

Form No. J(1)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL APPELLATE JURISDICTION**

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Om Narayan Rai**

**C.R.A. 42 of 2021
With
CRAN 1 of 2022
Manoj Mangrati
Versus
The State of West Bengal & Anr.**

For the Appellant : Mr. Abhishek Sarkar.
For the State : Mr. Nilay Chakraborty, Ld. A.P.P.
Heard on : 24.04.2026
Judgment on : 24.04.2026.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against judgment and order of conviction dated **22nd September, 2021** passed by the learned **Additional Sessions Judge, 3rd Court, Darjeeling** in connection with **Sessions Case No. 08 of 2018** pertaining to **Sessions Trial No. 02(7) of 2018** arising out of **Rangli Rangliot Police Station Case No. 19 of 2017**. The appellant was convicted under **Section 376 of the IPC** corresponding to **G.R. Case No. 246 of 2017** to suffer **rigorous imprisonment for 10 years and to pay a fine of Rs. 20,000/-**.

2. At the outset we wish to record our appreciation for the very sincere effort put in by Mr. Abhishek Sarkar, learned counsel for the appellant appointed by HCLSC in placing the evidence threadbare and relying upon several decisions in support of the appeal.

3. The matter has been heard at length by this Court.

THE PROSECUTION CASE.

4. The prosecution case in brief is that the complaint in question was lodged by the victim herself (name withheld) on 16th June, 2017 at about 1.05 p.m. The incident occurred as per the complaint at 12.05 a.m. The victim who was 56 years of age was sleeping in her house along with her mentally challenged son. The victim was a widow and one of the two wives of her late husband who expired about 7 to 8 years prior to the incident. The appellant is stated to have come to the house of the victim about 12.05 and 1.00 a.m. on the 16th of June, 2017 in a fully drunken condition. He knocked at the door of the victim. The son of the victim opened the door. The appellant located the victim with the torch light of a mobile phone and ravaged her for over four hours thereafter. The complainant stated that the victim had intercourse with her against her wishes at least four times that night. Around 4.30 a.m. one Sarita Gazmer came to the victim's house when the victim told her about the incident. Thereafter, Sarita Gazmer, Binita Gazmer (PW-3) and Amrita Gazmer (PW-4) went to the Rangli Rangliot Police Station. The complaint was scribed by PW-2-one Prabi Gazmer. The victim signed on the same.

FIR No. 19 of 2017 was registered in the afternoon on 16th June, 2017 where the appellant was named as accused under Section 376 of the IPC.

5. Investigation commenced. The victim was sent to the Darjeeling Hospital for medical examination that was conducted by PW-13, Dr. Tshering Doma Sherpa. The statements of several witnesses were recorded under Section 161 of the Cr. P.C. and the statement of the victim under Section 164 of the Cr. P.C. was also duly recorded before the Jurisdictional Magistrate, Mungpoo. The statement of the victim was translated into Hindi by PW-10, Rekha Thapa and later reduced in English by the Magistrate. Police went to the P.O. and seized the garments of the victim being a light green/yellow coloured petticoat. A printed lungi was also seized. The police thereafter went to the house of the appellant and seized his undergarment. He was later arrested. Investigation was thereafter completed and charge-sheet was filed.

THE TRIAL:

6. The trial commenced after framing of charges under Section 376 of the Indian Penal Code against the appellant on 17th July 2018.

7. **PW-1** was the victim and prosecutrix herself. She deposed on the lines of the entire prosecution case. Her evidence does not indicate that she could offer any resistance despite being ravished for four times by the appellant. She has, however, deposed that she screamed. She has further deposed that she was accompanied to the Police Station by one

Sarita, the second wife of her deceased husband. She also deposed that she gave her statements before the learned Magistrate at Mungpoo Court that was duly recorded by the learned Magistrate and she put her signature thereat. She was medically examined at Eden Hospital in Darjeeling. She also deposed that her house was surrounded by four other neighbours. The accused committed rape on her four times in the night. Her son did not intervene during the offence committed on the victim because he was mentally challenged. She detailed her statement before a learned Magistrate. She deposed in her cross-examination that nobody comes to her house at midnight unless being formally called. She reiterated her statement recorded under Section 164 of the Code of Criminal Procedure given before a Judicial Magistrate in cross-examination.

8. **PW-2**, was **Prabi Gazmer**, a co-villager and the scribe of the complaint, who identified the same. The complaint was marked as an Exhibit.

