

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE**

PRESENT:

**THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE**

**C.R.R. 1153 of 2016**

**Sri Suresh Rajbanshi**

**Vs.**

**The State of West Bengal and another**

For the Petitioner : Mr. Soumya Nag  
(Amicus Curiae)

For the Opposite Party : Mr. Pawan Kumar Gupta  
Ms. Sofia Nesar  
Mr. Santanu Sett  
Mr. Sankha Subhra Chakraborty

For the State : Mr. Debashis Roy, Ld. P.P  
Mr. Saryati Dutta

Heard on : 19.02.2025

Judgment on : 28.02.2025

**Dr. Ajoy Kumar Mukherjee , J.:**

1. Being aggrieved by the judgment and order dated 11<sup>th</sup> February, 2016 passed in Criminal appeal no. 17 of 2015, present Application has been preferred. By the order impugned learned Court below dismissed the aforesaid criminal appeal preferred by the petitioner herein/Appellant and affirmed the judgment of conviction passed by the trial court in G.R. case

no. 1320 of 1998, whereby Trial Court sentenced him to suffer a simple imprisonment for a period of six months for committing offence punishable under section 323 IPC and also sentenced to suffer simple imprisonment for a period of seven months for committing offence punishable under section 354 of IPC.

**2.** The allegations levelled in the FIR *interalia* is that the petitioner herein being the neighbour of the victim on 17.09.1998 at about 2.30 P.M. entered victim's house and put his fingers in the private parts of complainants daughter/victim who was then aged about five years and also pressed her breast, causing injuries to the said child and for which complainant's daughter was admitted at Chinsruah Hospital being sustained injury on her person.

**3.** Upon conclusion of investigation the investigating authority submitted charge sheet against the petitioner under sections 354/323 of the IPC and the trial court after framing charge in the aforesaid sections at the end of trial, convicted the petitioner and sentenced to imprisonment as above.

**4.** The petitioner herein preferred criminal appeal before the court below but by the impugned judgment and order learned Court below dismissed the Appeal as stated above.

**5.** Being aggrieved by the judgment of affirmation passed by the court below, petitioner contended that though prosecution examined as many as eight witnesses but the prosecution failed to prove the charge against the petitioner herein beyond reasonable doubt and there are multiple inconsistencies and contradictions in the testimony of the prosecution

witnesses, which makes the prosecution case highly doubtful. Petitioner has attacked the impugned judgment mainly on the following grounds:-

- (a)** The court below failed to appreciate that the victim who deposed as P.W-3 could not identify the petitioner properly and she could identify the petitioner only after being instructed by her parents.
- (b)** Learned Courts below also failed to take into consideration the fact that there was existing dispute between the family of the petitioner and the victim, as admitted by P.W-3 which actually is the basis of false implication of the petitioner in the instant case.
- (c)** Since identification of the petitioner by the alleged victim was prompted by her parents, it has severely undermined the reliability of her testimony and the same has vitiated the trial of the instant case.
- (d)** Apart from P.W-3 the parents of the victim deposed as P.W-1 and PW4 but their deposition also suffers from grave contradictions and they are also not eye witness to the incident. The courts below failed to appreciate that according to P.W-1 incident occurred at 2.30 P.M., whereas father of the victim as P.W-4 stated that he had reached his house at about 1.30 P.M. and accordingly it is highly improbable that such an incident would have taken place at 2.30 P.M. as stated by the victim.
- (e)** The courts below did not consider that apart from Pw1, PW3 and PW4 other witnesses being PW2 and PW5 who are neighbour and uncle of the victim have adduced evidence which is hearsay in

nature and as such no reliance could be placed upon the evidence adduced by such witnesses.

**(f)** The courts below did not follow the well settled principle of criminal jurisprudence that the mental condition of the accused person place a crucial role in determining both culpability and sentencing and it is apparent from the deposition of PW1 that the petitioner was an idiot which fact was not properly taken into consideration, while adjudicating the matter particularly with regard to sentencing.

**6.** For abundant caution petitioner has also made an alternative argument contending that if the arguments made by the petitioner is not acceptable to the court then his prayer would be that section 323 and section 354 of IPC at the relevant point of time prescribed punishment for imprisonment or punishment with fine or with both and since nearly 27 years have already been passed and the petitioner had already undergone ordeal of long drawn trial and also considering the mental condition of the petitioner, this Court may exercise inherent jurisdiction to impose fine only, in lieu of any term of imprisonment.

