

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 674 OF 2014
MADHAI GHOSH ALIAS SAMIR GHOSH
VS
THE STATE OF WEST BENGAL & ANR.

For the Appellant : Mr. Prabir MAjumder, Adv.
Mr. Snehansu Majumder, Adv.
Mr. Debraj Shil, Adv.
Mr. Debangshu Majumder, Adv.
Ms. Sangeeta Chakraborty, Adv.
Ms. Anindita Kundu, Adv.

For the State : Ms. Sujata Das, Adv.
Md. Ejaj Akhtar, Adv.

Last heard on : 19.02.2026

Judgement on : 08.06.2026

Uploaded on : 08.06.2026

CHAITALI CHATTERJEE DAS:-

1. Assailing the judgement of conviction passed by the Learned Session Judge, Tehatta, Nadia in Session case No. 9 (6) 2010 under Section 376 of the IPC this appeal is filed whereby the appellant was sentenced to suffer Rigorous imprisonment for 7 years and to pay a fine of Rs. 5,000/- in default to suffer

Rigorous imprisonment for 6 months for the offence punishable under Section 376 of the Indian Penal Code.

Fact of a case

2. A complaint was lodged before the Court of Additional Chief Judicial Magistrate, Teheatta, Nadia on August 21, 2009 by the victim against the present appellant along with 3 other accused persons alleging commission of rape on her on May 17, 2009 at 4 A.M in the morning at Kishorpur, P.S. Karimpur, Dist. - Nadia. It was stated in the complaint that the complainant being a house wife was a resident of a village where the accused persons were co-villagers and known to the complainant. The present appellant was working in Delhi and other accused persons used to visit Delhi in a regular manner. On account of the severe financial crisis the present complainant being a poor lady was allured by the accused persons to give her a good job with handsome salary at Delhi and being so assured the complainant proceeded towards Delhi with them. After reaching Delhi the accused no. 1 being the present appellant arranged a rented room and asked for some time to search out job for her. According to the complaint after 7 or 8 days the FIR named accused returned home and the complainant compelled to reside in the same house with the appellant and because of co-habitation the appellant attracted towards the complainant and one night he entered into her room and raped her. She further narrated that the complainant tried to resist but he threatened to kill her and thereafter the appellant used to commit rape on the complainant in a regular manner and she was afraid of the threat of murder. On her asking him about the job he delayed the matter and then one night on August 7, 2009 two unknown persons arrived at their room and discussed to

sell the complainant over handsome amount which she and found to be trapped by the false assurance of the accused persons who planned to sell her.

3. On the next day that is on August 8, 2009 the complainant left Delhi to save her life and returned at her matrimonial house but she was threatened by the appellant and other accused persons as they were afraid that the complainant will disclose the incident to the villagers. The complainant informed all the witnesses about the incident and then advised her to proceed for legal steps by the police, accordingly she filed the complaint under Section 156 (3) of Cr.P.C. The said complaint was received by Karimpur P.S, on September 1, 2009 and started Karimpur P.S case no 227/09 under Section 367/376/120B/34B IPC against FIR named accused persons. On completion of investigation the charge sheet was submitted only against the present appellant under Section 367/376 IPC and the matter being exclusively triable by the Sessions Court was transferred to the Court of Learned Additional Sessions Judge, First Track Court, Tehetta , Nadia after commitment . The Learned Court after considering the materials and hearing the parties framed the charge against the present appellant under Section 367/376 of the IPC and the contents of the same was read over and explained to the accused person who pleaded not guilty and claimed to be tried. Hence the trial commenced.

4. In order to bring home the charges the prosecution adduced as many as 8 witnesses including the complainant and the Learned Trial Court considering the evidence adduced by the parties and the submissions made by the respective advocates and also the examination under Section 313 of the

accused person passed the order of conviction. Being aggrieved thereby this appeal has been filed.

