

Prakash Kumar Chettri Vs. State of Sikkim

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Court : Sikkim

Decided On : Dec-01-2011

Judge : The Honourable Acting Chief Justice Wangdi

Appeal No. : CRL. A. NO. 5 OF 2011

Appellant : Prakash Kumar Chettri

Respondent : State of Sikkim

Judgement :

Wangdi, ACJ.

This Appeal is directed against the judgment of the Learned Sessions Judge, South and West Sikkim at Namchi dated 06-05-2011 in S. T. Case No.19 of 2008 (hereinafter referred to as the impugned judgment) by which the Appellant has been convicted and sentenced under Sections 363/376 of the Indian Penal Code.

2(i) The prosecution case, in brief, is that on 14- 02-2008 a FIR was lodged in the Melli Police Station by one Shiva Kumar Chettri, P.W.1 of Sadam Suntaley, South Sikkim stating that his daughter Darpana Chettri whose date of birth was 21-05-1992 had suddenly gone missing since 9 p.m. of Sunday, i.e., 11-02-2008. After some searching, it was learnt that she had been kidnapped by the Appellant, Prakash Kumar Chettri, son of Shri Gopal Chettri, resident of Adampool, East Sikkim, who is a Home Guard working in the Melli Police Thana and that his wife had informed that the Appellant had kept the girl in his quarters for the whole night.

(ii) Based on this Melli P.S. Case No.5(2)2008 dated 14-02-2008 under Section 363 IPC was registered against the Appellant and investigation taken up.

(iii) Investigation revealed that Darpana Chettri, the victim and her younger brother had come to Melli Bazar on 05-02-2008 from their village at Suntaley as her brother was studying in Sunshine School there and started residing with their relative Shri C. B. Chettri, P.W.4. In the first few days of her stay there she got acquainted with the Appellant, Prakash Kumar Chettri. On 11-02-2008, Darpana Chettri, the alleged victim, accompanied by his brother and others, went to Rolu Temple on the occasion of Saraswati Puja on a vehicle arranged by the Appellant at SNT Dara above the Melli Check Post after a brief chat between them. When the victim and the others were having some refreshment in the nearby canteen after offering prayers at Rolu temple, the Appellant also arrived and joined them. After making payment of the bill for the refreshment the Appellant stopped a taxi service for the victim and the others for their return to Melli where they arrived an hour later. Later about 1900 hrs. when the victim returned home after watching the Saraswati Puja programme at Melli Bazar, the Appellant arrived at the hotel of C. B. Chettri and requested the victim to accompany him to his quarters to meet his wife and children. After an initial hesitation the victim agreed to the request where she was invited into the sitting room when the wife and his daughters of the Appellant were sleeping in their bed room. When Geeta Chettri, P.W.3, wife of the Appellant, came to learn of the victims presence in the house she rushed into the sitting room and began assaulting her physically. With the intervention of the Appellant, the victim managed to escape followed by the Appellant. Then the Appellant later caught up with the victim and forcibly took her towards Melli Check Post from where she was asked to go ahead towards the West Bengal side threatening to push her into the river from the Melli bridge if she shouted for help. The victim then quietly proceeded to Melli Check Post followed by the Appellant and on reaching the West Bengal side boarded a truck for the Appellants mothers house at Naxal Bari, West Bengal and, stayed there for two days. Thereafter, they went to Cooch Behar, West Bengal and stayed in his friends house for two days and then to Nepal for one month. During this period, the Appellant forced the victim to have sexual intercourse with him warning her not to tell anyone about it. Finally, they arrived at Gangtok and stayed at the Appellants house and went to

Namchi only on 23-04-2008 from where he was arrested and the victim sent to Namchi Hospital for medical examination. The Medical Report indicated that the victim had been subjected to sexual intercourse in the recent past.

(iv) Having found prima facie case against the Appellant under Sections 363/376 IPC, charge-sheet was filed against him accordingly.

3. On charges being framed by the Learned Trial Court, the Appellant pleaded not guilty and claimed for trial.

4. The Learned Trial Court after the trial, found the Appellant guilty of the offences and accordingly, convicted and sentenced him by the impugned judgment.