9. **PW-3**, was **Binita Gazmer** a co-villager. She was a seizure witness to the Lungi and Petticoat of the victim. She deposed that she was informed of the incident on the victim by Sarita Gazmer and accompanied Sarita and the victim to Rangli Rangliot Police Station where the complaint was formally lodged and FIR was registered. Her signature on the seizure list of the Lungi and Petticoat was exhibited as Exhibit-2.

10. **PW-4**, was **Amrita Gazmer**, a neighbour another seizure witness. She deposed that Sarita had come to her house and had told her about the offence committed upon the victim. She deposed that she accompanied the victim along with Sarita to the Police Station to lodge a complaint.

11. **PW-5**, was **Chandrakala Gazmer** a neighbour. She deposed that round about 10:30 to 11:00 in the night on the date and time of the occurrence; the appellant first knocked on the grill door of her house and flashed a torch light. She did not open the door and then the appellant went to the house of the victim. She exaggerated when she stated that Sarita caught the victim red handed. She reiterated in cross-examination that she had informed the police that the victim was caught red handed by Sarita.

12. **PW-6**, was **Ganesh Mangrati** another co-villager. He signed and identified his signature on a seizure list that was marked as Exhibit-2/1.

13. **PW-7**, was **Rajen Chettri**. He was a co-villager and knew the victim. He put his signature on the seizure list of the Lungi and Petticoat of the victim and the appellant in his house in the presence of his wife, Sanjukta. The signature on the seizure list was marked as Exhibit-2/2. The seizure lists of articles seized from the house of the appellant and the victim were marked as Exhibit-8 and Exhibit-9 respectively.

14. **PW-8**, was **Tamding Wongmo Bhutia**, a lady Police Constable. She signed on the seizure list of yellow petticoat of the victim. Her signature on the seizure list was marked as Exhibit-2/3.

15. **PW-9**, was **Meena Rai**, another lady Police Constable, who recorded the statement of the victim under Section 161 of the Code of Criminal Procedure.

16. **PW-10**, was **Mrs Rekha Thapa**, a Translator. She translated the statement of the victim, from Nepali to English, before a Judicial Magistrate under Section 164 of the Code of Criminal Procedure. She deposed that she translated the statement of the victim from Nepali to Hindi and the Magistrate reduced such statement to writing in English.

17. She further deposed that when the statement was read out and explained to the victim, the latter put her signature thereon. PW-10 herself put a signature on the statement made under Section 164 of the Cr.P.C. The signature of the PW-10 on the 164 statement was marked as exhibit-3 and 3/1. PW-10 was cross-examined by the appellant as to whether the statement was recorded in English or otherwise.

18. **PW-11** was **Dr. Thendup Tshering Bhutia**. He had examined the appellant and declared that he was capable of performing physical intercourse. PW-12 was S.I. Niraj Rai, Investigating Officer. He proved the sketch map index and the FIR. He confirmed having examined Sarita

Gazmer, PW-3, PW-4 and PW-5. He also examined other witness namely wife of the appellant.

19. He confirmed that he seized the wearing apparels of the victim and the undergarment of the appellant. While he stated initially that he did not collect the FSL report of the seized alamats from the relevant department, he later deposed that he did so. The FSL report was marked as Exhibit-11. The FSL report confirmed semen stains on the petty coat of the victim.

20. The seized wearing apparels of the victim and the underwear of the appellant produced in Court were marked as Exhibits.

21. **PW-13** was **Dr. Tshering Doma Sherpa**. He examined the victim and found no physical injury. No foreign body was found in the private parts of the victim. The medical report of the PW-13 was marked as Exhibit 10. The history portion of the report indicates that the victim had stated she was sexually assaulted. He further deposed that erosion on the private part of the victim could have been due to infection. The doctor found recent sexual activity by the victim.

22. The appellant was examined under Section 313 of the Cr.P.C. He denied all the circumstances in the evidence confronted to him by the Trial Judge. He did not state that there was any previous enmity with the victim.

ARGUMENTS OF THE COUNSEL FOR THE APPELLANT

23. Learned counsel for the appellant would argue that since Medical Officer did not find any injury on the body of the victim or in her private parts, the allegation of forcible sexual assault on the victim is unsubstantiated. He further argued that it is not believable that the victim did not offer any resistance to the appellant while being ravaged for a period of four hours. He further argued that the FSL report which indicated presence of semen on the petticoat of the victim was not compared with the body fluids of the appellant and, therefore, could not have been relied upon. The medical evidence indicated that there was no foreign body in the private parts of the victim, and the same also does not prove that the appellant committed sexual assault on the victim. The case of sexual assault by the appellant has not been proved beyond reasonable doubt by the prosecution.

