

**(2016) 04 CAL CK 0024**  
**In the Calcutta High Court**  
**Case No : C.R.A. No. 80 of 2015**

Raju Adhikary and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

**Date of Decision :** 05-04-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 156 (3), Section 156(3), Section 313  
Penal Code, 1860 (IPC) — Section 120B, Section 323, Section 324, Section 325,  
Section 34, Section 341, Section 354, Section 376, Section 379, Section 427, Sect

**Citation :** (2016) 04 CAL CK 0024

**Hon'ble Judges :** Ishan Chandra Das, J.

**Bench :** Single Bench

**Advocate :** Pinaki Bhattacharyya, Advocate, for the Appellant; Manjit Singh,  
Learned P.P., Saryati Datta and Ayan Basu, Advocates, for the Respondent

**Final Decision :** Allowed

## Judgement

Ishan Chandra Das, J.—1. This criminal appeal has been directed against the judgment and order of conviction dated 11.06.2014 passed by learned Additional Sessions Judge, Fast Track, 8th Court, Alipore, South 24 Parganas in Sessions Case No. 19(5)/2012 (Sessions Trial No. 1(5)/2011), arose out of Canning P.S. Case No. 293/2011 dated 21.09.2011 wherein learned Trial Court found the appellants Raju Adhikari and Hazra Adhikari guilty of the offence punishable under Sections 323/34 and 354/34 of the Indian Penal Code and sentenced them to suffer Simple Imprisonment for 6 months and to pay a fine of Rs. 1000/- in default to suffer Simple Imprisonment for one month and further to suffer Simple Imprisonment for 2 years for the offence punishable under Section 354/34 of the Indian Penal Code with further direction that both the sentences to run concurrently, subject to set off.

2. Briefly stated, the case of prosecution as it is reflected from the petition filed by one Madhab Halder before learned Chief Judicial Magistrate, Alipore in terms of Section 156 (3) of the Cr. P.C. wherein it appears that on 17.07.2011 at about

3 p.m. while Sm. Rina Halder, the wife of his younger brother went to bring her calf from the garden of the accused persons, she was abused by them in filthy languages and while said Rina protested, the accused persons assaulted her and brought her in a bush of the garden, torn her wearing apparels like saree, saya etc. and in course of such misdeed Rina Halder fell down on the ground and the appellants No. 1 and 2 outraged her modesty and tried to commit rape on her but she somehow managed to escape herself from the clutches of the miscreants and raised alarm and being attracted by such hue and cry, the de facto complainant Madhab Halder rushed to the place of occurrence and asked the accused persons the reason for such incident of assault upon Rina Halder to which he was also abused in filthy languages and was assaulted with fists, blows and kicks. He was also assaulted with lathi on his forehead and other parts of his body. The appellants also snatched a gold ornament from Rina Halder and sum of Rs. 10,000/- from the petitioner as well. Sustaining serious injury on his forehead, the de facto complainant Madhab Halder went to Canning P.S. and lodged the G.D. Entry No. 1085 dated 17.07.2011 and therefrom they were referred to Canning S.D. Hospital where he had to undergo treatment for about 7 days till 23.07.2011. Being informed about the said G.D. Entry, the appellants and other accused persons went to the house of said Rina Halder and threatened her with dire consequences for which said Rina Halder lodged another diary at Canning P.S. being G.D. Entry No. 1166 dated 18.07.2011 but no action was taken. The petitioner also informed the matter to the local panchayat, the respectable persons of the locality tried to settle the dispute through compromise but no result yielded due to non-cooperation and adamant attitude of the accused persons, resulting filing of this application under 156 (3) of the Cr. P.C. at a belated stage for sending it to the Officer-in-Charge of the P.S. concerned for treating the same as F.I.R. Accordingly, on receipt of the said application, the Officer-in-Charge of Canning Police Station started Canning P.S. Case No. 293/2011 dated 21.09.2011 under Sections 341/376/324/511/325/379/427/506/120B and 34 of the Indian Penal Code and consequently the charge-sheet was submitted and the case was committed to the Court of Sessions for trial.

