
(2011) 01 CAL CK 0018
In the Calcutta High Court
Case No : C.R.R No. 2990 of 2004

Nakul Chandra Paul

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Penal Code, 1860 (IPC) — Section 376

Citation : (2011) 4 CHN 626

Hon'ble Judges : Kanchan Chakraborty, J

Bench : Single Bench

Judgement

Kanchan Chakraborty, J.—The challenge in this revision is to the judgement and order dated 30.8.2004 passed by the learned Additional District & Sessions Judge, Fast Track, 2nd Court, Tamluk in Sessions Trial No. 1(2) 2004/S.C No. 9(1) 2004 where by and whereunder the learned Judge acquitted the opposite party No. 2 Swapan Das from the charge punishable u/s 376 of IPC.

2. Nakul Chandra Paul, the de facto complainant of the case, has taken out this application praying for setting aside of the judgement and order which have been impugned on the following grounds :

- a) that the learned Trial Court failed to appreciate the evidence on record on its proper perspective and background;
- b) that the learned Trial Court erred in coming to a conclusion that the prosecutrix had, consent to the sexual intercourse with the respondent No.2 and, as such, the alleged sexual intercourse is not a rape within the definition of 375 of the IPC;
- c) that the learned Trial Court made some observations which altogether has created serious doubt about the correctness of the judgement impugned;
- d) that the learned Trial Judge erred in disbelieving the oral testimony of

prosecutrix and the prosecution witness Nos. 1 and 4;

e) that the judgement impugned does not reflect that the learned Trial Court applied his mind while acquitting the opposite party no.2 from the alleged charge of rape upon the prosecutrix.

3. The case before the learned Trial Court, in short, is that on 8.9.2000, Nakul Chandra Paul (hereinafter referred to as the petitioner) lodged a complaint in the Court of learned Additional Chief Judicial Magistrate, Tamluk alleging therein that the respondent Swapan Das committed rape on his minor daughter Chandana Paul forcibly and, as a result, Chandana Pal became pregnant. Observing the physical change of Chandana, the petitioner inquired into the matter about 6 months after the date of alleged commission of rape and came to learn that the respondent No.2 Swapan was responsible for the pregnancy. On 3.9.2000, Chandana delivered one male child but immediately after the delivery, the child died. The incident was reported to the local people who tried to negotiate the matter but failed. Ultimately, the petition of complaint was filed by the petitioner the Court of learned ACJM, Tamluk which was referred to Panskura Police Station for investigation treating the same as FIR. On the basis of said petition of complaint, Panskura police Case No. 149 dated 13.12.2000 was started against the opposite party No.2. The investigation into the case was done and a chargesheet was filed against the opposite party no.2 in order to prosecute him for committing the offence u/s 376 of IPC.

4. The learned Trial Court after recording oral evidence and upon considering the same together with the documentary evidence, came to a conclusion that the prosecution failed to bring home the charge against the opposite party No.2 beyond reasonable doubt and that the alleged sexual intercourse had taken place with the consent of the prosecutrix who was not found to be a minor child. Being dissatisfied with the said judgement, this revision has been preferred on the grounds mentioned above.

5. The point to be considered is whether the judgement and order impugned are required to be interfered with in this revision application.

6. In order to bring home the charge leveled against the opposite party No. 2 Swapan Das, the prosecution examined as many as 9 witnesses including the prosecutrix, the de facto complainant Nakul Chandra Paul (the petitioner herein), the Medical Officers who examined the prosecutrix and the I.O. In all seven (7) documents have been admitted into evidence on behalf of the prosecution and marked Exhibit. On the other hand, one witness was examined on behalf of the O.P. No. 2 and one document was admitted into evidence in support of defense case which was marked Exhibit A.

7. The petition of complaint on the basis of which the case was started was lodged by the petitioner Nakul Chandra Paul who happened to be the father of the prosecutrix. This petition of complaint is a very important piece of evidence in this case because it was filed six (6) months after the alleged incident and not in

police station but in Court. It says that the opposite party no.2 Swapan Das was a characterless dangerous man. Taking the opportunity of being a neighbour he used to come to the house of the de facto complaint and mix up Chandana Paul, the minor daughter of the petitioner. The intimation between them gradually increased and the petitioner asked the opposite party No.2 to restrict his visit. However, the opposite party No. 2 continued his visit and in absence of the petitioner, he committed rape against her will. Chandana became pregnant, Observing the change of physical state of Chandana, the petitioner inquired into the matter and Chandana informed him that the opposite party No. 2 was responsible for her pregnancy. On 3.7.2000, Chandana gave birth a male baby but the baby died immediately after its birth. Entire matter was reported to the local people who tried to settle the matter amicably but all the attempts became futile as the opposite party No. 2 did not come forward. The petitioner did not inform local P.S. considering the social prestige and future of his daughter. The FIR could not be lodged promptly because of the fact that efforts were made to settle the matter amicably.