24. On the omission in the investigation and on the part of the prosecution, it is argued that Sarita Gazmer the vital witness was not examined by the prosecution. He further submits that the statement of the victim under Section 164 of the Cr.P.C. cannot be accepted as it was not proved by the Magistrate, who recorded the same.

25. He submits by reference to several decisions of the Hon'ble Supreme Court that even if there is some doubt as to whether the offence

was, in fact, committed by the appellant then his client should be acquitted.

26. He also argued that it is difficult to believe that the son of the victim did not react to his mother being ravaged by the appellant which is extremely unusual. He, therefore, argued that in the absence of any medical evidence as regards the mental ability of the son, the likelihood of the son opening the door of the house to let the appellant inside is not believable.

ANALYSIS OF THIS COURT

27. This Court has carefully considered the argument advanced by the learned counsel for the appellant and the State. In so far as the statement of the victim under Section 164 of the Cr.P.C. is concerned this Court notes that the victim was cross-examined on the same by the appellant. The said statement recorded in presence of the PW-10 translator, who identified her signature was, therefore, rightly considered by the learned Trial Court. Given the settled law that a statement recorded under section 164 of the Cr.P.C is not treated as substantive evidence but is only used for the purpose of either corroboration or contradiction, the very fact the translator as well as the victim confirmed the recording of the same and were cross-examined in respect of the said statement u/s 164 of the Cr.P.C., the objection raised by the learned Counsel for the appellant that the said statement was not marked exhibit

as the relevant learned Magistrate was not examined does not impress this Court.

28. Furthermore, this Court cannot lose sight of the fact that there is a presumption as regards its genuineness in terms of Section 80 of the Evidence Act, 1872. In any event, the victim herself in cross-examination had reiterated that she had made a statement under Section 164 of the Cr.P.C. before the Magistrate.

29. The evidence on record indicates that the son of the victim was mentally challenged. He was not, however, shown to be physically incapable of opening the door in the middle of the night. The evidence of PW-5 supports the case of the prosecution that the appellant in a drunken condition, first attempted to enter the house of the PW-5 and flashed a torch light. Upon PW-5 refusing to open the door, the appellant went to the house of the victim and knocked thereat. The presence of the victim at the place of occurrence is, therefore, corroborated by evidence of PW-5 and PW-1.

30. On the medical evidence argued by the learned counsel for the appellant, this Court finds that the victim was about 56 years old and was widowed about 8 years prior to the incident. She may not have at all offered any resistance to the appellant while he was committing the crime on her due to fear of injury or her age.

31. The absence of injury on the body of the victim or on her private parts is appropriately explained by her age and her evidence. While it is true that Sarita Gazmer, the other wife of the husband of the victim was not examined and could have thrown substantial light on the case against the appellant, this Court is satisfied that the charges against the appellant are duly proved by the statements of the victim in her complaint and her evidence on Court corroborated by the statement given by her before a Magistrate under Section 164 of the Cr.P.C. There is some corroboration from the medical evidence (to the extent to the history of assault narrated by the victim to the PW-13) and the evidence of PW-2 to PW-5 as regards the version, allegation and evidence of prosecutrix against the appellant is concerned.

32. In so far as the FSL report is concerned, this Court notes that semen was found on the petticoat of the victim as certified by the serologist. While it is true that semen sample found by the serologist on the victim's petticoat was not compared with the body fluids of the appellant, the same by itself is not enough to create any doubt in the light of the consistent testimony of the victim.

33. The appellant in his examination under Section 313 of the Cr.P.C. has not been able to explain that he was not present at the place of occurrence at the time of occurrence. He has not offered any alibi of being present anywhere else.

34. The corroboration of the victim's statements by the other witnesses can only lead to one conclusion i.e. that the appellant committed offence on the victim as alleged by her.

35. Learned counsel for the appellant has relied upon several decisions of the Hon'ble Supreme Court. The first of which is the case of **Narender Kumar Vs. State (NCT of Delhi)** reported in **(2012) 7 SCC 171**. Particular reliance was placed on paragraph 30 thereof. In the said case it was held that it was for the prosecution to prove its case beyond reasonable doubt and that guilt of accused cannot be established on the basis of weakness of the defence.

36. It was further held that there must be sufficient legal evidence and materials on record to lead to conviction of the accused. In the instant case it is seen that the prosecution case is duly established and the Trial Judge has not relied on any weakness or failure on the part of the appellant. The said decision would have no application in the facts of the case.

37. The next decision relied upon by the learned counsel for the appellant is the case of **Rai Sandeep alias Deepu Vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 21** particularly paragraph 22 thereof. In the said case it was held that a witness can be held to be sterling when his/her evidence is of high quality and caliber and is unassailable. The tests laid down to assess the quality of such sterling witness were duly

set out in detail. The evidence should be natural and consistent with the case of the prosecution qua the accused and the witness should be able to withstand cross-examination of any length.

