

Md. Taher Ali Vs. State of Assam

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Court : Guwahati

Decided On : Nov-23-2006

Judge : B.D. Agarwal, J.

Appellant : Md. Taher Ali

Respondent : State of Assam

Advocate for Pet/Ap. : Mr. M. U. Mahmud, Mr. Mahmud

Disposition : Appeal dismissed

Prior history : B.D. Agarwal, J. 1. The appellant-Taher Ali has been convicted under Sections 448 and 376 of the I.P.C. vide judgment and order dated 31-12-2004 passed by the learned Additional Sessions Judge (Ad hoc), Bongaigaon in Sessions Case No. 27(B)/2003. By the impugned judgment, the learned Sessions Judge has sentenced the appellant to undergo R.I. for 7 (seven) years and also to pay a fine of Rs. 2,000/- for his conviction under Section 376, I.P.C. and one month R.I. has been awarded under Section 4

Judgement :

B.D. Agarwal, J.

1. The appellant-Taher Ali has been convicted under Sections 448 and 376 of the I.P.C. vide judgment and order dated 31-12-2004 passed by the learned Additional

Sessions Judge (Ad hoc), Bongaigaon in Sessions Case No. 27(B)/2003. By the impugned judgment, the learned Sessions Judge has sentenced the appellant to undergo R.I. for 7 (seven) years and also to pay a fine of Rs. 2,000/- for his conviction under Section 376, I.P.C. and one month R.I. has been awarded under Section 448, I.P.C. Two months further R.I. has been awarded for non-payment of fine. Both the sentences have been directed to run concurrently. Being aggrieved with the conviction and sentence the accused has preferred this appeal.

2. I have heard Mr. M. U. Mahmud, learned Counsel for the appellant as well as Mr. B. S. Sinha, learned Addl. P.P., Assam. I have also gone through the impugned judgment and have also perused the relevant records.

3. Shorn of the details, the prosecution case is that both the appellant and the victim women were neighbours and they lived at village Bhaoraguri, under Bijni Police Station. The alleged incident took place on 11-2-1999 at about 1.30 p.m. At that time the victim woman was alone at home and she was feeding her baby. Taking the opportunity of loneliness of the victim woman the appellant entered her dwelling house and subjected the woman to forcible sexual intercourse. Within moments of the incident the step-son of the victim woman came home and the victim's husband also reached home by 3 p.m. They were duly reported about the incident by the victim who was in turn communicated to the village headman. After failing to get the culprit punished by the villagers for two days, the FIR was lodged.

4. The formal written FIR was lodged by the victim woman herself on 13-2-1999, it was registered as Bijni Police Case No. 11 / 1999 under Sections 448/376, I.P.C. After investigation, the accused was accordingly challaned vide charge-sheet dated 29-12-1999. As a part of investigation the victim was got medically examined and her statement Under Section 164, Cr. P.C. was also obtained. The victim's 'petticoat,' which was used by her at the time of the rape, was also seized by the police. Ext. 1 is the FIR; Ext. 2 is the statement before the S.D.J.M., Bijni; Ext. 3 is the seizure list; Ext. 4 is the charge-sheet and Ext. 5 is the medical report.

5. In order to establish the offence the prosecution examined only 6 witnesses. P.W. 1 is the victim woman herself; P.Ws. 2 and 3 are the husband and step-son respectively; P.Ws. 4 and 5 are the Police Investigating Officers and P.W. 6 is the

medical officer.

6. It is the defence case that the husband of the victim woman had land dispute with the accused and on this score the accused has been falsely framed in the rape case. However, no evidence either oral or documentary was produced to buttress the defence story. After the conclusion of the trial the learned trial Judge found that the allegation of rape was corroborated by reliable evidence and accordingly the accused/ appellant was convicted.

7. Mr. Mahmud, learned Counsel for the appellant submitted that there are material discrepancies in the deposition of the witnesses from (he story projected in the FIR. The learned Counsel further contended that the deposition of P.Ws. 1 and 2 are also at variance from each other. Besides this it was also the submission of the learned Counsel that the medical report also does not support the theory of sexual intercourse forcibly or consensual, and as such, the appellant deserves to be given benefit of the same.

8. Since the case of *Rafique v. State of U.P.* : 1980 CriLJ1344 , the Hon'ble Supreme Court has taken a consistent view that conviction of an accused for a sexual offence can be recorded on the basis of sole testimony of the victim/prosecutrix. The only rider is that such deposition of the victim should be unimpeachable and the same should be wholly reliable by the Court. In the case of *State of Punjab v. Ramdev Singh* : AIR 2004 SC1290 . the Hon'ble Supreme Court has reiterated that the Courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault upon women and children. On the basis of these established principles, I would now examine the case at hand.

