
(2006) 07 CAL CK 0058
In the Calcutta High Court
Case No : C.R.A. No. 59 of 1996

Surendra Singh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 21-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 376

Citation : (2007) 1 CHN 94

Hon'ble Judges : Pravendu Narayan Sinha, J; Partha Sakha Datta, J

Bench : Division Bench

Advocate : Prabir Kumar Mitra, Shatarup Purakayasta and Puja Lamichaney, for the Appellant; Samir Chatterjee and P. Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

Partha Sakha Datta, J.—This appeal is directed against the judgment and order dated 18.12.1995 passed by the learned Assistant Sessions Judge, Midnapore in Sessions Trial No. XXXVI(5)/1994 convicting the appellant u/s 376 of the IPC and sentencing him to suffer simple imprisonment of 10 years.

2. One Basudeb Mandi then residing at Tentulberia under Haldia P.S. lodged an FIR with the Haldia Police Station at 19.30 hours on 21.5.1986 alleging the following facts:

The victim at the material point of time stayed with his brother-in-law Jiten Soren in a rented accommodation under one Basanta Maity at Tentulberia. While in the morning of 20.05.1986 all went out for work the victim who was then 10 to 11 years old was alone in the house of Jiten Soren. A co-tenant Suren Singh who is the appellant herein entered into the apartment of Jiten, shut the door from within, caught hold of the victim, committed rape upon her at 11 a.m. At 10 p.m. when all returned home from work the victim was found lying in unconscious condition and was profusely bleeding in her private part of the body. She was immediately taken to one quack doctor Mr. Milan Kumar Acharya in the

night. At 1 a.m. the victim regained her senses and narrated the incident to him (FIR maker), Jiten Soren, Jiten's wife Gouri Soren and Laxman Mandi. Since all were busy to search out the accused there was delay in coming to the police station. This complaint is Exhibit 1 in the case.

3. On this complaint Haldia Police Station Case No. 12 dated 21.5.1986 was registered u/s 376 of the IPC against the accused Suren Singh and upon completion of investigation chargesheet was submitted against the accused under the said section of the law and the learned Assistant Sessions Judge upon examination of 12 witnesses for the prosecution and of the accused u/s 313 of the Cr.P.C. convicted the accused u/s 376 of the IPC and awarded the sentence as said above.

4. Of the 12 witnesses examined by the prosecution the oral testimonies of P.W. 1 Basudeb Mandi (FIR maker), P.W. 2 Jiten Soren, P.W. 6 Gouri Soren (P.W. 2's wife), P.W. 8 the victim herself and P.W. 9 Smt. Sita Mandi are vital insofar as what they have said relate to the fact in issue. Though P.W. 5 Dasarath Soren and P.W. 7 Malati Soren were declared hostile by the prosecution their evidence could not be brushed aside altogether having regard to the statements in cross-examination by the prosecution. The quack doctor is one Mr. M.K. Acharya, P.W.4 and the doctor who examined the victim in the Tamluk Sub-Divisional Hospital is P.W. 12 Dr. T. Patra. P.W. 11 is the I.O. P.W. 3 Mallika Mandi and P.W. 10 Laxman Mandi were tendered for cross-examination without any examination-in-chief, and cross-examination by the defence was also declined.

5. P.W. 1 (FIR maker) says in his evidence that he was a day-labourer at Tentulberia under P.S. Haldia having hailed from a village under Dantan P.S. of the same district. Like him Jiten (P.W. 2), Jiten's wife (P.W. 6), his wife Mallika (P.W. 3), Malati Soren all resided as tenants at Tentulberia and the accused also was a tenant in a separate room in the same house. It was 20.5.1986 in the morning at about 8 a.m. when all the persons left for work, the victim was kept alone in the house of P.W. 2 to take care of P.W. 2's one and half year old baby in the house of P.W. 2. The victim was then 10 to 11 years old. At 6/8 p.m. when all returned from work the victim was found feeling unwell. Out of her own accord she stated that the accused Suren Singh had committed rape upon her sometime after departure of all the male members of the rooms. The wearing apparels of the victim were found stained with blood. She was immediately taken to Mr. Milan Acharya (P.W. 4) a quack doctor, who medically treated her. In cross-examination of this witness it has transpired that like him who is a gang leader of the labourers the accused also was a gang leader. P.W. 2 Jiten Soren in whose house the victim would work says that like him the accused was also working as a day-labourer and he was also residing as a tenant. All the rooms are made up of mud-wall and roofed by tiles. Keeping his baby in the care and protection of the victim he went out with his wife for work and when he came back at 10 p.m. the victim told his wife Gouri Soren (P.W. 6) that at about 11 a.m. the accused had committed rape upon her. The victim's wearing apparels were found stained

