Rabi Dalui @ Rabin Dolui Vs State of West Bengal

C.R.A. No. 190 of 2010

Court: Calcutta High Court

Date of Decision: April 4, 2012

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 164#Penal Code, 1860 (IPC) â€" Section 376(2)(f)

Citation: (2012) 3 CHN 212

Hon'ble Judges: Asim Kumar Ray, J; Ashim Kumar Roy, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Ashim Kumar Roy, J.
In this appeal the appellant Rabi Dalui @ Rabin Dalui has challenged his conviction u/s 376(2)(f) IPC and sentence

of rigorous imprisonment for 10 years with fine and default clause passed by the learned Additional Sessions Judge, 12th Court, Alipore in

Sessions Trial No. 02(02)2007. The prosecution case according to the FIR goes like this:

On 24th January 2006 sometime in the afternoon the PW/2 Manu Dalui found her daughter, P.W.3 aged about 6 years was bleeding from vagina.

At once she was taken to Vidyasagar Hospital but as she could not be admitted there she was removed to M.R. Bangur Hospital where on the

same day she was admitted under Dr. Subodh Kumar Bera (PW/9). Thereafter on 30th January 2006 while PW/3 was undergoing a surgical

incision, on being asked by her attending doctor in presence of her mother, the victim girl disclosed that on last Saturday in the afternoon the

appellant Rabi Dalui, the cousin brother of her father took her inside his room and raped.

2. During the trial prosecution examined as many as 12 witnesses, while defence examined one.

3. The learned Counsel appearing on behalf of the appellant contended before us that he is absolutely innocent and has been falsely implicated in

the aforesaid case out of family feud. He vehemently urged that there has been a delay of six days in reporting the incident to the police without any

reason which makes the prosecution case highly suspicious. He further pointed out that according to the doctor (PW/8), who treated the victim girl

the injuries found in her private parts may also be caused by accidental fall which completely belies the prosecution case.

On the other hand, the learned Counsel for the State vehemently contended that there is no reason to disbelieve the victim girl as nothing could

have been brought out from her lengthy cross-examination which may raise doubt as to the guilt of the appellant. He with reference to the evidence

of the doctor further contended that the injuries sustained by the victim in her private parts clearly shows that she was raped.

4. Heard the learned Counsels appearing for the parties, considered their rival submissions. Perused the impugned judgment, deposition of the

witnesses and other materials on record.

4 (a). The PW/1, Badal Dolui is the father of the victim girl. According to him, he was told by his daughter (PW/3) that she fell and sustained injury

and from his cross it reveals that on their way to hospital his daughter told him as to how he sustained injury. Thereafter he came to learn from his

wife at hospital that she was raped by the appellant and due to that she suffered bleeding injury in her vagina. In his cross the witness admitted that

he did not hear anything directly from his daughter about this incident and the appellant Rabi Dalui and his parents'' live in a single room.

(b) The PW/2 Manu Dolui, the mother of the victim stated in her evidence that initially her daughter told she sustained injury by fall but on the way

to Bangur Hospital her daughter disclosed that accused Rabi Dolui raped her. In her cross the witness admitted that she made no statement to the

police with regard to this incident and the police was informed on the very day when she came to know about the real incident from her daughter.

(c). The PW/3 is the victim girl, the said witness in her deposition stated that when she was taken to hospital she told her mother about the incident.

On the point of identification of the appellant by the victim girl (PW/3) in the trial, following observations have been noted by the Trial Court in the

deposition sheet:

On being asked to identify him the witness lowers down her face, again raises it and try to see the persons in Court but again lowers down her

eyes.

Being asked whether she can identify her jyatha and being asked to identify him by her hand the witness looks at one of the two persons on dock

but does not raise her hand or finger to identify the accused. I find that the witness repeatedly looks at the person who discloses his name as Rabi

Dalui.

It appears from her deposition, the victim girl (PW/3) answered in affirmative when it was told to her that she fell down while coming down the step and got injuries but immediately thereafter gave answers in the negative by shaking her head. She then stated that she told her mother that she

sustained injuries by fall.

It further appears from the records that while FIR was lodged on 30.01.06 the statement of the victim girl u/s 164 Cr.PC was recorded on 3.4.06,

i.e. nearly 3 months after the case was registered.

(d). The PW/6 Bapi Dolui is a cousin of the father of the victim girl, PW/1 Badal Dolui. This witness stated in his evidence on 28.01.06 after

coming back from his duty he came to learn that victim was taken to hospital for some reason and on his coming back his brother Badal Dolui

narrated the incident by saying that accused Rabi Dolui committed rape upon his daughter. The victim girl narrated the entire incident to him at

Bangur Hospital on being asked by her mother. The witness also admitted that appellant was staying in a single room with his parents. The witness

claimed that he had been to the hospital on the first day of the following month when the incident was narrated to him by her.

(e). The PW/7 Biswanath Dolui is a neighbour of the PW/1 and came to learn about the incident from him and was a witness to the seizure.

(f). Both the PW/10 Bimal Hazra and PW/11 Ashok Das who are the neighbours of the defacto-complainant (PW/1) and both were declared

hostile. Although the witnesses were cross-examined by the defence with reference to her earlier statement made to the police but the Investigating

Officer (PW/12) of the case made no statement in his chief about what was told to him by the said witnesses.

The PW/10 during his cross-examination by the defence disclosed that appellant used to reside in a single room along with his parents and for last

5/ 6 years the father of the appellant was unable to go for work and his mother used to work as a domestic help and returned home during noon.

