raped her. Rehana Begum, P.W 8 wife of Sarafat Sk. the brother, found the victim returning home in crying condition and she disclosed the accused forcibly torn her churidar and attempted to commit rape on her. She further specifically deposed that the front part of churidar was in torn condition. which prima facie proved her case that force was applied. P.W. 9 Rokya Bibi is the wife of Sarafat Sk., the brother of the victim to whom the victim stated that the appellant raped her.

34. It is a settled law that in every crime, there is first intention to commit, secondly preparation to commit it, thirdly attempt to commit it. If in the third stage the attempt is successful, then the crime is complete. In this case vide a seizure list dated 23.6.08 the wearing apparel of light sky colour kurta /salwar, upper part was seized which was torn on the left side of the breast. The pyjama was also torn on the back side. This seizure list was

proved by the seizure witness Eqbal Mistry .Therefore from the statement of the above witnesses, all of whom found the wearing apparel of the victim in torn condition and found her weeping if that version is coupled with the seizure of such wearing apparel it would manifest that the force was applied to the victim by the appellant and he torn the wearing apparel of the victim and dragged her to the ditch and it fully corroborates the version of the victim in which manner the accused forced her and dragged her to the ditch and put her in lying condition ,gagged her mouth and torn her salwar and he pushed his penis into her private part to which she felt pain and then she could shout and managed to get herself free from his clutches .

35. In an offence of rape usually no eye witness can be found and hence the evidence of the victim if otherwise inspire confidence in the mind of court is to be given utmost importance. The complainant in her statement described that the appellant tried to insert his penis into the private part of the victim and she felt pain and then she manages to get rid of him. She narrated the same fact before the Magistrate as is evident from the evidence of the Learned Magistrate who deposed as P.W. 13 and such statement was marked with Exhibit 2/1. Her version of rape can be found corroborated by P.W 7, P.W 8 and P.W 9 . In this case the victim refused to go for medical examination so no medical report of her can be found. The court cannot be oblivious to the fact that the victim is an illiterate lady and a jari worker was waiting to be married as her brother was looking for a bridegroom. Such incident happened in the year 2008 in a remote village when assurance of

marriage was made by the father and elder brother of the accused /appellant due to which she even did not lodge any complaint. The refusal of the victim to go for medical examination seems justified since in between one month was passed after the complaint .

36. In a recent decision the Hon'ble Supreme Court held that

"In cases of offences committed under Section 376, IPC, when the story of the victim girl as told in the evidence is found credit-worthy, the apparent insufficiency of medical evidence pitted against acceptable testimony of the victim, the latter would prevail,"

37. In the case of **Deepak Kumar Sahu vs State of Chatishgarh**² The Hon'ble apex court held that, The sensitive approach and greater inclination to rely on the creditworthy evidence of the victim is guided by the aspect as observed in **Bharwada Bhoginbhai Hirjibhai vs. State of Gujrat**³, It was observed thus:-

"In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion?"

² 2025 INSC 929

³ (1983) 3 SCC 217

Merely because the wearing apparels were not stained with mud itself cannot inure in favour of the accused and can't be used to shield the wrong committed by him but it can very well be presumed that force was applied to hold her lay on the ground as her backside of the wearing apparel was found in torn condition ,and the possibility cannot be ruled out that when it was produced before the court, long after 2years , no such impression of stain could be found in bare siting.

38. The incident of a village Salish are proved where a proposal of marriage was given to settle the dispute by Sk.Musa ,the father of the accused and also an amount of Rs.40,000/- was settled to be paid by the father of the accused to the father of the victim girl, but because of non-payment of such amount and refusal on the part of the father of the accused for the marriage, compelled the victim to lodged the complaint. Therefore, primarily the delay in lodging the complaint is about one month is well explained as it can be seen that the victim girl was illiterate at that time and also their family was not financially strong and hence, they believed the assurance given, on behalf of the accused and his family members.

39. It is no more *res integra* that the evidence of the victim of sexual harassment is to be believed if otherwise can inspire confidence in the mind of Court. So far the victim herself is consider she at the inception narrated that the accused while having discussion about the said work caught hold of her hand and expressed her his love towards her and as she raised protest by saying that his father being rich man it would never be possible, he did

not pay any heed to her request and then embraced her, torn her wearing apparel and cohabited with her and then she pushed him away. Not only that, the accused also threatened her not to inform anybody about the incident and also gagged her mouth with his hand. After she being rescued herself from the clutches of the accused while started crying then her elder brothers and their wives reached there. In the cross examination this version of the accused could not be impeached as there was no confusion regarding the presence of the accused at the spot as well as that she was taken by Akash at that spot. It was a village area and was dark in the evening without having any electricity and as it can be found from the sketch map also that the P.O is a Khadan (ditch) in the village and surrounded by vacant land and there was a break soling project on the Panchayat road and the house of Sk Nazir was far away from that place .She was taken at that spot with the assurance of giving Jari work and it proves that the appellant had an intention from the beginning for which she was taken away to a place near to which no residential house or shops were there and it was dark in the late evening .

40. In this case the accused during his examination under Section 313 Cr.P.C when placed with the incriminating materials, only denied the same being false .No defence witness was cited .The learned trial court considered the evidence of the victim that during her cross examination she categorically said about the sexual intercourse made by the accused after she was forcefully lying down and she was facing sky and tried to get rid of

him and after being released she raised alarm. The victim was cross examined for three days and she successfully withstand the cross examination and her testimony could not be impeached and throughout she maintained her stand of being raped by the accused. Her statement before the Learned Judicial Magistrate manifest the manner in which the appellant committed such sexual offence .

41. In ***Madan Gopal Kakkad Vs. Naval Dubey*** ⁴, it has been held as under:

“Thus to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pedenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is, therefore, quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains.”

The refusal of the victim to go for medical examination after one month cannot be considered as deficiency to prove the case when otherwise the prosecution has been able to prove the case that the offence of rape was committed on her on the relevant day by the accused person. The other co-

⁴ 1992) 3 SCC 204

accused were the father and brother of Sk. Musa who were not charged with the allegation of rape on the victim and they have been acquitted.

The learned trial court considered that there are certain inconsistencies but considered the sole testimony of the victim and held there is nothing to disbelieve such evidence and passed the order of conviction and this court finds no reason to interfere with such order of conviction in view of the law laid down in this regard coupled with the entire facts and circumstances and the evidences adduced by the prosecution witnesses including the victim.

Conclusion

42. Therefore, from the above facts and circumstances and the evidences adduced before the Learned Trial court, this court is of the considered view that the judgement and order of conviction passed by the court, holding the appellant, guilty of the offence does not suffer from any illegality or infirmity warranting interference .

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 .

43. In the case of ***Piyali Dutta vs State of west Bengal***⁵ 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

⁵ (2017) CriLJ 4041

distinguished 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 a intelligible or a reasonable differentia o distinguish between victims of crime on the basis of time of occurrence more so when prosecution itself be silent on time.

- 44.** Therefore in thus 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.
- 45.** Hence the Member Secretary, State legal aid Service Authority and the respective Secretary of District Legal Aid Services Authority are directed to take appropriate steps for granting compensation in terms of the above scheme to the victim.
- 46.** Accordingly this CRA stands dismissed.

47. The Judgement and order of conviction passed by the Learned Session Court is hereby affirmed.

48. The bail Bond of the accused person stands forfeited and the appellant is directed to surrender within 6weeks from this date.

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

[CHAITALI CHATTERJEE (DAS), J.]