with blood. She was taken to Dr. M.K. Acharya who stitched her private part and P.W. 1 had been to the police station on the next day to lodge the FIR. P.W. 6 Smt. Gouri Soren, wife of P.W. 2 says that after returning from work the victim told her that during absence of all male members of the family the accused had committed rape upon her. She found marks of blood in her wearing apparels. She has further stated that after the incident the accused fled away. The evidence of P.W. 8, the victim is that when Gouri (P.W. 6), Gouri's husband (P.W. 2) and others went out for work as day-labourer and she was alone in the room, the accused who did not go out for work on that day and stayed in his room which was adjacent to the room of P.W.2 came to her room, bolted the door from inside and committed rape upon her and then left away. She sustained pain and bleeding injury in her private part, and her wearing apparels were stained with blood. When P.W. 2 and P.W. 6 came back in the evening she told them that the accused Suren had committed rape upon her against her will. She was taken to doctor who stitched her injuries and then she was taken to another doctor in the Tamluk Hospital for medical examination. P.W. 9, also a day-labourer, says in her evidence that on the day of incident the accused did not go out for work and after coming back from work she found the victim in her room, bleeding in her private part of the body and the victim told that she was raped by the accused. The victim is her cousin sister. P.W. 5 Dasarath Soren who according to I.O. (P.W. 11) told him that he had been staying with the accused in joint mess and that the victim was raped by Soren turned hostile to say that he does not know anything of the incident. But from his cross-examination by the prosecution and also from examination-in-chief it has transpired that the victim was minor, that the accused was staying adjacent to the house of P.W. 2, P.W. 1 and others, and that P.W. 2 and others took the victim for medical examination. P.W. 7 Smt. Malati Soren though turned hostile said in her cross-examination by the prosecution that the victim was at the material time 10/11 years old, that the baby of P.W. 2 and P.W. 6 used to be kept under the care of the victim while P.W. 2 and P.W. 6 went out for work, that on the day of the incident she (P.W. 7) along with others went out for work in the morning, that after returning from work all found the victim unwell in her room, that the victim was shifted to Dr. Acharya for medical treatment and that after the incident the accused was not found in the locality. P.W. 4 Dr. M.K. Acharya who is a quack doctor examined the victim at 10.30 p.m. on 20.5.1986 and found bleeding injuries in her private part. He stitched injuries of her private part and gave medical treatment. He says that on interrogation he came to know that one Soren Singh had committed rape upon the victim girl. He further clarifies in his examination-in-chief that P.W. 2 told him about the incident. The victim was taken to him by 4/5 persons including Jiten Soren (P.W. 2), Birendra Nath Majhi, Suniti Giri and others. According to him, the victim was 9/10 years old. However, he advised the victim to go to the hospital for better treatment. P.W. 12 Dr. T. Patra examined the victim on 22.05.1986 at Tamluk Sub-Divisional Hospital at 10 a.m. when she was brought by a constable and P.W. 6. He found that "one nylon stitch torn fourchette applied by the local doctor outside as stated by the party, bleeding fresh, hymen ruptured recently,

lacerated injury on the vagina seen, bleeding slightly, vagina allows one finger with difficulty". Vaginal swab was taken and handed over to the constable. Considering the factum that the fourchette was torn, hymen was ruptured and lacerated injury was there in the vagina, P.W. 12 opined that the victim appeared to have been raped recently. By this witness, report of radiological examination which is Ext. 4 was proved since B. Ghosh had expired in the meantime and according to the radiological examination report, (Ext. 4), the victim was below 14 years on the date of examination which was 22.5.1986.

6. Having thus placed the sum total of evidence of the witnesses let us proceed to have a critical appreciation thereof. P.W. 1, P.W. 2, P.W. 3, P.W. 6, P.W. 7, P.W. 8 and P.W. 9 all hail from different places like Belda, Dantan, Keshiary of the district of Midnapore and they all came as day-labourers to work at Tentulberia under P.S. Haldia. Most of them are relations to one another and like P.W. 1 and P.W. 2 the accused was also a day-labourer who belonged to a village under the Police Station Keshiary of the district of Midnapore. All the witnesses including the accused lived in separate apartments but in the same building under one Basanta Maity of Tentulberia as tenants. They would go out for work in the morning and return in the evening. It appears from the original deposition sheets of the witnesses that many of the witnesses are illiterate and belong to weaker section of the society.