5(i) Before this Court the only substantive ground taken on behalf of the Appellant by Mr. N. Rai, Senior Advocate, Legal Aid Counsel, is that the sexual intercourse indulged in by the Appellant and the victim were consensual as the case is replete with the evidence of them having a love affair. As per Mr. Rai, the age of the victim had not been determined as no ossification test had admittedly been conducted over the victim. This inadequacy in the investigation renders the birth certificate, Exhibit 4 and, the immunization card Exhibit 3 reflecting the date of birth of the victim as 21-05-1992 gravely suspect. Under such facts and circumstances, it was an error to have held that offence under Sections 363/376 IPC had been made out against the Appellant.

(ii) Upon consideration of the Learned Counsels, the evidence and the material on record, I am of the view that the limited ground raised in support of the Appeal cannot be sustained so far as the date of birth is concerned. The immunization card, Exhibit 3 and the birth certificate, Exhibit 4 are documents issued by the competent authorities under their seal and signature under the powers vested in them to issue such certificates and, therefore, I see no reason to suspect the veracity of the entries made therein. We also have on record Exhibit 5 which is a progress report issued by the Govt. Senior Secondary School, Sadam South Sikkim, in respect of the victim, Darpana Chettri, which also shows the date of birth as 21-05-1992. These documents have been proved by P.W.1, Shiva Kumar Chettri and P.W.2, Bishnu Maya Chettri, who are father and mother, respectively

of the victim. For these reasons, there can be no manner of doubt that the date of birth of the victim is 21-05-1992.

(iii) However, the other contention on behalf of the Appellant that the Appellant and the victim had a love affair going on between them and that the sexual intercourse indulged in by them was consensual appear to be established by the evidence. The first of all such evidence is the FIR, Exhibit 1 the tone and tenor of which clearly indicates that a case of elopement has been sought to be made out as one of kidnapping. The emphasis made in the FIR on the date of birth of the victim as 21-05-1992 is undoubtedly indicative of that. The next is the statement of P.W.1, Shiva Kumar Chettri, father of the victim who while being crossexamined has made the following statement:-

Shiva Kumar Chettri, P.W.1

Cross-examined by the accused through Shri S. Majumdar and Shri Sandeep Rai, Counsels.

.. It is true after the accused and victim girl reached the quarter of the accused they were confronted by the wife of the accused and on being assaulted by the wife of accused both of them fled the place soon after without spending the night.

(iv) The other witnesses whose statements are relevant to and corroborative of the fact of elopement are P.W.3, Geeta Chettri, wife of the Appellant and, Darpana Chettri, the victim, P.W.5. The relevant portions of their depositions are as under:-

Geeta Chettri, P.W.3

I know the accused present in the dock who is my husband. The accused married me about 6 years ago. I have two daughters born through the accused.

The accused was also Home Guard, attached to Melli P.S. At the relevant time we were staying in a police quarter at Melli. It was about 13 months ago, I do not remember the month but the day was 11th day of the month, the accused had duty till 8 P.m. At about 11 p.m. the accused came home and the door of the house was open by my maid servant. I asked him if he would like to have food to which

he stated that he would not have food. Thereafter I went to the other room and slept with my two children. In the night I heard some persons talking outside the house. I opened the door and found the accused talking with one girl whom I do not know. On seeing this I got annoyed (sic) and picked up a wooden danda of the police lying nearby and hit both of them with the said danda and drove them out from my house. Thereafter I joined Home Guard and went for training. The accused did not return home for about three months.

Cross-examined by the accused through Shri S. Majumdar, Counsel.

. After about 2 minutes from refusal of taking food I heard a coughing sound. As soon as I heard the sound of cough I dashed into the room and saw accused and a girl sitting on the sofa. On seeing this I picked up the police roll and assaulted them and drove them out of my house thereafter bolted the door from inside and shouted at the accused not to come back. I can identify the photo image of the boy and the girl in the photographs marked X collectively that is to say the boy is my husband (accused) and the girl concerned is Darpana. ...