38. Having regard to the evidence of the prosecutrix in the instant case, this Court finds that the test laid down in the ***Rai Sandeep alias Deepu (supra)*** is duly fulfilled. The prosecution case is consistent with the statement in the complaint, the statement made before the Magistrate under Section 164 of the Cr.P.C. as well as the evidence given in the trial. There is sufficient corroboration from the other witnesses, namely, PW3, PW-4 and PW-5 and the seizure effected by the Investigation Officer. The evidence of PW-1 is, therefore, of sterling quality.

39. Learned counsel for the appellant next relied upon the decision of ***Radhu - Vs. - State of Madhya Pradesh*** reported in ***(2007) 12 Supreme Court Cases 57***, particularly, paragraph 16 thereof. In the said case, the accused was acquitted of a charge under Section 376 of the IPC in view of the gaps and several discrepancies in evidence led by the prosecution. Such gaps and discrepancies resulted in the offence becoming highly improbable. The allegation of the parents of the victim that they were indebted to the appellant's family, was found unnecessary for being proved in view of the serious gaps of the prosecution case. The said case would have no relevance in the facts and circumstances of the instant case.

40. Learned counsel for the appellant next relied upon the case of ***Tameezuddin alias Tammu Vs. State (NCT of Delhi)*** reported in ***(2009) 15 Supreme Court Cases 566***, particularly paragraph 11 thereof. In the said case, the medical evidence, i.e., the bodily fluids of the appellant being found on the clothes of the victim was held not sufficient to drive home a charge under Section 376 of the IPC. The said case is distinguishable in the facts as the statement of the victim herein duly supported by the other evidence already discussed hereinabove have established the guilt of the appellant beyond reasonable doubt.

41. The next case relied upon by the learned counsel for the appellant in the case of ***Kali Ram Vs. State of Himachal Pradesh*** reported in ***(1973) 2 Supreme Court Cases 808***. At paragraph 23 it was held that once the facts shown by the prosecution are established as having occurred and existed, a Court can raise a statutory presumption that the offence has been committed by the accused. The onus then shifted from the accused to rebut any such presumption. It was, however, laid down in paragraph 26 that if there are reasonable doubts as regards the guilt of the accused, the benefit of such doubt cannot be withheld from the appellant. As already discussed hereinabove, the prosecution case and the version of the prosecutrix being consistent with her statement under Section 164 of the Cr. P.C. and the evidence on record clearly established the offence against the appellant. The corroborating evidence of PW-3, PW-4 and PW-5, lend further credence to the case made out by the

prosecution. The FSL report and the history of the assault narrated before the Medical Officer, complete the chain of circumstance against the appellant.

42. Learned counsel for the appellant next relied upon the case of **Raj Kumar Singh alias Raju alias Batya Vs. State of Rajasthan** reported in **(2013) 5 SCC 722**. In the said case, it was found that the denial by the accused in examination under Section 313 of the Cr. P.C. by saying that the incriminating materials was a false statement was not sufficient to call for an adverse inference against him. The object and purpose of Section 313 and 315 of the Cr. P.C. was discussed in the said case. The said case would have no application in the facts and circumstances of the instant case.

43. Learned Counsel for the appellant lastly relied upon in the case of **Sharad Birdhichand Sarda – Vs.- State of Maharashtra** reported in **(1984) 4 Supreme Court Cases 116** particularly paragraphs 152 and 153 thereof. In the said case the principles of circumstantial evidence were explained in substantial detail to bring home a charge against an accused.

44. In the instant case, this Court does not find that the prosecution had relied only upon circumstantial evidence rather the prosecution has relied upon direct evidence of the prosecutrix against the appellant.

45. This Court finds that the appellant took advantage of the age of the victim, who was 56 years old and could not offer much resistance to him. The appellant who was well developed and physically healthy, as his medical examination report reveals (Exhibit 4), committed an offence of rape on a helpless widow. The chance of the appellant knowing the mental condition and the inability of the son of the victim to put up a resistance against him also cannot be ruled out.

46. In the facts and circumstances as discussed hereinabove, this Court is of the view that the impugned judgment and the order of conviction dated 22nd September, 2021 passed by the Trial Court calls for no interference. C.R.A. 42 of 2021 shall stand dismissed.

47. In view of dismissal of the appeal itself, the connected application being CRAN 1 of 2022 shall also stand dismissed.

48. Let a copy of this judgment along with the Trial Court's Record be forthwith sent down to the trial Court.

49. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Om Narayan Rai, J.)