7. It was 20.5.1986 at 10 a.m. when all the witnesses went out for work only one person who preferred not to go out for work was the appellant alone who stayed in the room adjacent to the room of P.W. 2 where the victim was alone left to take care of one and half year old baby of P.W. 2 and P.W. 6. From the report of the radiological examination of Dr. Ghosh as also from evidence of all the witnesses it has become abundantly clear that the victim was minor. As we find from evidence of P.W. 12 the vulva pubic hair of the victim was not yet developed. There was a suggestion put to the victim that she was 17 years old which the victim denied forthwith. Even if she was 17 years old on the date of incident which is contradictory to the radiological examination report as also evidence of the witnesses it is sufficiently clear that she was a minor. However, at about 11 a.m. when all were absent from the respective rooms the victim was raped by the accused against her will. She sustained severe bleeding injuries, her wearing apparels were stained with blood. When the witnesses returned from the work in the evening or at night the victim told them she was raped by the accused. She was immediately taken to quack doctor Acharya who found profuse bleeding injury in the vagina and stitched bleeding injuries by a nylon cord. Thereafter she was taken to P.W. 12 on 21.05.1986 who found, as said above, fresh bleeding injury with laceration in her vagina with hymen ruptured recently and doctor opined that it was a case of rape. The accused fled away from the place of occurrence and could not be found out. On the next day the witnesses went out for work and searched for the accused and then in the evening P.W. 1 lodged the FIR. From the evidence of the witnesses it did not transpire at all that there was any animosity or enmity between P.W. 1 and the accused. Nor could it

appear that the victim had any love affairs with the accused. The victim was minor while the accused was around 30 years old at the relevant time. All the witnesses, nay, all the day labourers including the accused would occupy a room each side by side walled by mud and roofed by tiles in the same building as tenants under one Basanta Maity of Tentulberia. The conduct of the accused is suspect in this that though he was to go out for work he chose not to go out and stayed alone by the side of the victim and then fled away from the locality after commission of rape. He had been an absconder for six months after the date of the incident and surrendered before the learned SDJM, Tamluk on 17.11.1986. The suggestion to the doctor that bleeding injury in the private part of the body could have occurred because of insertion of a foreign body or throwing chilli is absurd at the least. From the quack doctor it was elicited to the convenience of the defence that the injury might be caused by putting a foreign body on the private part of the victim and such injury may also happen by fall on hard substance. It is absolutely absurd to suggest that by throwing chilli or by fall on hard substance such injury could be caused. Having gone through oral evidence of the witness which corroborated one and other and the evidence of the victim vis-a-vis the medical evidence of P.W. 4 and P.W. 12 there is left no room for doubt to say that it was a case of rape and the author of rape was no other than the appellant.

8. Let us traverse the contradictions which according to the defence have made the prosecution case a failure but with which we are unable to agree. Firstly, undoubtedly there was little delay in lodging the FIR. Occurrence took place at about 11 a.m. on 20.5.1986 while the FIR was lodged in the evening of 21.5.1986. In the FIR itself as also in evidence of other witnesses it has been stated that while the victim was found bleeding in the private part of her body in the night when the witnesses returned from work in the night of 20.5.1986 they who are mostly illiterate first took the victim in the night to the quack doctor who stitched the private parts of the body by a nylon cord. Their decision was right because the victim was bleeding profusely. In the FIR it has been stated "I have come late to the police station to inform as we were busy to search out the said accused". Mr. Prabir Kumar Mitra, learned Advocate appearing for the appellant submitted with reference to the evidence of P.W. 1 that P.W. 1 said that in the morning of 21.05.1986 he had been to the police station to submit FIR (Ext. 1), while FIR was practically lodged at 7.30 p.m. on 21.05.1986. True, P.W. 1 did not lodge the FIR in the morning of 21.05.1986. He lodged it in the evening of 21.05.1986 but this contradiction did not make out the case false in view of the evidence of the witnesses vis-a-vis the medical evidence. The learned Advocate for the State submits that the witnesses including the FIR maker who were all day-labourers searched out for the accused but could not find out and then they were scheduled to go for work as a day-labourer which they could not avoid and then in the evening they had been to the police station. The submission of the learned Advocate for State has no reason for rejection. Police seized the wearing apparels of the victim as it is found from the seizure list (Ext. 2). It is submitted