9. Admittedly the FIR was lodged after two days. Both in the FIR as well as in the oral evidence the victim woman has given explanation for not informing the incident to the police immediately. Learned Counsel for the appellant rightly did not raise the question of delay in filing the FIR.

10. With regard to the discrepancies, the learned Counsel submitted that in the FIR it was stated that the accused first assaulted her with a stick and then

overpowered her and committed rape. However, in the oral evidence the victim woman has deposed that while she was feeding her baby on the bed the accused entered the room and subjected her to forcibly sexual intercourse. According to the victim woman when the accused was leaving the room she picked up a stick to beat the accused. But the lathi was snatched by the accused and rather she was assaulted on her stomach and she became unconscious. In the cross-examination the victim woman has reiterated the story given on oath in the chief-examination. The same story was also narrated in her initial statement under Section 164, Cr. P.C. I find from the record that the FIR has been drawn by some other person, admittedly at the instance of the victim woman. In such a situation the possibility of writing a little distorted version of the victim cannot be totally discounted. Be that as it may, discrepancy as to whether the victim was beaten before her rape or subsequently is not of much relevance as it does not touch the root of the case. In my opinion the version given by the victim in the Court is more probable and the same is accepted.

11. According to the learned Counsel for the appellant the prosecutrix was allegedly assaulted on her abdomen whereas the doctor has found one scratch mark around her umbilical region. Since the umbilical region is very close to the abdomen the victim's version that she was assaulted on her abdomen cannot be said to be a discrepant statement. In other words the above alleged contradiction is also insignificant one.

12. The third deficiency in the prosecution case, according to the learned Counsel for the appellant, is that although the matter was immediately reported to the village headman, but the prosecution did not examine the said village headman. The law in this regard is already settled, more particularly, to decide an offence of sexual assault. The authority in this regard has already been given by me in the earlier part of the judgment. In the present case the name of the village headman, namely, Abdul Hasan was specifically disclosed in the oral evidence. Hence the accused was also free to summon the said person as his defence witness to disprove the allegation. While saying so, I do not propose to say that the burden lies upon accused to prove his innocence. The basic principle of law, that it is the burden of the prosecution to prove his case beyond all reasonable doubts still

remains.

13. After going through the entire evidence of the victim woman I find that she has not trembled at any point of time. Her version is thoroughly corroborated by her husband and step-son. As noted earlier the defence failed to give any concrete suggestion to the prosecution witnesses about his false implication. Hence it is difficult to on my part to take an extreme view that the appellant must have been framed with any ulterior motive at the cost of chastity of a woman.

14. It was also argued that the doctor did not notice any symptom of recent sexual intercourse while examining the victim woman and this fact should also be taken in favour of the appellant.

15. Regarding corroboration by medical evidence also the Hon'ble Supreme Court has said that it is not a sine qua non. Without multiplying the rulings on this legal principle, suffice is to mention the case of *Dastagir Sab v. State of Karnataka* : (2004)3SCC106 and also the case of *Ramdev Singh* (supra).

16. In the present case the victim is a married woman, having children. Besides this she was medically examined after two days. Hence there would have been no possibility to find any sign of violence or sexual intercourse due to belated examination. The reason for delay in examining the victim has already been given in the earlier part of the judgment. Precisely, it was due to the fact that the FIR was also lodged after two days from the date of the incident.

17. For the forgoing reasons I hold that the learned Additional Sessions Judge has rightly convicted the appellant under Section 376, I.P.C. The findings in the impugned judgment do not suffer from any infirmity or illegality. Hence the conviction is hereby upheld.

18. Coming to the question of sentence, I find that the learned trial Judge has awarded the minimum sentence prescribed under the law. Mr. Mahmud, learned Counsel for the appellant has submitted that the appellant is a married person and he has his wife and two minor daughters in the family. According to the learned Counsel the accused is the only bread earner in his family and now the family

members were in distress. As such, the sentence should be reduced.

19. In my considered opinion the above usual grounds are not enough to reduce the sentence below the minimum sentence prescribed under the law. In the case of Kamal Kishore v. State of Himachal Pradesh reported in : 2000 CriLJ2292 the Hon'ble Supreme Court has held that there must be adequate and special reasons for awarding lesser sentence. This view has been reiterated by the Apex Court in succeeding judgments. Keeping in mind the guidelines given by the Apex Court and also the fact that the appellant took undue advantage of the woman, who was alone in her house at the relevant time, to satisfy his lust, I hold that it is not a case wherein the sentence can be reduced. Hence the request for reducing the sentence is also rejected.

20. In the result the appeal stands dismissed.

21. Send down the LCR and a copy of the judgment.

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