

In the matter of:

Madhabi Barman

... appellant.

versus

The State of West Bengal

... respondent.

Mr Sudip Ghosh
Mr Apurba Kumar Datta
... for the State.

Learned counsel appearing on behalf of the appellant contends that the prosecution has committed a grievous error in failing to have the investigation conducted by a special police officer in terms of Section 11 of the said Act. The recovery of the victim girl is also said to be doubtful. There are two first information reports on different dates. The evidence of the prosecution witnesses are at variance with each other. Disclosing such discrepancies, learned counsel appearing on behalf of the appellant prays for setting aside the impugned orders of conviction and sentence.

Shorn of unnecessary details, the prosecution case in short is that on August 21, 2011, the victim was missing from her house. Her parents reported the matter to the police on August 27, 2011 and Nabadwip P.S. Case No.524 of

2011 was started. Thereafter, on the basis of a telephonic call, the parents came to know that the victim was in Cooch Behar. A second FIR was lodged. Pursuant to the same, the investigating officer made a prayer for amalgamation of both the FIRs and the learned Magistrate granted him such sanction.

In course of the investigation, the investigating officer examined the available witnesses and recovered the victim and thereafter submitted a charge-sheet under the aforesaid sections.

At the very outset, we would like to consider the age of the victim. There was no endeavour on the part of the investigation to ascertain the age of the victim. No ossification test was conducted on her. Even the investigating officer did not collect any school leaving certificate or anything else in support of the minority of the victim. Admittedly, the victim was a student of Class-X at the relevant point of time.

The second investigating officer in his cross-examination admitted that he knew that such cases should be investigated by a special police officer. In spite of such apparent knowledge, he did not take any effective steps for handing over the case to his superior for conducting the investigation. It is, perhaps, needless to say that when the statute specifically speaks that a thing has to be done in a particular manner and if that procedure has not been followed, it will certainly vitiate the prosecution case. On being asked by us, learned counsel for the State could not give any satisfactory answer.

We have seen the evidence of the witnesses. The investigating officer and the witnesses have deposed as to the recovery of victim. The victim has also deposed in this case and her statement was also recorded under Section 164 Cr.P.C. She did not disclose that it was the accused who kept her confined for nearly four months. That apart, it appears from the evidence of the second investigating officer that he along with two other constables of his police station proceeded towards Cooch Behar and with the help of local police (Kotwali Police Station) recovered the victim. No such police personnel was called as a witness to help the prosecution in this regard. In the midst of such grave anomalies and discrepancies, we are of the opinion that the prosecution failed to establish the charge beyond reasonable doubt.

CRA 306 of 2014 is allowed by setting aside the judgment and order dated

March 21, 2014.

Accordingly, the appellant be set at liberty at once. A copy of this order and the lower court records be sent to the learned trial court forthwith for releasing the accused from this case, if she is not connected with any other offences.

Let a copy of this order be also sent to the correctional home where she is lodged for the immediate release of the accused.

(Sanjib Banerjee, J.)

(Siddhartha Chattopadhyay, J.)