

(2024) 05 CAL CK 0008
In the Calcutta High Court
Case No : Criminal Appeal No. 111 Of 2019

Amar Sardar

APPELLANT

Vs

State Of West Bengal.

RESPONDENT

Date of Decision : 15-05-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 325, 326, 341, 354, 376, 380, 488, 506, 509, 511

Citation : (2024) 05 CAL CK 0008

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Dev Kumar Sharma, Sreyashi Biswas, Puspita Saha

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

The Appeal:-

1. The present appeal has been preferred against a Judgment dated 07.01.2019 passed by the Learned Additional District & Sessions Judge, Fast Track, 3rd Court, Howrah, convicting the appellant under Section 376/511/354 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for a period of two years with fine of Rs. 2000/- i.d. of simple imprisonment for a period of one month for the offence punishable under Section 354 of the Indian Penal Code and also sentencing him to suffer rigorous imprisonment for the period of 7 years and to pay a fine of Rs. 10,000/- i.d. of simple imprisonment for the three months for the offence punishable under Sections 376/511 of the Indian Penal Code and all sentences against the appellant to run concurrently.

The Prosecution:-

2. The allegations on the basis of which the proceeding in the present case was started is that:-

i) On 29.05.2011 one Amit Kumar Mitra (Pool) lodged an information with the Officer in Charge, Sankrail Police Station against the appellant and 2 others namely Chandi Sardar and Paran Sardar, alleging commission of offences under Sections 488/341/376/511/354/509/325/326/380/506/34 of the Indian Penal Code.

ii) On 28.05.2011, the appellant along with others allegedly entered into the premises of the victim lady, unlawfully and allegedly tried to commit rape upon her. It was further alleged that the appellant alongwith others allegedly assaulted her and also inserted an iron in her private part and thereby outraged her modesty.

iii) On the basis of the aforesaid information, Sankrail Police Station started a case being No. 263/2011 dated 29.05.2011 under Sections 448/341/376/511/354/509/225/342/380 500/34 of the Indian Penal Code against three accused persons including the appellant.

iv) During trial, the prosecution examined 8 witnesses and proved documents marked Ext 1 to 6 in order to substantiate the charges framed against them. There was no defence witness.

3. On conclusion of trial, the Appellant was convicted.

The Defence:-

4. The defence case is of mere denial and false implication, of them being the landlord and that the de facto complainant falsely implicated them, there was a pending case for eviction from the rented premises against the complainant.

The Evidence:-

5. The relevant part of the Written Complaint is reproduced for convenience:-

".....For evicting me from the tenanted room the landlord started conspiracy in different ways because other tenants would have paid more amount as rent. They filed eviction Suit also. They cut and detached water and electricity connection from our room. After having court's order the electricity connection from our room. After having court's order the electricity connection was restored, but water supply connection is still remaining closed. In these circumstances Smt. Chandi Sardar along with her husband Sri Amar Sardar threaten us daily and use filthy language.

On today (28.05.2011), Saturday I was at my residence as my shop was closed. I came out for some special personal work at about 5 P.M. in the afternoon leaving my wife alone in the room. Suddenly in the evening at about 8 to 8.30 P.M. some five to six young men knocked at the door and being called by my wife who was there, they answered that they had come to collect subscription for Kali Puja. As and when my wife opened the door, they forcibly entered the room and snatched my wife inside the room by holding her hand, closed the door from

inside. Then they pulled her into our bedroom, closed all windows from inside so that no sound of shouting come out. Then they tried to open the door connecting upper floor with the lower one by plus and screwdriver, but after sometime someone of the strangers opened the connecting door and Smt. Chandi Sardar and her husband Sri Amar Sardar come down from upstairs and entered our room with pillow covers in their hands. They inserted piece of cloth inside the mouth of my wife so that she cannot shout and tied her hands also. Amar Sardar, Smt. Chandi Sardar and strangers conducted beastly torture upon my wife and Amar Sardar tried to snatch her modesty. My wife threw kicks in the ear and raised obstruction. Then they beat my wife severely, tried to pull her legs apart and inserted an iron pipe in her private part. They bit throughout her entire body with sharp teeth and made her private parts seriously wounded by such mischief. At about 9 P.M., I returned home and found my wife to lie in a pool of blood and the articles inside the room in a shattered condition. Being asked my wife told me the entire incident. She also told that some Rs. 7000/- Rs. 10,000/- kept inside the room were snatched by those miscreants and that her earrings and bangles were also snatched away. Even after committing such cruel mischief they used cream at their face from our room, comb their hair at our room and left away....."

6. Charge was framed under Sections 448/34 IPC, 376/511/34 IPC and 354/34 IPC, 326/34 IPC, 380/34 IPC.

7. Prosecution Witness 1 is the Complainant and husband of the victim. He has reiterated the contents in Written Complaint.

8. The Complaint was filed on the Next day of incident, considering that the victim had to be admitted for her treatment.