3. Learned Sessions Court in course of trial examined 9 witnesses altogether including the de facto complainant, the victim lady and other witnesses and on conclusion of trial found these appellants Raju Adhikari and Hazra Adhikari guilty of the offence punishable under Sections 323/34 and 354/34 of the Indian Penal Code, convicted them and sentenced them to suffer imprisonment & to pay a fine, as noted above.

4. Being aggrieved by and dissatisfied with the judgment and order of conviction, the present appeal has been preferred by the appellants herein mainly on the following grounds:--

"(1) Learned judge committed mistake in registering the order of conviction of the appellants upon the facts and circumstances of the case and upon the

evidence and other materials-on-record.

(2) Findings of learned trial Court was based on mere surmising and conjecture rather than on the basis of evidence or materials-on-record, causing serious prejudice to the appellants.

(3) Findings of the learned trial Court, being contrary to the evidence on record and conviction based on those findings are liable to be set aside.

(4) The petition of complaint under Section 156 (3) of the Cr. P.C. was filed before learned Chief Judicial Magistrate, Alipore at a belated stage and there were embellishment and exaggerated version of the incident which was based on unfounded allegations, the Medical Officer who examined the patients immediately after the so called incident did not record the name of the so called assailant or the reason of causing such injury was not noted in such report.

(5) There were contradictions in the statements in between the FIR and the evidence adduced on behalf of the prosecution and learned trial Court without considering proper aspect of the matter convicted the appellants.

(6) The appellants herein were not properly examined by learned trial Court while he did so in terms of Section 313 of the Code of Criminal Procedure.

(7) The performance of the Investigating Officer in the instant case was not proper but it was perfunctory one.

(8) The conviction and sentence passed by learned trial Court were otherwise bad-in-law and were liable to be set aside but in the instant case, learned trial Court did otherwise."

5. Now the point left for decision of the Court is --- whether learned trial Court was justified in convicting the appellants on the strength of the evidence and materials-on-record.

6. The de facto complainant Madhab Halder while examining himself as PW-1 before learned trial Court stated on solemn affirmation that on 17.07.2011 at about 3.00/3.30 p.m. alleged incident took place when the appellants Raju Adhikari and Hazra Adhikari assaulted Rina Halder (PW-2), the sister-in-law of the de facto complainant over the issue of entering of a calf into their area and both the appellants hit victim Rina Halder, outraged her modesty, caused bleeding injuries on the head of the de facto complainant. From the oral testimony of other witnesses, a corroboration of such statement has been found out as it was stated in the petition of complaint, filed before learned Chief Judicial Magistrate, Alipore in terms of Section 156(3) of the Code of Criminal Procedure. Learned Counsel for the appellants in course of his argument pointed out that the prosecution could examine 9 witnesses altogether including the de facto complainant Madhab Halder (PW-1), his sister-in-law Rina Halder (the victim as PW-2) Jadav Halder, the husband of victim Rina Halder (as PW-3), Purnima Halder the wife of the de facto complainant Madhab Halder (as PW-4),

Bhola Halder, a son of Madhab Halder (PW-5), one Sourav Halder, a son of victim Rina Halder (PW-6). Pointing out the relationship between the de facto complainant, the victim and the witnesses, he submitted that the relations of the de facto complainant made out a plan to teach a lesson to the appellants who raised protest against the mischief caused by their calf. Further pointing out the relevant statement of the above noted witnesses, learned Counsel for the appellants herein also urged that the alleged incident took place in a broad day light (3.00/3.30 p.m.) in presence of some local witnesses (as revealed from the oral testimony of PW-1 Madhab Halder) as the said de facto complainant categorically admitted in his cross-examination that one Anima Sardar, Uttam Adhikari, Chiranjeev Adhikari, Manik Adhikari, Goutam Naskar, Uttam Naskar and others rushed to the place of alleged incident but none came before the learned trial Court to corroborate the statement of the witnesses substantiating the allegations, brought against the appellants - he urged.

7. Further drawing my attention to the oral testimony of a local witness named Sashibhushan Sardar (PW-8), he urged that he was a hearsay witness and he did not have any personal knowledge about the incident as alleged.

