

(2023) 06 CAL CK 0017

In the Calcutta High Court

Case No : Criminal Appeal (SB) No. 148 Of 2022, IA No. CRAN 2 Of 2023

Sukalyan Keora & Ors.

APPELLANT

Vs

State Of West Bengal & Another

RESPONDENT

Date of Decision : 23-06-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 35, 323, 325, 354B, 376, 448, 511
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2023) 06 CAL CK 0017

Hon'ble Judges : Bibhas Ranjan De, J

Bench : Single Bench

Advocate : Shibaji Kumar Das, Rupsa Sreemani, Partha Pratim Das, Manashi Roy

Final Decision : Disposed Of

Judgement

Bibhas Ranjan De, J

1. Judgement and order of conviction of the appellants for committing offence under Section 354B/323/448 of the Indian Penal Code (hereinafter referred to as IPC) on 13.09.2022 passed by Ld. Additional Sessions Judge, Fast Track, Second Court, Hooghly has been challenged in this appeal. By the impugned judgement Ld. Trial Judge convicted all three appellants under Section 354B/323/448 of the IPC but other three female accused were acquitted of the charge under Section 323/34 of the IPC.

Background:-

2. In this case, initially law was put into motion by a written complaint lodged by one Namita Surul (PW1) before the Officer- in-charge of Pandua Police Station, District Hooghly alleging inter alia that all three appellants, well known to her, entered into her house on 20.08.2015 at about 6 p.m. while she was cooking. She cried by saying 'chor chor'. Then she was assaulted by appellant Sukalyan Keora and Amar Keora embraced her from the back portion. Appellant Asit Keora was also standing over there. They all made an attempt to molest her. Thereby,

she felt pain on her body and blood was oozing from her lips. At that time, her nephew rushed to the spot and cried out. She was sent to hospital for treatment and the doctor asked to lodge complaints to police.

3. On receipt of the aforesaid complaint on 21.08.2015 at about 12.20 hours Pandua PS Case No. 550 of 2015 dated 21.08.2015 under Section 448/376/511/323/325/35 IPC was started. After investigation charge sheet was filed against all three appellants and their respective wives under Section 448/376/511/323/325/34 of IPC before the Court at Ld. Chief Judicial Magistrate, Hooghly on 19.11.2015. After being committed the case to the Ld. Sessions Judge it was transferred to the Court of Additional Sessions Judge, Fast Track, Second Court, Hooghly for disposal.

4. Ld. Trial Judge initially framed charge under Section 323 of the IPC against all six (6) accused including the appellants and charge under Section 448 of the IPC against three appellants and charge under Section 376 /511 against appellant Amar Keora on 17.02.2017. Subsequently, Ld. Judge altered the charge on 16.07.2022 against all three (3) appellants under Section 323/34, 448/34, 376 read with Section 511/34 and charge under section 323/34 was framed against all three (3) female accused.

5. Prosecution examined nine (9) witnesses in all including victim, her husband, her minor son, two doctors, scribe of written complaint, investigating officer, recording officer and one lady home guard. In course of their evidence written complaint with endorsements, injury report, formal FIR, discharge certificate, rough sketch map with index, statements of witness recorded under Section 164 of the Criminal Procedure Code (hereinafter referred to as CrPC) were admitted in evidence as exhibit 1 series to 6 series.

6. Ld. Trial Judge convicted all three appellants for the offence under Section 354B/323/448 of the IPC relying on the corroborative evidence of victim (PW1) and her minor son (PW9) together with the injury reports (exhibit 2 & 4).

Argument:-

7. Ld. Advocate, Mr. Shibaji Kumar Das, appearing on behalf of the appellants has pointed out material contradictions between the FIR and subsequent evidence on oath. Mr. Das also contended that all facts alleged in the FIR were dramatically developed in course of giving statement before the Magistrate under Section 164 CrPC as well as during evidence on oath. Mr. Das has further pointed out that subsequent incident alleged to have been taken place on 21.08.2015 at about 5/6 a.m. did not take place in the FIR which was lodged on 21.08.2015 after 12 noon. Mr. Das, next, contended that evidence of victim regarding alleged injury has not been corroborated by the doctor (PW2) who examined her at Pandua Rural Hospital at the first instance. Before parting with his argument, Mr. Das has contended that in spite of evidence of presence of many persons at the place of occurrence prosecution did not care to examine any of them. Mr. Das relied on a case of Subodh Kumar Sarkar Vs Sailendra Nath Sarkar reported in

2016 SCC OnLine Cal 1501 and Asman Mondal Vs. State of West Bengal reported in 2022 SCC OnLine Cal 2275 in support of rejection of evidence of prosecutrix on the ground of contradictions and inconsistencies in absence of corroborative evidence.