9. P.W.2 (victim) has stated as follows:-

".....When I opened the door, about 5/6 male persons suddenly shut my mouth and took me to my bed room. At that time Amar Sardar, Chandi Sardar and mother of Chandi Sardar came and opened the connecting door. Then Amar Sardar put a towel inside my mouth and assaulted me randomly with fist blows all over my body and face. The said Amar Sardar is present today in the court room (Identified). Accused Chandi Sardar and her mother instigated Amar Sardar to assault me. Then the accused Amar Sardar took out my gold ear rings, bangles, nose top (Nak Chabi) and case of Rs. 7,000/- to 10,000/- which were kept on the table.

Then the accused Amar Sardar brought a thick pipe from up stair and male person spread/pulled out my two legs to two different directions and the accused Amar Sardar inserted the said thick pipe inside my genital which caused severe pain and bleedings on my private parts. The accused Amar Sardar also tried to rape me but I fought to avoid rape on me. Then the accused Amar Sardar bit on my thigh, breast, neck, ear, cheek and lower part's of leg. Due to such assault and bleeding I became unconscious. Another accused who was present at the

P.O. at the time of incident is also present in the court room. I know this accused by his face but I do not know his name (The witness identified the accused Paran Sardar by face.

Thereafter I was taken to the hospital by an ambulance. I was admitted to the hospital for last 11 days....."

10. P.W.3 is a neighbour, who came for a courtesy visit and saw the Accuseds/ and the Appellant running away. She found the victim lying with the injuries as stated.

11. P.W. 5 is the sister of the victim who saw the injuries sustained by the victim when she visited her in the nursing home.

12. P.W. 7 has proved the seizure.

13. P.W. 8 is the Medical Officer who has proved Exhibit 6 though he did not examine the victim.

14. Exhibit 1 is the written complaint.

15. Exhibit 6 is the bed head ticket proved by P.W.8. Medical Document marked 'X' for identification.

16. Exhibit 4 is a seizure list showing seizure of country liquor bottles and glass from the house of the Appellant.

17. Seizure list marked Exhibit 5 shows seizure of a:-

i) Blood stained towel.

ii) A blood stained check gamcha.

iii) A blood stained door curtain.

iv) A little bit of sample of blood which is collected with help of cotton.

18. Exhibit 6 is a bed ticket in respect of the victim's treatment at Howrah District Hospital for 9 days. It is clearly mentioned on the said document that there was Vaginal Injury and gynecology is noted there.

19. Medical papers marked 'X' for identification shows that victim had to be given blood on 29.05.2011.

20. Another Hand written medical paper shows vulva Injury repaired 3"x 1½". History was given as fall on a stick in the bathroom.

21. Blunt lacerated injury was detected in the middle/side of right thigh.

22. 2 bottles of blood transfusion was advised.

23. Drain given was to be removed after 48 hrs.

24. Vaginal Pack to be removed after 24 hours.

25. All these documents including Exhibit 6 are in respect of the treatment at Howrah Hospital.

26. The Appellant and the state have filed their respective Written Arguments.

27. The Appellant has relied upon the judgment in Kartick Mondal & Anr. Vs State of West Bengal (2015) 2 CCRLR (Cal) 587.

28. Admittedly the parties have a relationship of landlord and tenant and there is also a pending eviction Suit /Order.

Analysis of Evidence:-

29. From the findings of the Learned Trial Judge based on the evidence on record it appears that:-

i) There has been no delay in lodging the FIR as the incident occurred on 28.05.2011 at about 8.30 pm and the case has been registered at 2.15 hrs. on 29.05.2011.

ii) Exhibit 4 – Seizure List shows seizure of country liquor bottles from the Appellant's house.

iii) Exhibit 5 – shows seizure of blood stained towel, check gamcha, door curtain etc from the place of occurrence on 29.05.11 at 8.05 hrs. to 08.45 hrs (Early morning).

iv) Medical paper shows injury to the private part of the victim which was repaired and there was blood transfusion. Injury also includes small abrasion inside lower lip on the both mouth side – size of 'pea'.

v) The evidence on record proves that an object caused injury to the victim's private parts, causing heavy bleeding, which required repairing and blood transfusion.

vi) As the Appellant's wife was present at the time and place of incident, the offence of rape is not complete but the trial court has rightly held that the act of putting an object in her private part comes within the preview of Sections 376/511 IPC and thus also Section 354 IPC and the trial Court rightly convicted and sentenced the Appellant and as such the Judgment and order of conviction and sentence under appeal being in accordance with law, requires no interference by this court and is accordingly affirmed.

30. CRA 111 of 2019 is dismissed.

31. Appellant's Bail bonds stands cancelled and he is directed to surrender before the trial Court to serve out his sentence within 30 days from the communication of this order failing which, the trial Court shall proceed in accordance with law.

32. All connected applications, if any, stand disposed of.

33. Interim order, if any, stands vacated.

34. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

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