8. A plain reading of the averments made in the petition of complaint lodged by the petitioner makes it clear that the petitioner had no knowledge about the alleged incident of sexual intercourse between his minor daughter and the opposite party No. 2 till she became pregnant and her physical state was changed. If the FIR is read minutely it will also reveal that local people were informed about the pregnancy who tried to settle the matter amicably. Information to the local people was given by the petitioner, of course, when he himself came to know about the pregnancy. The FIR was conspicuously silent about the date of alleged rape and period of pregnancy. No where within the four corners of the FIR it is also mentioned that when the petitioner became aware of changes of the physical state of the prosecutrix and inquired into the matter. The petitioner, according to the FIR, did not inform police station about the incident thinking of future of the prosecutrix but could not resist himself to inform to the local people about the incident which appears to be peculiar and contradictory. However, the FIR not being a substantial piece of evidence inconsistencies therein can well be ignored if Court finds other substantive and convincing oral and documentary evidence supporting the case of prosecution.

9. The prosecutrix who has been examined as P.W. 2, no doubt, is the most vital witness in this case. She has stated that the respondent No. 2 Swapan Das came to her house and raped her forcibly against her will at day time when there was no other person present in the house. She stated that she did not disclose the incident to any one for about 5-6 months. She had to disclose the fact to her parents when they asked about her changed physical state. She has stated that she informed her parents in the first part of the month of Kartik 1406 B.S. the incident took place. On the very date she disclosed the incident to her parent the petitioner, her father Nakul Chandra Paul called on the local people including his brother Gokul Paul. Swapan Das the opposite party No. 2 also came to her house at that time and there was a salish over the issue. She stated that Swapan

admitted his guilt and agreed to marry her. She has stated that she gave birth of a dead male baby. She had no consent in cohabiting with Swapan. She has stated that Swapan threatened her of dire consequences in case of disclosure of the fact to anybody. She stated further that she was 15 plus at that time. In her cross-examination she has stated that she was not at all examined by the Investigating Officer of the case. She disclosed the incident for the first time to her parent and thereafter in Court in course of her examination. She stated categorically that the I.O. visited her house but did not examine her or record her statement. She denied in her cross-examination the suggestion put by the defense that she was examined by the I.O. and she disclosed everything to the I.O. who recorded her statement. In her cross-examination, she stated that she tried to resist Swapan from committing rape by throwing her hands and legs but she did not shout. She instead of reporting the fact to any one continued her meeting with Swapan for about 5-6 times when none was present. She denied that her age at the time of occurrence was more than 15 and half years.

10. From the evidence of the prosecutrix some important facts can well be gathered. Firstly, the incident of alleged rape took place during day time while there was none in the house of the prosecutrix. The incident took place nowhere but in the house of the prosecutrix. The prosecutrix and the opposite party No. 2 were closely intimated with each other. After commission of the alleged incident of rape, they also met 5-6 times in absence of any person in the house of prosecutrix. The prosecutrix was not at all interrogated by the I.O. and her statement was not recorded by the I.O. u/s 161 Cr. PC. It also can well be gathered from her oral testimonies that some local people including her uncle as well as the respondent No. 2 came to her house for salish over the issue wherein the opposite party No. 2 acknowledged his guilt and announced that he would marry the prosecutrix. That the prosecutrix gave birth to a dead male baby.

11. Another important witness is the petitioner Nakul Chandra Paul himself. However, his evidence in examination-in-chief corroborates the fact stated in the FIR lodged by him excepting the fact that after delivery of dead male child, the prosecutrix requested the opposite party No. 2 to marry her on repeated occasions and on all the occasions he refused to marry her. Thereafter, he came to the Court and filed the petition of complaint. In between the date of acquiring the knowledge of the pregnancy of her daughter and lodging complaint in the Court, the alleged salish took place. Again, after giving birth of a male child by the prosecutrix till lodging of the complaint in Court, the prosecutrix requested Swapan repeatedly to marry her. This fact has neither been mentioned in the FIR nor stated by the prosecutrix herself. It is not also understood when the salish failed after informing the matter to the local people why the prosecutrix requested the opposite party No. 2 to marry her on a number of occasions.