by the learned Advocate for the appellant that while P.W. 1 had said in his evidence-in-chief that he returned from work between 6 to 8 p.m., P.W. 2 has said that all returned from work at 10 p.m. In our estimation it is no contradiction at all, rather this sort of contradiction is expected of illiterate and semi-illiterate persons who sustain their livelihood as day-labourers and this contradiction makes out the prosecution case most natural. It was argued that in, examination-in-chief P.W. 1 has said that having returned from the work in the night the victim told out of her own accord that she was raped by the accused, while P.W. 6 has said in cross-examination that she was unconscious when she was shifted to doctor. Again, it is submitted that in the FIR it was stated that at 1 a.m. in the night the victim told that she was raped. There has to be a harmonious construction of a piece of evidence and a particular piece of evidence cannot be isolated from the main context of the case. That the victim was raped is indubitably clear. The victim has categorically stated in her evidence as P.W.8 that she was raped by the accused when she was alone in her room and the accused was also alone in his room side by side, and when all others had gone out for work the accused raped her. From the evidence of P.W. 4 a quack doctor who stitched the bleeding injury by nylon did not say in his evidence that the patient was unconscious. He examined the patient at 10 p.m. after P.W. 1, P.W. 2 and others returned from work at different hours. P.W. 6, the wife of P.W. 2 said in her evidence that on interrogation the victim told that the accused had committed rape upon her. In her cross-examination it was suggested to the witness that at the relevant time the victim was unconscious and the witness who was illiterate answered in the affirmative. This does not lead to the conclusion that the victim was unable to make any statement in the evening or in the night so that the accused was made a scapegoat for no reason. Again, it was argued that P.W. 1 has stated in cross-examination that when he returned from work he found the victim doing work. Again, this statement has come out in cross-examination by way of a suggestion and given the level of intelligence and the status of the witness it was not unnatural that the witness fell to the prey of the suggestion of the defence. It was argued that P.W. 1 has said in his cross-examination that the victim told him that a person like Suren had entered into the room and committed rape. Again, this was a statement in cross-examination in the form of a suggestion. In the FIR and in evidence of all the witnesses including the victim there has been left no manner of doubt with respect to the identity of the individual who committed rape. It was argued that I.O. examined P.W. 4 on 15.06.1986 while P.W. 4 says that he was examined 3/4 days after the incident. It cannot be lost sight of the fact that occurrence took place on 20.05.1986 while P.W. 4 was examined in the Court on 10.11.1995. He may not have remembered as to when he was examined by the I.O. after the incident. Mr. Mitra, learned Advocate for the appellant has submitted that there was a long delay in submitting chargesheet by the I.O. and this has resulted the prosecution case to be improbable. The argument cannot be accepted on any reason whatsoever. The I.O. examined almost all the witnesses in the month of June, 1986 while occurrence took place on 20.5.1986. I.O. submitted chargesheet on

28.04.1990 after he received the report of F.S.L. dated 12.04.1990. Therefore, the time taken for submission of the chargesheet was on account of the time taken by the chemical analyst for submission of the report of Forensic Science Laboratory. It was argued that P.W. 8 has said that the accused committed rape for one hour. Again, it has to be stated that P.W. 8 the victim was an illiterate girl. She was put the suggestion in the cross-examination that she was raped for one hour and then the witness replied in the affirmative being unguarded. Such a statement in cross-examination does not enure to any benefit of the defence in view of the totality of the facts, circumstances and evidence on record. It was argued that the report of chemical examination of the vaginal swab of the victim was that neither spermatozoon (no semen) nor gonococcus could be detected in the vaginal swab said to be of victim and no semen could be detected on the pant of the victim. This report does in no way destroy the veracity of the prosecution case firstly because of very categoric and unimpeachable evidence of P.W.8 supported by evidence of P.W. 1, P.W. 2, P.W. 6 and P.W. 9 as also the witnesses who turned hostile. Secondly, the medical evidence of P.W. 4 and P.W. 12. are so vivid and direct that they corroborated the evidence of P.W. 8. Thirdly, absence of semen in the pant of the victim does not prove that there was no penetration of penis into the vagina. Fourthly, there is another report of chemical examiner to whom vaginal swab was sent to ascertain the blood group and Dr. (Mrs.) S. Ghosh reported on 12.01.1990 in her report that the vaginal swab was found disintegrated but she found human blood in the frock of the victim. Therefore, the report of the chemical examiner dated 12.04.1990 (Ext. 3) to whom vaginal swab was sent cannot be read too much to negate the prosecution case which from all angles has come to be proved. It was argued that in cross-examination P.W. 12 did not say as to how many hours back the hymen of the victim got ruptured. This statement in cross-examination of P.W. 12 does not help the defence because this witness found laceration in the vagina with bleeding and with rapture of hymen. Non-mentioning the exact hour when there was rapture of hymen is of no consequence. It was argued that P.W. 6 said in his cross-examination that the victim was taken to the doctor at 5 p.m. while the doctor (P.W. 4) says that he examined the victim at 10.30 p.m. P.W. 6 is an illiterate lady and in cross-examination she was made to say that the victim was taken to P.W. 4 at 5 p.m. This is not a contradiction at all.

9. Thus, having examined the oral evidence of the witnesses we find no merit in the appeal. The learned Trial Court has upon proper analysis of evidence of the witnesses rightly held the accused to be guilty to the charge u/s 376 of the IPC. As regards the sentence, it was appropriate having regard to the age of the victim and the other circumstances. We accordingly dismiss the appeal and affirm the judgment of conviction and order of sentence passed by the learned Trial Court.

10. A copy of the judgment along with the L.C.R. be sent down to the learned Trial Court immediately.

Pravendu Narayan Sinha, J.

11. I agree.