(g). The PW/7 is a police personnel who recorded the FIR and PW/12 Prasun Chakraborty is the investigating officer of the case. According to

this witness he seized the blood-stained wearing apparels of the victim girl but he did not collect any report from FSL. The witness stated that the

appellant resided in a single room.

(h). The appellant examined his father Sarat Dolui as a defence witness. During his cross-examination he disclosed that as he was suffering from

gastric during last 3/4 years he was not doing any work and prior to that he was working as a day labourer.

5. Therefore, from the evidence of the aforesaid witnesses, more particularly from that of Badal Dolui (PW/1) and Manu Dolui (PW/2), we find

admittedly their daughter PW/3 at first disclosed that she sustained injury due to a fall and then while he was removing to Bangur Hospital in the car

itself she disclosed to her mother (PW/2) that she was raped by the appellant which caused bleeding injury in her private parts and the PW/2

informed PW/1 at the hospital as to what she was told by her daughter. It is also claimed by the PW/2 that police was informed on the very day when she came to know about the real incident from her daughter. The victim girl (PW/3) also deposed that she told her mother about the incident while she was taken to hospital. It now appears from the evidence of the doctor (PW/9) under whose care the victim was admitted at Bangur Hospital that she was admitted in the hospital on 28th January, 2006 and the same was corroborated by other materials on record, whereas the police was reported on 30th January, 2006 about this incident. Thus, it is now evident that as claimed by the PW/2 the incident was not reported to the police by her on the very day she came to learn from her daughter (PW/3) about the complicity of the appellant in the commission of the offence as claimed and she is not a truthful witness. The prosecution has not come out with any explanation as to why even after knowing the complicity of the appellant the police was not informed at once either by the PW/1 or by the PW/2 and it took more than two days in informing the police. These facts cast a serious doubt as to the veracity of the said witnesses and on the prosecution case based on their evidence.

6. Now, coming to the evidence of the victim girl (PW/3) we find in cross while admitting that there are two steps adjacent to the road in front of their house, on first breath it was her evidence that she fell down while coming down the steps and got injuries and immediately she disowned her statement. However admitted soon thereafter that she told her mother that she sustained injury by fall. We find from the deposition sheets of the PW/3 that the Trial Court noted some observations on the point of identification of the appellant by the victim girl. Having regard to the same the identification of the appellant by the PW/3 as the person who raped her also does not inspire any confidence. Apart from that her evidence as to how she sustained injury is not of much credence.

7. During the trial prosecution examined two doctors, one is Dr. Subodh Kumar Bera (PW/9) under whose care the victim girl was admitted on 28th January, 2006 at M.R. Bangur Hospital and the second one is Dr. Tapan Kanti Roy (PW/8) attached to the Police Case Hospital who examined the victim girl on March 30, 2006, in connection with this case nearly two months after the alleged occurrence. We do not find any explanation forthcoming from the side of the prosecution as to why the victim girl was again examined by the PW/8 that too after two months of the alleged incident. In our opinion, more weightage to be given on the evidence of the PW/9 who examined the victim girl (PW/3) soon after the alleged incident rather than on the evidence of PW/8 who examined her two months thereafter at the instance of the police for the reason based known to them.

We find that the victim girl was treated for vulval heamatoma by the PW/9 from 28th January to 30th January, 2006 the victim was suffering from collection of blood under skin around her external genitalia following trauma which may occur due to the sexual assault. In his cross-examination the witness admitted that such injury may occur if the patient fall on a hard substance while playing. The vagina may rupture following sexual assault

by a person aged about 30/33 years. The discharge certificate of the victim was marked as Exhibit - 7. The witness further admitted that it was not

mentioned in Exhibit -7 whether there was vaginal rupture. We find during cross-examination it was suggested to the said witness that he stated to

the investigating officer of the case that victim being referred from Vidyasagar Hospital came to his hospital and that on being asked, the guardian

of the patient told that the patient fell down and sustained injury and they decided to take help of surgery, when the witness expressed his inability

to recall whether he made such statement to the police or not. Now from cross-examination of the Investigating Officer, P.W. 12, when he

examined Dr. S.K. Bera (PW/9), he stated as per the parents" of the victim she fell down and sustained injuries and on 30th prior to taking her to

operation theatre the mother of the victim told that she was sexually assaulted by one of her uncle and at the time of admission there was no

reference as to the incident of rape and the patient was supposed to be discharged on that day.

8. On scrutiny of the evidence of the PW/9 we find it is an admitted position that the victim girl might have suffered on a fall on a hard substance

while playing and in the injury report there is no mention that her vagina was ruptured. His inability to recollect that he told the Investigating Officer

of the case that the guardian of the patient stated to him that she sustained injury due to fall when was confirmed by the Investigating Officer of the

case also creates doubt on his credibility. Apart from above, his evidence is not of such a nature which exclude the possibility of the defence case

that the victim girl sustained injury due to fall. So far as the evidence of PW/8 is concerned, we are not inclined to give any importance to the same,

firstly because he examined the victim girl nearly two months after the occurrence and secondly we do not find any reason forthcoming from the

side of the prosecution as to why the victim girl was re-examined by him at the Police Case Hospital.

9. For the reasons stated above, in our opinion on the evidence on record the conviction of the appellant was not at all justified and the same is

quashed. This appeal stands allowed.

The appellant who is now in jail at once be released, if not detained in connection with any other case.

The Lower Court Records also to be sent down to the Trial Court.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

Asim Kumar Ray, J.

I agree.