**7.** Learned Counsel appearing on behalf of the *de facto* complainant and the state raised vehement objection against the contention made by the petitioner and specifically contended that the doctor who examined the victim deposed as P.W-8, in his examination has stated, the vulva was swollen and there were abrasions on the labia majora, the hymen was ruptured and fresh vaginal bleeding was present. He also made definite opinion that such injury cannot be self infliction of injury. The victim has

clearly identified the accused person in the dock and has also stated the incident before the court below. Considering the heinous nature of crime committed by the petitioner upon a five year old girl, the imprisonment awarded by the court below can be said to be flea-bite sentence which does not call for intervention by this court.

**8.** On perusal of the judgment of the court below it appears that he had taken care of all the questions raised herein. So far as identification of the accused person by the victim under the instruction of her parents are concerned, has been dealt with by the trial court as well as by the court below and they clearly pointed out that no suggestion was put to the witness to the effect that if her parents would not have identified the accused, P.W-3 herself would not be capable of identifying the wrong dwer. Moreover from scanning other part of evidence adduced by P.W-3 court below came to a definite finding that the said witness has stood firm on the point that accused had entered her house and committed the offence. So far as the contradiction pointed out by the appellant regarding time of alleged occurrence the court below has also discussed the same and came to a finding that the evidence as laid by the child namely P.W-3 was not tutored. Though the appellants has taken it a point that due to animosity in between to neighbouring families, the allegations might have levelled against the appellant herein out of grudge but the courts below clearly opined that no prior dispute was found to have existed from the documentary or oral evidence to substantiate that there existed any animosity that can have prompted complainant to lodge any false complaint against the appellant herein.

**9.** From the evidence laid by the prosecution witnesses and also from the documents taken in the evidence, the court below affirmed the judgment of conviction passed by the Trial court holding that the appellant herein have caused the injuries to the private part of the minor girl and there are concrete corroboration among all the witnesses as regards the manner of occurrence of the incident. It has been further observed that the evidence adduced on behalf of the prosecution is found to be trustworthy and acceptable, specially the evidence of the victim minor child, which has been corroborated by medical evidence.

**10.** The courts below upon discussing the language of section 354 of IPC as prevailing at the relevant point of time, clearly came to a finding that the appellant herein had outraged the modesty of the girl child. Since the injury in the private part of the victim was proved to be deliberate it must be said to have done in order to outrage her modesty. The court below after scanning evidence also clearly held that the culpable intention of the accused which is the crux of the matter has been well established in the present case. The Trial court is also of the definite opinion that only because the victim girl is of a tendered age does not mean that she is devoid of a sense of 'modesty' and therefore, the same cannot be outraged.

**11.** The issue that the petitioner was an idiot at the time of commission of offence was also raised before the court below and while discussing the same the court below held that even if it is accepted that the appellant was slow in understanding about the consequences but still an idiot who may not have the prudence of average person but he is not to be reckoned as devoid of natural physical urges. Moreover, in the present application I find

that the petitioner while filed the application has not been represented by guardian nor he has shown any proof during hearing that at the relevant point of time he was insane or not capable of understanding about the consequence of the offence in order to get protection under the law.

**12.** Above all this application has been preferred under section 482 of the Code of Criminal Procedure which deals with inherent power of High Court to pass order to prevent abuse of the process of any court or otherwise to secure the ends of justice. Such power cannot be taken as another mode of preferring appeal from the impugned judgment. The expressions '*ends of justice*' and '*to prevent abuse of the process of court*' are intended to work when an innocent person is unjustifiably subjected to an undeserving conviction.

**13.** In the present context as I have stated above that both the courts below have passed reasoned order and such finding of conviction was based on proper appreciation of evidence. In an application under section 482, the High Court hardly has any power to make an attempt to reappraise the evidence, unless the evidence has been grossly misappreciated by the courts below, causing injustice to the aggrieved person. The High Court is not supposed to substitute its own view while dealing with an application under section 482, where it does not find that the conclusion drawn by the courts below are erroneous being contrary to the dictum of law or that decision is not based on inadmissible evidence or no evidence. It is not within the domain of the High Court while dealing with the present application to interfere with the concurrent findings of the court below, unless it is shown that the conclusion arrived at on the basis

of appreciation of evidence, are suffering form absurdity or inherent improbability and that no prudent man can ever reach to such conclusion which the court's below had arrived at. Furthermore considering the fact that the heinous offence has been committed upon a child, the alternative argument made by the petitioner to convert the sentence of imprisonment into sentence of fine only, is also not acceptable from the facts and circumstances of the case.

**14.** In view of above **CRR 1153 of 2016** stands dismissed. The petitioner is directed to appear before the Trial Court within a period of 30 days from the date of communication of the order to serve out his sentence awarded by the impugned judgment. If the petitioner/convict fails to appear before the trial court within the specified time, the Trial Court will be at liberty to take all appropriate steps including issuance of warrant of arrest to secure attendance of the petitioner to serve out his sentence.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Dr. AJOY KUMAR MUKHERJEE, J.)**