12. In his examination-in-chief, the P.W. 1 stated that her daughter was aged about 15 and half years at that time. In his cross-examination, he denied the suggestion that her daughter was not a minor at that time. In his cross-

examination the P.W.1 stated categorically that she was not examined by the I.O of this case regarding the facts of the case. He admitted in his cross-examination that the facts relating to salish was mentioned in the FIR. She also admitted in his cross-examination that Swapan admitted his guilt and agreed to marry the prosecutrix in the meeting of the para people. In his cross-examination he has admitted that there was a litigation between him and the father of Swapan over a pathway. He also admitted that mother of Swapan have taken one criminal action against him over that issue. Although the P.W. 1 admitted hid signature in the Exhibit A, he doubted the genuinely of the same. He denied that the prosecutrix became pregnant not due to sexual intercourse with the opposite party No. 2.

13. The judgement passed by the learned Trial Court has been challenged on the grounds that the learned Court failed to appreciate evidence on record on its proper perspective and recorded acquittal of the opposite party No, 2 basing on some immaterial rather hypothetical grounds which has no relevance to the actual issue before the Court.

14. On careful perusal of the judgement which has been impugned herein it appears that the learned Trial Court failed to rely on the statement of the prosecutrix as well as her father, P.W. 1 The learned Trial Court found their statement and the statement of the Investigating Officer of the case are not corroborating to each other. The learned Trial Court found that there was suppression of material facts in the FIR as well as in the deposition of the witnesses. The learned Trial Court considered it proper to get the evidence of the prosecutrix corroborated by evidence of any independent individual especially when the Investigating Officer made statement contradictory to the statement of the prosecutrix. In fact, the learned Trial Court doubted the alleged fact of delivery of child and age of the prosecutrix.

15. The I.O. of this case has been examined as P.W.8. The P.W.8 stated that during investigation he recorded the statement of victim girl, Chandana Paul. She stated him that she was raped at night time. The victim girl Chandana flatly denied that she was ever examined by the I.O. and her statement recorded by the I.O. in course of investigation. The Investigation Officer, in a criminal case, plays very important role in the matter of bring out the truth by examining witness and collecting evidence in different manners. Normally in case of rape and where victim girl found available, the I.O. of the case is supposed to examine her, record her statement, place her before Magistrate for getting her statement recorded u/s 164 Cr. PC and place her before Medical Officer for medical examination. In the instant case, neither the victim, according to the statement of the P.Ws. 1 and 2 was interrogated by the I.O. nor the victim was placed before a Magistrate for recording her statement u/s 164 of the Cr. PC. According to the P.W.1, the ledger of the FIR who happens to be the father of the prosecutrix, has not been interrogated by the Investigating Officer and his statement also not recorded by him. On the contrary, the Investigating Officer

i.e. the P.W.8 stated categorically that he interrogated the P.W.1 and recorded his statement u/s 161 Cr. PC. The statement of the I.O. in one hand and the prosecutrix and her father on the other hand are contradictory to each other and confusing also because I, irrigated, normally is in a case like that, the I.O. is suppressed to record statement of the victim if she is available and ledger of the FIR. Naturally, the learned Trial Court was confused as to veracity of the statement of the prosecution witnesses. The I.O. is one of the important prosecution witnesses. So the prosecutrix is. If their statement contradict with each other, the learned Trial Court is bound take note of that because this is a serious contradiction and obviously creates doubt in the mind of Court.