Submissions

5. Learned counsel for the appellant, vehemently and fervently contended that the entire case of the prosecution is false and fabricated. The prosecution story is full of improbabilities and loopholes. The evidence of the material prosecution witnesses is flimsy and does not inspire confidence. The conduct of the witnesses is highly suspicious which makes their testimony doubtful and unworthy of credence. The Learned Advocate appearing on behalf of the appellant further contended that on 27th of May, 2009 the lady alleged to go to Delhi on the assurance of giving job by the accused and they started from Karimpur and from Krishnanagar three other joined and all of five persons went for Delhi and stayed in a hotel and subsequently three persons left but she continued to stay with the appellant further shared the same room with the person which prima facie appears to be improbable and not believable. That apart the complaint was lodged after three months from the alleged date of incident . It is further submitted that the complaint is absolutely silent about an exact date and from the evidence adduced by the lady also the same cannot be ascertained the husband of the victim was not cited as witness and her family members narrated what is told to them by the witness. Most importantly the I.O. never visited Delhi for the purpose of investigation where the alleged offence was committed. The Learned Court did not find any enticement and hence did not consider the charge under Section 367 of the Indian Penal Code. No date of commission of rape was mentioned but the Learned Sessions Court framed the charge mentioning the date of incident on

17.05.2009 which was the date of lodging of the complaint and is not correct date. It was further argued that the victim stayed at Delhi for 22 days and she left only on August 8, 2009 from Delhi. The other witnesses who supported the case of prosecution are the brother, mother and co-villager. The son of the de facto complainant did not divulge anything who was more than 18 years. There are glaring inconsistencies found in the statement made in the complaint and in her testimony. The victim had prior acquaintance with the appellant and suppressed that he is a distant relative. The P.W. 2 was not examined by the I.O. and the doctor being P.W. 8 did not find any injury on her private part. She also did not utter anything before the doctor. The credibility of the witness/victim is not sterling in nature. It is further argued that the Learned Court passed the order of conviction on the basis of surmise conjectures and is liable to be set aside accordingly prayed for dismissal of the appeal.

6. Per contra the Learned Prosecution argued that the victim went to Delhi only with the assurance of providing job since she was in need of financial assistance. The victim's version inspires sufficient confidence on the basis of which the order of conviction can be passed. The Learned Trial Court rightly pass the order of conviction against the appellant and this appeal has got no merit and is liable to be dismissed.

Analysis

7. Heard the submissions. On careful perusal of the entire materials on record, the evidence adduced by the prosecution witnesses as well as the defence witnesses coupled with the submissions advanced by the Learned Defence Counsel as well as the prosecution the seminal issue falls for consideration is

that as to whether the Learned Court rightly pass the order of conviction against the appellant and or whether the prosecution was able to prove the case beyond the shadow of all reasonable doubt.

In the instant case the most important witness is the victim who lodged the complaint deposed as P.W. 1. On close scrutiny of her evidence it is evident that the date of incident stated to be taken place on 2nd Jaistha when the accused /appellant took her to Delhi in order to provide a job . After four days the accused inappropriately touched her breasts and committed sexual intercourse with her at 12.00 in the night. It could be further gathered that she was in Delhi for 22 days in the same room with the accused person and during her stay in the room the accused committed rape on her each of the days. On 22nd day the accused came with four unknown persons and she came to learn that they were discussing about selling her and then on hearing she came to Railway Station and with the help of local Bengali People she returned to her house. She first reported the matter to her husband and her brother and to her mother and then went to the local Police Station and reported the same to police but police took no step and then she went to court and lodged the complaint against the accused persons. After that police took her to hospital for medical examination and she gave statement before the Judicial Magistrate. She further deposed that her father-in-law's house was situated at village Kishorpur and a police camp is situated at a close proximity. According to her evidence she resided at her matrimonial place with her husband and son aged about 19 years and her bhasur and Ja. She admitted that the area where the matrimonial house was situated is a thickly populated place and her place of residence at Delhi also was a thickly populated zone.

Prior acquaintance with the accused /appellant since long is evident but she denied to develop any extra marital affair with the accused person.

