

Pitambor Das Vs. State of Assam

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Court : Guwahati

Decided On : Dec-04-2003

Judge : P.G. Agarwal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154

Appeal No. : Crl. Appeal No. 59 of 1995

Appellant : Pitambor Das

Respondent : State of Assam

Advocate for Def. : P.P.

Advocate for Pet/Ap. : G. Lal and P. Das, Advs.

Prior history : P.G. Agarwal, J. 1. This appeal is directed against the judgment and order passed by the Trial Court in Sessions Case No. 74(D) of 1994, whereby the appellant was convicted under Section 376/511 of I.P.C. and sentenced to suffer R.I. for seven years and to pay a fine of Rs. 500, in default to further imprisonment for one month. 2. The prosecution case, 'in brief, is that on 4.5.1994 while Punaram Das was awaiting at bus stand at Dibrugarh along with his wife and minor daughter, Smt. Bindumati

Judgement :

P.G. Agarwal, J.

1. This appeal is directed against the judgment and order passed by the Trial Court in Sessions Case No. 74(D) of 1994, whereby the appellant was convicted under Section 376/511 of I.P.C. and sentenced to suffer R.I. for seven years and to pay a fine of Rs. 500, in default to further imprisonment for one month.

2. The prosecution case, 'in brief, is that on 4.5.1994 while Punaram Das was awaiting at bus stand at Dibrugarh along with his wife and minor daughter, Smt. Bindumati Das, the accused appellant Pitambor Das introduced himself as an acquaintance and thereafter took the old man away on the pretext of having a cup of tea. After putting the old man away from the scene of incident, he returned back to the bus stand and this time he took away the minor daughter, Smti Bindumati Das on the plea of providing a cup of tea. The accused took away the girl to a tea garden and there he committed rape on her. The victim raised halla for help where upon some neighbour came and the accused fled away. The girl was given shelter by a muslim gentleman and thereafter the Gaon-bura was informed. In the mean time, the father of the girl returned. The matter was informed to the police and subsequently the victim was recovered.

3. To bring home the charge, the prosecution examined the alleged victim, Smt. Bindumati Das, P.W.2 the informant father Shri Punaram Das, P.W. 4 the Doctor, the Investigating Officer and one Sri Absar Ali P.W.1.

4. In this case there is no dispute at the bar that P.W.2, Smt. Bindumati Das is a minor girl and she was aged about 12 years. There is oral and medical evidence on the record. P.W. 4 has categorically stated that the girl was aged about 13/14 years. Even the Trial Court had recorded the same finding and it has not been challenged.

5. P.W. 2 and P.W.4 have stated as to how the accused initiated conversation with them while they were waiting at the bus stand to return home in the bus. The accused told P.W. 4 that he was born and brought up in the same village and he took away P.W 4 for a cup of tea and thereafter asked him to wait in a shop and the accused returned back to the bus stand. P.W. 4 had stated that there he

waited for two hours and thereafter he returned back to the bus stand and found his daughter missing. He told his wife that the accused was taken away his daughter for a cup of tea. From the evidence of P.W. 4 I find that he is a village simpleton and he was treated by the accused.

6. The victim P.W. 2, has supported her father's evidence and she stated that after sometime the accused came back and told her 'your father has called you for a cup of tea', whereupon P.W. 2 went with the accused. She was taken to a shop but she did not find his father there and when she asked for his father, the accused told her that he has gone to his house and asked her to accompany him. The accused then took the girl in a bus to Lohued and while she was being taken through the tea garden she started to cry and thereafter the accused forcibly felled her and raped her against her will and fled the scene. While she was crying, a lady arrived at the place of occurrence and took her to the house of a muslim gentleman. She reported the matter to him and the said gentleman informed the police.

7. So far the alleged incident of rape is concerned, this is evidence of P.W. 2 only and naturally there cannot be any other eye witness to such incident. She reported the matter immediately to P.W.1, who is a fisherman, aged about 40 years. P.W.1 has also deposed that he found the girl in his courtyard with blood stained clothes and some blood stain on her legs and P.W. 2 reported him about the commission of rape by a person. P.W. 1 informed the headman and as desired informed the police. The evidence of P.W.1 had not been challenged. Thus, I find that the evidence of the victim has been corroborated by P.W. 4 and P.W. 1 and out of them P.W. 1 is an independent disinterested witness.

8. The law regarding basing conviction on the basis of the evidence of prosecutrix is more or less well settled. There is no requirement of law that the evidence of the prosecutrix is to be corroborated. If the evidence is found to be reliable, conviction can be based on the sole testimony. In the present case the victim before us is a 12 years old girl and the accused was a stranger to her. She had no animus against the accused and there was no reason whatsoever to make a false statement concerning her own integrity and chastity. In the recent case of State of

Himachal Pradesh v. Lekhraj, reported in (2000) 1 SCC 247, the Apex Court has explained the necessity of corroboration of testimony of the victim and it was observed that in absence of any earlier motive for falsely implicating the accused the evidence of the victim is reliable. In the present case, the accused seeing a girl in the accompany of an old and vulnerable couple, played his dirty tricks and removed the girl from the custody of the parents and thereafter took her to a lonely place and committed heinous act, The P.W.1 also found blood stained clothes and blood stain in her person.

9. The Trial Court relying on the prosecution evidence on record has entered into conviction but in view of the medical evidence of P.W 3 to the effect that no evidence of sexual intercourse is seen, the benefit was extended to the accused and the conviction was under Section 376/511 of I.P.C.

10. Mr. G. Lal learned counsel for the appellant has submitted that the incident took place will amount to an offence under Section 354 of I.P.C. and not under Section 376 of I.P.C. The victim in her deposition has categorically stated that the accused person removed her clothes and forcibly torn her clothes and removed the panty and entered into her person and out of pain she cried and there was bleeding. As stated above, the Trial Court gave the benefit holding that, there may not be any penetration but the entire act of the accused will definitely amount to attempt to commit rape and no stretch of imagination can be said that this is a case of outrage of modesty only.

11. The learned counsel for the appellant has also challenged the conviction on the ground of non-examination of the scribe and non-seizure of the blood stained clothes. P.W. 4 is the informant and he has deposed that the F.I.R. was lodged by him and it bears his signature. The statement was corroborated by the P.W. 5, the Investigating Officer and I find that the filing of the F.I.R. has not been challenged and there is no cross-examination on this point. Under the circumstances the non-examination of the scribe is immaterial. The ratio of law laid down by this Court in (1998) 2 GLR 312 is not applicable.

12. The learned defence counsel has submitted that in the instance case there was a delay in sending the F.I.R. to Magistrate. The Exhibit-2 was lodged on

6.5.1994 and from the signature of the Magistrate, appearing on it, I find that it was sent to the Court on 9.5.1994. For this delay in sending the F.I.R to Magistrate by the police, the entire prosecution case cannot be thrown out over board as because the F.I.R. is not a substantive piece of evidence and there is also no allegation whatsoever that the F.I.R. is a concocted document.

13. In view of the tell tale materials available on record and the evidence of the victim, an innocent teen aged girl and corroborated by the evidence on record, I hold that the conviction of the accused appellant under Section 376/511 of I.P.C. needs no interference. So far the punishment is concerned, I reduce the imprisonment to 4 (four) years R.I. and a fine of Rs. 500 in a default to imprisonment for further one month. The accused appellant, who is on bail, is directed to surrender forthwith to suffer the sentence. Send down the records to the Chief Judicial Magistrate, Dibrugarh for necessary action.

14. The appeal stand disposed of with the modification of sentence as stated above.

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