Darpana Chettri, P.W.5

. During my stay at Melli Bazar the accused often used to come to the Hotel of my aunt. One day he talked with me and wanted to know my name and residential address. I disclosed to him my name and home address. In turn, the accused also disclosed that he was a Home Guard attached to Melli P.S. and that he has wife and two children living in a Police quarter at Melli. He further informed me that his father was in Police Department. He also said that he has also got a step mother who was staying at Naksalbari, West Bengal. On 11.02.2008 in the morning I alongwith my brother and friends viz. Priya Pradhan and Sneha Chettri waited for a vehicle at S.N.T. turning point in order to go to Rolu temple for performing Swarasati Puja. In the mean time the accused also came there and asked me as to where we were proceeding to. On my disclosure that we were proceeding to Rolu Temple he stopped a jeep and we came to Rolu Temple by said vehicle. At Rolu Temple we performed puja and thereafter we were having tea in the nearby teashop. The accused also came to the said hotel/teashop and paid out bill against our wish. The accused thereafter stopped a jeep for us and we all returned

to Melli. That day, whole day I remained the hotel-cum-residence of my aunt. At about 7 P.M. the accused again came to the hotel of my aunt with his friends and had some liquor which the accused had brought from outside. I requested my aunt for money in order to make a phone call to my mother. The accused suggested me that I should use his cell phone to make a phone call to my mother. I used his cell phone to talk my mother. The Saraswati Puja was being celebrated at Melli Bazar on the relevant night. The accused suggested me that I should go to his quarter and meet his wife as his wife who was calling me. . He brought me to SNT Dara and asked me to proceed towards checkpoint and he followed me. After we cross over the river we came to the junction of Namchi-Gangtok road, the accused stopped a Tata and we boarded the same. The accused took me to his step mothers house at Naxalbari where we stayed for two days from there the accused took me to Coochbihar where we stayed for three days. Thereafter he took me to Gaya Ganga, Kakarvita, Katahari. We stayed in several places for about two months during this period the accused forceibly (sic) married me. .

Cross-examined by the accused through Shri S. Majumdar and Shri Sandeep Rai, Counsels.

.. It is true that I met lot of people while we stayed at Naxalbari. It is true that I did not raise any alarm or tried to escape while I was staying in Naxalbari, as accused was always around with me. We went by public bus straight away to Coochbihar. I do not recall the name of the friends of accused where we stayed at Coochbihar. It is true that on our way from Naxalbari to Coochbihar and then to Gayaganga by bus we came across lot of people but I did not raise any alarm or ask for help as the accused was all the time with me. From Gayaganga we boarded a bus to Naxalbari in Nepal boarder (sic). In the Indo-Nepal boarder (sic) at Naxalbari there is an Indian checkpoint, a custom checkpoint and a land custom checkpoint at Indian side and their counterpart on Nepal side also have their offices. It is true I did not raise alarm and asked for help as the accused was with me. .

(v) From the evidence extracted above, the only conclusion that one can draw is that the Appellant and the victim are paramours and that the victim had willingly agreed to elope with the Appellant. Had it been otherwise it was expected of the

victim to have raised alarms during the period over two months when she traveled together with the Appellant and lived at different places. Apart from these, application of the victim to the Officer-in-Charge, Melli P.S., Exhibit D13 and the bunch of 12 photographs marked as Exhibits D1 to D12 of the Appellant and the victim taken during their sojourn over two months adds credence to the conclusion. The contents of the letter D13 reads as under:-

To,

The Officer In-charge

Melli Police Station

(South Sikkim)

Respected,

Sir,

I Darpana Chettri, beg to submit this report that I have eloped with Prakash Chettri on 12th February, out of my own free will. Thereafter, I have informed my father, mother and maternal uncle about this, but they did not listen to me and they lodged a report in the Melli Thana. Prakash Chettri has no fault at all and the accusation against him is all baseless. I am making this statement in full consciousness and not out of any undue influence.

Thanking you

Sd/-

Darpana Chettri

Wife of Prakash Chettri

(vi) These facts, however, would not help the Appellant in view of the minor age of the victim and under such circumstances, I do not find any reason to interfere with the impugned judgment of the Learned Trial Court.

6. Mr. J. B. Pradhan, Learned Public Prosecutor most fairly submits that considering the fact that the offence is only technically made out and the girl was just under age, i.e., about 15 years 9 months and also that the Appellant is a young man of about 27 years during the time of offence it would be in the interest of justice if the sentence is reduced.

7. Concurring with the submission of the Learned Public Prosecutor, I am of the view that the interest of justice would be served if the sentence is reduced and limited to the period of imprisonment already undergone by the Appellant against each of the offences without altering the sentence of fine.

8. In the result, the Appeal stands dismissed subject to modification of the sentence stated above.

9. No order as to costs.

10. A copy of the judgment be transmitted to the Learned Sessions Judge, South and West Sikkim at Namchi forthwith for compliance.

11. Let the trial Court records be sent forthwith.

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