- 8.** The husband of the victim lady was not examined by the Investigation Officer which is admitted by the I.O. during his cross-examination. The I.O. tried to examine the local witnesses but failed to trace out and had no scope of examination. He admitted that he did not go to Delhi for the purpose of investigation of this case. P.W. 2 is the brother, P.W. 3 is the mother and P.W. 4 is the son of the victim lady. The P.W.2 deposed that the accused was unknown to him but this witness was not examined by the Investigating Officer. He also could not say about any extra marital relationship between his sister and the accused person or any day, month or year when his sister reported the incident to him. He had no discussion with anybody of the case before deposing in the court. It is found that that the witness did not inform him about the incident. The mother of the victim lady ,P.W 3 also identified the accused and deposed that he took her daughter with a pretext to give her job later on her daughter fled away after being frightened. She reported all the incident to her. She denied of having any love affair between the P.W. 1 and the accused person and she did not see any incident as described. She never discussed anything about this case to anybody excepting the I.O. before adducing evidence in this Court. P.W. 4 the son of the victim also identified the accused and said that he took his mother on the pretext to give job at Delhi but he did not have any knowledge about the case. He further deposed that he never discussed anything about the matter with anybody and during examination by the Investigating Officer. He did not say to the Investigating

Officer that accused took his mother to Delhi on the pretext to give her job. He denied to have any personal knowledge about the case.

9. Therefore from the above narrative it is evident that excepting the victim's statement there is no corroborating evidence to support her case. Three witnesses of her family members were not examined by the Investigating Officer and her husband did not depose whom she informed at the first instance.

10. P.W. 5 is the Doctor who treated the victim on September 5, 2009 when he was posted at Karimpur Rural Hospital as Medical Officer. During his examination he did not find any prima facie material about commission of rape on her and nothing was disclosed before him at the time of her examination. He produced his medical report which was exhibited. P.W. 7 is the Investigating Officer. P.W. 8 Dr. Santosh Kumar Dutta a Medical Officer who also examined the victim on October 1, 2009 in presence of one duty labour room staff and the patient said about sexual intercourse by the accused on several time. He did not found any injury in her private part and no foreign body was detected. He advised her pregnancy colour test and Ultrasonography of pelvis. The witness specifically describe that sexual intercourse and forcibly rape are different and there is no note in his report regarding the injury over private part and or any sign of injury. He did not mention any need regarding any forcible rape in the injury report.

11. In this case one Tirthankar Bhattacharyya deposed as C.W. 1, the Judicial Magistrate who was posed at Tehetta Sub Divisional Court on September 4, 2009 and he recorded the statement of the victim girl under Section 164 Cr. P.C. He read the contents of the same to the witness who put her LTI and

appended the certificate. The said document was exhibited. C.W. 2 is the Law Clerk working at Tehetta Court who was the scribe of the written complaint as per instruction of the complainant. He mentioned his signature over said complaint. All the incriminating materials placed before the appellant while he was examined under Section 313 of the Criminal Procedure Code and excepting claiming innocence he did not utter anything.

12. The above facts and circumstances raises the question as to whether the evidence adduced by the victim girl can be the sole basis for passing an order of conviction in absence of any other supporting evidence. It is a settled proposition of law that the testimony of a victim of sexual offence is usually not to be questioned unless it failed to inspire enough confidence in the mind of the Court. In this case the lady was aged about 32 years , married and mother of a son of 18 years left with a person of their locality to Delhi voluntarily on the assurance of providing job. The nature of job has not been explained and no evidence could be found as to whether she had any prior discussion with her husband or any of the family members of her family or of her matrimonial house before leaving her matrimonial home. No iota of materials are found that she was accompanied with her husband or son when she left for Delhi with a co-villager who was then aged about 24 years. In her complaint she stated about three other accused persons who joined them from Krishnanagar but while adducing evidence she did not mention about these facts . No investigation held at Delhi where the alleged offence of rape was committed . The overall circumstances makes it difficult to inspire enough confidence that a village lady having a child and husband not only left with a co-villager on the pretext of having a job but also co- habited with a person in

