

(2017) 07 CAL CK 0023
In the Calcutta High Court
Case No : 196 of 2017

Dinonath Dalui @ Dino @ Din Dalui

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 10-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 164](#) - Power to examine the accused - Recording of confessions and statements

Citation : (2017) 07 CAL CK 0023

Hon'ble Judges : Siddhartha Chattopadhyay

Bench : SINGLE BENCH

Advocate : Shiladitya Sanyal, ?Soumyapriyo Chowdhury, ?Avishek Bhandari, Saswata Gopal Mukherjee, Faria Hossain

Final Decision : Allowed

Judgement

1. Doubting the correctness of the judgment passed in S.T. No. 03(06) of 2014, the appellant has preferred this appeal. According to the appellant, the learned trial court failed to appreciate the position of law as well as the evidence of the prosecution witnesses in its proper perspectives. According to him, the learned trial court failed to consider the factual aspects and the probability factors.
2. As against the learned Counsel appearing on behalf of the state contended that the learned trial court had considered legal aspects and all other material aspects in its proper perspectives and so the judgment passed by the learned trial court is quite unimpeachable.
3. In the interest of effective adjudication, factual scenario of this case

is required to be visualised. Shorn of unnecessary details, the prosecution case in a nutshell is such that on 17.08.2012, when the victim was sleeping alone in her house, the accused entered into her room and committed rape upon her forcibly. According to the victim, at that relevant point of time, her husband was not present. He had gone to some other place for his work. When the accused was committing rape upon her, somehow the victim had been able to flee away and screamed for help. Thereafter, she had disclosed the ill-episode to her brother-in-law (husband's brother). When her brother-in-law went to ascertain the fact from the accused, the present appellant accused assaulted him mercilessly and for which the victim's brother-in-law had to take admission in a nursing home for getting medical treatment. After a few while, the F.I.R. was lodged and in this way law was set into motion.

4. The defence case as it appears to me from the trend of cross-examination and examination of the accused under Section 313 Cr.P.C. is his innocence and that he has been falsely implicated.

5. To come to a finding, I should scrutinize the evidence of the prosecution witnesses thoroughly. The P.W. 1 in her evidence has stated that the door of her room was made of bamboo having some gaps in between the two bamboo pieces. There was a kerosene oil lamp in her room to get light. Suddenly one person entered into her room and pressed her mouth by a gamchha. At that time she could not identify the accused as it was dark in her room. Just prior to that she has categorically stated that there was a kerosene oil lamp to have light in her room. Therefore, at that time darkness loomed large in her room is a mystery. She further stated that after pressing her mouth the accused appellant disrobed her. She then tried to resist at her best. In spite of that the accused appellant had committed rape upon her. When the accused was fleeing away, she could identify the accused outside the said room and the said person is no other than the present appellant Dinonath Dalui. Practically the fate of this case hinges on the

testimony of this witness mainly. In spite of having a kerosene oil lamp in her room, she could not identify the accused. Existence of kerosene oil lamp indicates that there is no electricity in her house. The offence took place in the wee hours, then how the victim identified the appellant is still a mystery. According to the victim, she caught hold of lungi of the accused and when she started shouting, her brother-in-law came there and at that time accused assaulted him. In the F.I.R. there is a complete departure. The F.I.R. speaks that brother-in-law went to the accused to ascertain what happened and at that time the accused assaulted him. But evidence is completely different. From the cross-examination of this victim recorded on 16.08.2014, it appears that there are adjacent houses near the room of the victim. The victim's relations are also residing adjacent to each other. It has been clarified in her evidence that there is existence of house of one Nandi Sardar, Naba Gharami, Bangla Jana, Siddhaswar Jana and others. The evidence of P.W. 2 also corroborates that they used kerosene oil lamp for illumination of their rooms. This P.W. 2, is the brother in law of the victim, and he specifically stated that the victim lives in an adjacent room. When the victim screamed for help, he came from his room and found the accused standing outside her room. The story of F.I.R. is otherwise. Initially the victim disclosed her agonies to her brother-in-law, who in turn, went to accused to ascertain what happened.

6. According to the brother-in-law, the appellant assaulted him and for which he was admitted in a nursing home. This P.W. 2 further stated that his elder brother (victim's husband) works at Calcutta but he does not know where he works. The P.W. 3 stated that hearing the shouting, she came to the spot and found the victim as well as her nephew. The evidence of P.W. 4 and P.W. 5 are not much relevant for the purpose of adjudication of this case. The P.W. 6, is not an eye-witness. She told about the incident when she came to the house of the victim. Other witnesses are the doctor and police personnel.

7. The victim had given a statement under Section 164 of Cr.P.C. which speaks that suddenly one person entered into her room and forcibly committed rape upon her. When he was fleeing away, she identified the victim. She thereafter reported the incident to her brother-in-law (husband's brother). When the said brother-in-law chased the accused, he was assaulted by the appellant. Her such piece of evidence, in course of under Section 164 of Cr.P.C., are not in tune with her statement before the trial court and in the F.I.R.

8. On perusal of the evidence it appears that the victim's brother-in-law resides adjacent to her room and there are many other houses in and around the place of occurrence. A village road is also there just behind the window of the victim's room. One has to enter into the victim's room by crossing some other houses of the victim's family members. The husband of the victim did not show any interest about the incident nor came to adduce evidence. If kerosene oil lamp was there why the victim could not identify the accused is required to be explained. It is not the case of the victim that the accused had put cloth on her eyes.

9. While the victim was taken before the doctor for her medical examination, she did not divulge the name of the accused and as to how she was raped.

10. The learned Counsel appearing on behalf of the appellant has referred to a decision reported in (2011) 14 SCC 671 (Amar Bahadur Singh vs.- State of U.P .). The factual aspect of that case is almost akin to the present one. The Hon"ble Apex Court held that it was perhaps when the accused and prosecutrix had been caught red-handed the story of rape had been cooked up, to salvage some of the family honour. It seems to me that this case may be an instance of that type of case.

11. Considering the circumstances, I am of the view that the prosecution failed to establish the guilt beyond all reasonable doubts.

Accordingly, the criminal appeal is allowed. The appellant be set at liberty at

once. Judgment of the trial court is hereby set aside. The instant criminal appeal is thus allowed.

12. Let a copy of this order and LCR be sent to the learned Court below at once for information and taking necessary action.

13. Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.