8. In this context, we may quote the statement of the Medical Officer, Dr. Sutirtha Dey (PW-7) who admitted that on 17.07.2011 he examined Madhab Halder and found laceration on the left temporal region measuring about 3 cm x 1 cm and injury on his right knee and some minor injuries on his left leg but surprisingly the patient did not disclose the names of the assailants before the Medical Officer, while examining himself at the hospital.

9. Learned Counsel for the state while supporting the judgment and findings of learned trial Court pointed out that immediately after the incident the victim and the de facto complainant were brought to the hospital for their medical aid and the statements of the witnesses clearly revealed that the incident of assault and outraging modesty of victim Rina Halder took place at the instance of the present appellants who were rightly convicted by learned trial Court.

10. Placing reliance on a decision of the Hon''ble Apex Court in RAJU PANDURANG MAHALE V. STATE OF MAHARASHTRA AND ANOTHER reported in , (2004) 4 SCC 371, he submitted that Section 354 of the Indian Penal Code makes penal, the assault or use of criminal force on a woman to outrage her modesty and the essential ingredients of this offence are:--

"(a) That the assault must be on a woman.

(b) That the accused must have used criminal force on her.

(c) That the criminal force must have been used on the woman intending thereby to outrage her modesty."

11. While explaining the above noted offence (i.e. outraging modesty of a woman), the Hon''ble Apex Court in RAJU PANDURANG MAHALE V. STATE OF MAHARASHTRA (supra) explained the same in the following languages:--

"12. What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object."

12. The genesis of crime as reflected from the oral testimony of the witnesses, noted earlier, it is manifested that the members of two families including the female members were involved in a dispute over a trifling issue and as the effecting parties to the litigation i.e. the de facto complainant and the victim lady contributed to the same, where the other members of their family took interest to incriminate the present appellants and other members of their family but some of them were ultimately proved innocent before learned trial Court save & except the appellants herein. Where there is false implication of some innocent persons by way of embellishment in the written complaint, the veracity of the entire prosecution story should be scrutinized with due care & caution. It is observed earlier that the alleged offence was committed in broad daylight and the de facto complainant also admitted that some local persons were present at the Place of such Occurrence but no corroboration came out from their mouth. Here all the corroborating witnesses were none but the family members of the de facto complainant and the victim. In the given situation unless any corroboration comes out from any independent corner, no reliance can be placed on the testimony of such witnesses who were inimical in character particularly towards the appellants and other members of their family who were proved innocent by learned trial Court. True it is that almost all the witnesses examined in favour of the prosecution were the near relations of the complainant and their corroboration proved futile when it is found that the de facto complainant did not disclose the names of the assailants before the medical officer treating him at the hospital and in the background such corroboration may be given stamp of untruth. Another important feature as pointed out by learned Counsel for the appellants that the prosecution did not seize or produce the torn wearing apparels before the trial Court to prove that the victim's modesty was outraged over the alleged incident where the appellants made an attempt to commit such offence, culpable in nature.

13. Considering the above materials-on-record, the essentials of the offence punishable under Section 354 of the Indian Penal Code have not been established at all, far to speak of beyond doubt. In the premises, I am unable to accept that the appellants were guilty of the offence, as complained of, rather they deserve the benefit of doubt. Hence, I do not concur with the findings of the learned trial Court in holding these two appellants guilty of the offence

punishable under Sections 323/34 and 354/34 of the Indian Penal Code and in my considered opinion the appellants, in the aforesaid circumstances, deserve an order of acquittal on the strength of such benefit of doubt.

14. In the result, the appeal succeeds. The relevant portion of the judgment and order of conviction passed against these two appellants are hereby set aside. The appellants are set at liberty at once. Bail Bonds furnished on their behalf stand cancelled.

15. Let a copy of this judgment be sent to the learned Court below along with the LCR at once, for information and necessary compliance.

16. Urgent Photostat certified copy of this judgment, if applied for, shall be supplied to the Advocates for the parties upon compliance with all formalities.