the same room for a continuous period of 22 days and despite being raped only after four days of her reaching at Delhi. She did not provide any local area at Delhi or even produced any ticket to show that she went to Delhi or she reached her place on the date as mentioned in the complaint. Investigation has been made in a clandestine manner without examining her husband or any of the family members and also without taking any step to visit the place of occurrence where the alleged rape was committed. No Police Officer ever visited Delhi in order to ascertain the veracity of her statement or the locality where she resided for a continuous period of 22 days. She did not take the name of any other person with the intervention of whom he boarded the train for Calcutta. A Lady continuously being raped against her will for continuous period of 22 days only left the house after she heard about the discussions held between the accused and three other unknown persons about selling her. She never said that she has confined in a room and was under serious surveillance of the accused and was not in a position to move out from the said house. No explanation is forthcoming to explain the reason of not leaving Delhi immediately after four days when she first alleged to have been raped. No injury report or sign of injury could be found by any of the Doctor while examining the lady on September 9, 2009 when few days prior to that she left Delhi.

13. In the decision of ***Narendra Kumar vs State (NCT of New Delhi)***¹, in paragraph 28 onwards it was observed:

“28. The courts while trying an accused on the charge of rape, must deal with the case with

¹ (2012) 7 SCC 171

utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of the witnesses which are not of a substantial character.

29. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide *Tukaram v. State of Maharashtra*¹¹ and *Uday v. State of Karnataka*¹².)

30. The prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record

to record the conviction of the accused. The conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix; case becomes liable to be rejected.

31. The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtues/unchaste woman that itself cannot be a determinative factor and the court is required to adjudicate whether the accused committed rape on the victim on the occasion complained of.”

14. In the case of **Birka Shiva vs State of Telengana**² in **para** 18 the Hon’ble Supreme Court observed and held as follows:-

“18. The prosecution has sought conviction of the appellant under Section 376 IPC, asserting that he had committed forcible sexual intercourse with the victim. It is trite law that a conviction for rape can be sustained solely on the testimony of the prosecutrix/victim, provided that her evidence inspires confidence in the mind of the Court and appears to be natural and truthful. However, if the version given by the prosecutrix is inconsistent, unsupported by any medical

² 2025 SCC Online SC 1454

evidence, or the whole surrounding circumstances are highly improbable and believable in the case set up by the prosecutrix, the Court shall not act on the solitary evidence of the prosecutrix. [See : State of Punjab v. Gurmit Singh²¹; Vimal Suresh Kamble v. Chaluverapinake Apal S.P.²²; Sadashiv Ramrao Hadbe v. State of Maharashtra²³; Tameezuddin v. State (NCT of Delhi)²⁴; Narender Kumar v. State (NCT of Delhi)²⁵; and Mukesh v. State (NCT of Delhi) ²⁶.]

19. In the present case, we find that this charge has no legs to stand on, for she only makes a positive statement about the occurrence of sexual intercourse and does not even in the slightest imply the same to be against her will. The absence of consent is the sine qua non to sustain a charge under Section 376. That cannot, in our opinion, be met as per the evidence on record.”

Conclusion

- 15.** Therefore after giving an anxious consideration of the entire materials after appreciation of evidence on record the glaring inconsistencies found from the evidence of the victim coupled with the surrounding circumstances and that there was no investigation at all at the alleged place of occurrence makes the allegation so improbable to consider that by any stretch of imagination it can be held that the prosecution could establish the case beyond all reasonable doubt and in such situation the accused is entitled to benefit of doubt.
- 16.** Accordingly this Criminal Appeal is hereby allowed .The judgement and order of conviction passed by the learned Session court is hereby set aside .All connected applications are disposed of.

17. The appellant be set at liberty forthwith upon execution of bond to the satisfaction of the trial court which shall continue for 6months in terms of Section 437A of Cr.P.C, if not wanted in any other case.

18. The T.C.R along with a copy of the judgement be sent down to the concerned Court.

19. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]

