
(2015) 02 CAL CK 0049
In the Calcutta High Court
Case No : C.R.A. No. 255 of 2014

Rekha Mondal

APPELLANT

Vs

Brojen Mondal and Others

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 372
Penal Code, 1860 (IPC) — Section 376(2)(g)

Citation : (2015) 02 CAL CK 0049

Hon'ble Judges : Indrajit Chatterjee, J.; Shubhro Kamal Mukherjee, J.

Bench : Division Bench

Advocate : Ranjit Kumar Ghosal, for the Appellant

Final Decision : Dismissed

Judgement

Indrajit Chatterjee, J.—This appeal was posted for admission hearing under Section 372 of the Code of Criminal Procedure, 1973.

2. Notices were issued to the respondent Nos. 1 to 5 as well as to the State of West Bengal to show cause as to why the appeal against acquittal would not be admitted.

3. The de facto complainant/victim of Bishnupur P.S. Case No. 197 dated 13.06.2005 under Section 376(2)(g) of Indian Penal Code (henceforth called as the said Code) has approached this Court with this appeal against the judgement of acquittal passed by the Learned Additional Sessions Judge, 2nd Fast Track Court at Alipore District South 24-Parganas in Sessions Trial No. 7 (4) 08 arising out of Sessions Case No. 48 (2) 07, which arose out of BGR Case No. 2209 of 2005.

4. The assailed judgement was delivered on 28.02.2014 in which the Learned Trial Judge acquitted all the accused persons, who are now the respondent Nos. 1 to 5 before this Court in respect of the charge punishable under Section 376(2) (g) of the Indian Penal Code.

5. This appeal was presented before this Court on 03.04.2014 and as such it is not barred by limitation as prescribed by our Hon''ble Court in its decision as reported in Chobban Mallick Vs. State of W. Ben., .

6. Heard the Learned Advocate appearing on behalf of the appellant, for the State. Perused the Lower Court's records including the impugned judgement. The fact in nutshell, which went on trial before the Learned Trial Court as we got from the evidence on record can be stated thus: that the victim cum de facto complainant used to reside at first at village Sukhdebpur, District South 24-Paraganas. After her marriage with PW 2 (Pulak Mondal) they shifted to their new residence at village Dhanyasisha within P.S. Bishnupur of the same district.

7. The present respondent Nos. 1 to 5 are all residents of Sukhdebpur from where the de facto complainant and her husband had to shift to Dhanyasisha before one month due to dispute in between their family and the respondent No. 5 (Debabrata Mondal). It is also relevant for consideration that the respondent Nos. 2 to 5 are all full brothers and the respondent No. 1 is the son-in-law of their family. The respondent Nos. 2 to 5 are all residents of that Sukhdebpur village and respondent No. 1 is however a resident of Naraharipur, P.S. - Usthi of the same district.

8. It has been claimed by the prosecutrix that the incident took place in the intervening night of 12.06.2005 and 13.06.2005 and to be more precise at 12 in the midnight when the victim woke up to attend nature's call. It was her further case that five respondents and another accused, namely, Meghnad Mondal (declared as Juvenile) entered into the house of the victim and the respondent No. 1 (Brojen) put a white cloth on her mouth in which there was some adhesive. At that time, she found that her husband was tied by a rope with the grill. She, also, found other respondents, including the said Megnad Mondal, near the dinning room and Brojen Mondal forced her to write on a plain paper "Ami Tomake Bhalobasi, tomai chara bachbona, etc." and, thereafter, she was raped at first by Brojen and, thereafter, by other respondents including that Meghnad Mondal one by one. She became senseless and regained her senses at Vidyasagar Hospital where she was treated at first as indoor patient for one week and, thereafter, she was referred to one Government Hospital at Park Circus, where she was also treated. She lodged the FIR which was written by her husband as per dictation. She also made a statement to one Judicial Magistrate, which was recorded under Section 164 of the Code.

9. The prosecution examined in all 14 witnesses including the doctors and the Investigating Officer. The Ld. Trial Court as per the impugned judgment did not believe the version of the prosecution mainly on the ground that no injury was found either on her body or on her genitals (private parts). It may be noted that she was examined by doctor (P.W 10) on 11.07.2005. She was also examined by another doctor (P.W 9) on 13.06.2005 at 6.10 a.m. when the doctor found her to be unconscious but there was no abnormality in the blood pressure and she was shifted to Vidyasagar Hospital. In his cross-examination, he (PW 9) had to admit

that he did not find any external injury in the body of the victim even though he examined the patient thoroughly. It may further be noted that P.W 10 further deposed that in case of a sexually habituated woman there may not be any injury on the genital even if she was subjected to gang rape.

10. We have gone through the impugned judgment, the evidence on record both oral and documentary. It is apparent from the evidence on record that there was enmity between the parties. The absence of any injury either in the person of the victim or in her private parts will speak heavily against the prosecution story and its genuineness particularly when we are considering a case of gang rape. We cannot agree with the evidence of P.W 10 that in case of a gang rape and that too by six miscreants one by one, no internal or external injury can be expected simply because the woman was habituated with sexual intercourse.

11. She did not disclose either in the First Information Report or in the statement made under Section 164 of the Code that her parents-in-law were in the said house and naturally the evidence of such witness must be viewed with suspicion. Mere seizure of one torn blouse and other wearing apparel of the victim without any FSL report cannot prove anything against the accused person that she was gang raped on that fateful night. This Court is not unmindful of the fact that one roll of leucoplast and one piece of leucoplast were seized, but such seizure will not be of any help to the prosecution to prove such a story.

12. This court is also not unmindful of the fact that the husband of the victim as P.W 2 categorically deposed that he went to the police station even before the victim regained her senses. The information which he divulged to the police has not come before this Court. He (P.W 2) categorically deposed that he was not aware of the fate of his wife on that fateful night at least prior to 12.30 p.m. on the next day when his wife regained her senses. He categorically deposed that he was tied with a grill and his wife was taken towards the varandah and he did not see then what happened to the victim. It may also be noted that as per evidence the victim was found in a senseless condition in the varandah. She was taken to the Hospital from her house in a senseless condition and as such this is one gray area of this case, which has not been answered by the prosecution to prove the guilt of the accused persons/respondents.

13. Evidence of P.W 1 shows that the accused persons entered into the house by breaking open one window fitted with iron rods, which was in the bathroom, but the police did not seize any such broken rod. We have gone through the sketch map which was marked as Exb. 13 before the Learned Trial Court only to see that there is not mention of any bathroom not to speak of that broken window, the entry point of the miscreants. Thus, the entry point is also under strong suspicion.

14. Thus, considering every aspects of this case this Court is of the view that there is no reason to interfere with the views of the Ld. Trial Judge. The order of acquittal was passed considering every details of the evidence on record.

15. Thus, there is no merit in this appeal and, thus, is dismissed at the admission stage.