8. Per Contra, Ld. Advocate, Mrs. Manashi Roy, appearing on behalf of the State has tried to make this court understand that there is sufficient corroboration between the evidence of victim (PW1) and her son (PW9). Thereby, Mrs. Roy supported the impugned judgement.

9. It is trite law that FIR cannot be an encyclopedia with all details. But in our case victim lodged FIR on 21.08.2015 alleging all details of act of every individual accused. But victim started alleging a different story at the time of making statement before the Ld. Magistrate on 03.09.2015 and thereafter during her evidence on oath before the Trial Court. For the first time in her statement under Section 164 of the CrPC she alleged an offence of assault against wives of the appellants and subsequently in the evidence victim stated that wives of all three (3) male accused assaulted him on 21.08.2015 at about 5/6 a.m. in the early morning. If that be so what prevented the victim to make allegation against those female accused in the written complaint which was lodged before the Police Station on 21.08.2015 at 12 noon? In the FIR it was alleged by the victim at the time of incident her nephew came to her and cried out but in evidence victim stated that at the time of incident her two children came to her and started shouting.

10. In her evidence she testified that after assault she sustained bleeding injury on her lips. PW5 (husband of the victim) also testified that he found blood was oozing from her lip and scratch mark on her right hand and that is why Police referred his wife for treatment at Pandua Hospital. But the doctor (PW2) who examined her at Pandua Rural Hospital found no external injury. In fact doctor wrote simple injury hearing the complaint of physical assault on 20.08.2015 at about 6 p.m and prescribed medicine for pain and injury. Further doctor (PW2) specifically testified that patent did not disclose names of any assailants and manner of assault. Therefore, the nature and manner of assault alleged by the victim has not been corroborated by the doctor.

11. Scribe of the FIR (PW6) has deposed that 1 & ½ year back while he was at Pandua PS for his personal work and on the request of the victim (PW1) he wrote the complaint (exhibit1) but in his cross-examination he stated that he did not make any correction of date under his signature as scribe he could not say who made correction of the date under his signature in the written complaint.

12. From the evidence of PW9 (son of the victim) it appears that at the time of giving evidence on 27.02.2020 he was a boy of 12 years and naturally he was 7 years at the time of allege incident. Therefore, he came to court to depose after lapse of 5 years. In these circumstances, scope of tutoring cannot be ruled out in terms of the written complaint lodged by the victim (PW1) who alleged that at

the time of the incident her nephew came to the place of occurrence. PW 9 in his evidence has stated that accused Sukalyan Keora caught hold of her mother and accused Amar Keora was pulling wearing apparels of her mother and he began to shout. Many people gathered over there and accused parsons fled away. But, his father (PW5) has stated that as soon as his son and daughter entered into the house accused person, seeing them, fled away after crossing the boundary wall. From the sketch map with index it comes to my view that place of occurrence i.e. house of the victim is situated beside the Pucca Road. But, unfortunately, none of the persons assembled was examined in this case and nephew of the victim was also not examined in this case.

13. Victim (PW1) has deposed in her evidence that accused tried to disrobe her. PW9 (son of the victim) also testified that accused were pulling wearing apparels of her mother. But, from the evidence it reveals that I.O never seized any of the wearing appeals of the victim during investigation.

14. It is an admitted position of fact that there was an inimical relation between the victim and accused/ appellants and it that view of the matter false implication of the accused/appellants cannot be ruled out.

15. Considering all the aforesaid material inconsistencies, I am unable to agree with the findings of the Ld. Judge in convicting the appellants under Section 354B/323/448 of the IPC.

16. For the reasons, I find no other alternative but to hold that the judgement and order of conviction passed in Sessions Trial No. 14 of 2017 is liable to be set aside.

17. In the result, the judgement and order of conviction passed in connection with Sessions Trial No. 14 of 2017 stands set aside. Appellants are being acquitted and set at liberty. Appellants be discharged from the respective bail bond.

18. Let a copy of the judgement along with Trail Court record be sent back immediately.

19. The appeal stands disposed of and all pending applications, if any, also stand disposed of.

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