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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 150 OF 2011

MUKUL @ MOFIKUL MONDAL ... APPELLANT(S)

VERSUS

STATE OF WEST BENGAL ... RESPONDENT(S)

O R D E R

The appellant is held guilty under Section 376 of the Indian Penal Code ("IPC" for short) and sentenced to undergo rigorous imprisonment for 10 years and a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for 5 months for raping his own pupil aged about 9 years.

According to the prosecution, on 9.06.2006 the prosecutrix and her brother had gone to the appellant's place for private tution. The appellant called the prosecutrix's brother inside the room and he was asked to massage his body. After some time, the prosecutrix was called by the appellant through her brother. When she entered the room, the appellant locked the same from inside, the clothes of the prosecutrix were removed, the appellant also took off his clothes and put his penis into her vagina. Thereafter, the appellant ejaculated and asked the prosecutrix to wash his undergarments in the bathroom. However, she did not do so but returned to her home and washed the same. She then reported the incident to her mother and, ultimately, her father (P.W.-1) gave report to the Police on 12.06.2006. On the basis of the said report, Tehatta Police Station Case No. 118 of 2006 was registered under Section 376 and 511 of the IPC.

The Police, after usual investigation, submitted the chargesheet under Section 376 of the IPC and the appellant was committed to the Court of Sessions where charge for an offence under Section 376 of the IPC was framed. The appellant denied to have committed any offence and claimed to be tried. From the trend of the cross-examination, his defence seems to be of false implication. The Trial Court, relying on the evidence of the prosecutrix (P.W.-2), her brother (P.W.-5), her mother (P.W.-10) and the Doctor (P.W.-8) came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubts and, accordingly, held the appellant guilty, as above. The judgment of the conviction and the sentence had been affirmed by the High Court.

By Order dated 22.10.2010, notice was given limited to the question of nature of offence and quantum of sentence.

Mr. Rauf Rahim, learned counsel appearing for the appellant, attempted to assail the very conviction of the appellant. In view of the limited rule, we are not inclined to go into that.

Mr. Rahim, then submits that even if the entire prosecution

story is accepted, the allegations do not constitute an offence under Section 376 of the IPC and the allegation proved utmost would come within the mischief of Section 376/511 of the IPC. In this connection, he has drawn our attention to the evidence of P.W.-8, Dr. Sudhir Ranjan, who had examined the prosecutrix and did not give any opinion in regard to the rape on the victim girl. He submits that the lacerated injury on lower vaginal wall found by the Doctor may show that the appellant attempted to commit rape but on that account he cannot be held guilty for the offence of rape.

Mr. Anip Sachthey, learned counsel appearing on behalf of the respondent-State, however, contends that even a little penetration would be suficient to hold the appellant guilty under Section 376 of the IPC. This is evident from the deposition of the Doctor, who has found laceration on the lower vaginal wall. In view of the aforesaid, according to Mr. Sachthey, the conviction of the appellant under Section 376 of the IPC is not fit to be interfered with by this Court.

We have appreciated the rival submissions and find substance in the submissions of Mr. Sachthey. Here is a case in which the prosecutrix has clearly stated that the appellant has penetrated his penis into her vagina and also rubbed his penis against her vagina. We do not find any reason to doubt her evidence. Further, the evidence of the prosecutrix is corroborated by the evidence of the Doctor. He has found laceration on vaginal wall, which, in his opinion, has occurred during act of coitas. In the face of it, offence under Section 376 of the IPC is clearly made out. The view which we have taken finds support from the judgment of this Court in the case of Wahid Khan vs. State of Madhya Pradesh reported in 2010 (2) SCC 9. Para 19 of the judgment reads as follows:

> "19. It was also contended by learned counsel for the appellant that since hymen of the prosecutrix was found to be intact, therefore, it cannot be said that an offence of rape was committed on her by the appellant. This contention cannot be accepted as the offence of rape has been defined in Section 375 IPC. Explanation to Section 375 reads thus:
>
> > "Explanation.-Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."
>
> It has been a consistent view of this Court that even the slightest penetration is sufficient to make out an offence of rape and depth of penetration is immaterial."

Mr. Rahim, learned counsel for the appellant, then addresses on the question of sentence. He submits that the sentence awarded is fit to be reduced. The appellant is tutor and the victim of crime is his nine year old pupil. we are of the considered opinion that the sentence awarded is not excessive and, therefore, it does not call for our interference in this appeal.

In the result, we do not find any merit in the appeal and it is dismissed accordingly.

.....J.
(CHANDRAMAULI KR. PRASAD)

.....J.
(JAGDISH SINGH KHEHAR)

New Delhi; the
October 24, 2013

ITEM NO.101 COURT NO.9 SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 150 OF 2011

MUKUL @ MOFIKUL MONDAL Appellant (s)

VERSUS

STATE OF WEST BENGAL Respondent(s)

(With appln(s) for bail)

Date: 24/10/2013 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

For Appellant(s) Mr. Rauf Rahim,Adv. (A.C.)

For Respondent(s) Mr. Anip Sachthey,Adv.
Ms. Shagun Matta, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

| (S.K. Rakheja) | |(Indu Satija) |
|Court Master | |Court Master |

(Signed order is placed on the file)