16. According to the I.O., the prosecutrix told him that the alleged incident took place at night time. According to the statement of the P.W.1 and the prosecutrix, the incident took place at day time. The learned Trial Court has noted this contradiction because this has created doubt in his mind. There is no independent evidence as to birth of a still born baby save and except the evidence of P.W.1 and P.W.2. The evidence of P.W.3 regarding birth of a child cannot be considered being hearsay. The uncle of the prosecutrix i.e. Gokul Chandra Paul stated that he was not examined by the I.O. in course of investigation into the case. But the P.W.8 i.e. I.O. has made a contradictory statement and stated that he recorded a statement of P.W.4, Gokul Chandra Paul. Gokul Chandra Paul came to know about the incident from his younger brother Nakul. He was present in the meeting called on by Nakul. He has stated that Swapan was present in that meeting and admitted that he was responsible for the pregnancy of the P.W.2. The P.W.4 has stated Chandana actually delivered a dead male child but no where it has been transpired in his deposition that he was present at the time of delivery of that dead child or that he had seen the dead child delivered by Chandana. No where he has stated also when and where Chandana delivered the baby. The P.W.6 was reported about delivery of a son by Chandana while Chandana was examined by the P.W.6. So, there is no supporting evidence to the case of the prosecution that the victim had actually delivered a live baby or a still born baby at any point of time save and except the evidence of P.W.1 and P.W.2. It has already been observed that the oral testimonies of P. W. 1 and P.W.2 are contradictory to the oral statement of I.O. as well as documents on record. No local people although named by the P.W. 1 and the P.W.2 has come forward to support the case of prosecution that the prosecutrix ultimately delivered a baby at any point of time and Swapan was the father of that child. None of the local people excepting the uncle of the prosecutrix has come forward to support the case that there was a mliah over the issue of sexual intercourse by Swapan with the prosecutrix. The Medical evidence recorded by the learned Trial Court, as a whole, is found not at all helpful for the prosecution. There were some absurd facts which was noted by the learned Trial Court and which appeared to me also are very important. According to the prosecutrix, she did not mention the incident of rape to any one till the date of her parent asked her about the reason of her changed physical

state. She continued intimate relation with Swapan even thereafter who met her in her house in absence of her parents atleast 5-6 times till she disclosed the incident to her parent. This fact, however, does not appear to be practical. However, the action of the father of the prosecutrix after being aware of the facts of rape, appears to be peculiar and absurd. He did not inform the police about the incident thinking of future of his daughter and social prestige. He, however, disclosed the facts to every one of the locality. Had he actually afraid of social prestige and future of her daughter, he would not have disclosed the fact to any third person. However, the para people were called on and a meeting was held. In the meeting, according to the P.W.1, P.W.2 and P.W.4, the opposite party No. 2 admitted is guilt and assured to marry the prosecutrix. No para people has come forward to support the case although some of them are named by the P.W.1 and P.W.2. This fact has been noted by the Trial Court because it created a doubt in his mind. It appears from the statement of the P.W.1 that there was a dispute over a pathway between him and the parents of the opposite party No. 2. Litigations were pending between them over the issue. Therefore, it cannot be said that relation between the de facto complainant and the opposite party No. 2 was cordial.

17. In a case of rape, normally Court accepts testimony of prosecutrix without corroboration because Court always keeps in mind that no self respective owner put her honour at stake by falsely alleging commission of rape on her. Therefore, ordinarily a look for corroboration of her testimony is found unnecessary and uncalled for. But where the evidence of the prosecutrix is found not trustworthy, not convincing and contradictory to the statement of other important witnesses, Court must, as a rule of caution as well as prudence, look for corroboration of her testimony. In the instant case, the learned Trial Court found that the testimony of the prosecutrix was contradictory to the statement of the Investigating Officer on material points. Her statement is also found contradictory to the fact stated in the FIR and the P.W. 1. Naturally, the learned Trial Court looked for corroboration of her testimony and could not find any statement which corroborated her statement. So, the learned Trial Court hesitated to accept the statement of the prosecutrix and record conviction on the basis of her statement. On that count, the judgement impugned cannot be said to have been passed by not appreciating the evidence properly as claimed by the appellant.

18. As regards the observations of the learned Trial Court relating to the matters as to the age of the prosecutrix, delivery of a dead baby or death of the baby immediately after birth etc. appear to be immaterial. But, in fact, the learned Trial Court has not taken any opinion from those facts while recording acquittal of the opposite party No. 2. The learned Trial Court, as it appears to me, found the oral testimony of the prosecutrix and the other witnesses unacceptable, unreliable and self contradictory. There was a doubt of course, as to the veracity of the statement of the P.W.1 and P.W.2. In this background the learned Trial Court recorded acquittal of the opposite party No. 2 giving him the benefit of

doubt.

19. The judgement impugned was passed upon proper appreciation of the evidence and upon consideration of the factual background by the learned Trial Court and in my considered opinion the judgement impugned is not required to be interfered with in this revision. There is no perversity or absurdity in the judgement necessitating interference in the revision.

20. Accordingly the revision fails.

21. The judgement impugned is affirmed.

22. The petition is, thus, disposed of.