

Ram Narayan Jha Vs. State of Assam

Ram Narayan Jha Vs. State of Assam

SooperKanoon Citation : sooperkanoon.com/124694

Court : Guwahati

Decided On : May-21-1998

Judge : P.C. Phukan, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376 and 511; Code of Criminal Procedure (CrPC) , 1974 - Sections 222, 222(3) and 313

Appeal No. : Crl. Appeal No. 87 of 1992

Appellant : Ram Narayan Jha

Respondent : State of Assam

Advocate for Def. : A.K. Bhattacharjee, K. Agarwalla and R.K. Agarwalla, Advs.

Advocate for Pet/Ap. : C.R. De and R.P. Singh, Advs.

Prior history : P.C. Phukan, J. 1. This is an appeal directed against the Judgment and order dated 30-7-1992 passed by the learned Additional Sessions Judge, Kamrup at Guwahati convicting the accused appellant under Section 376, IPC and sentencing him thereunder to 4 (four) years rigorous imprisonment and to pay a fine of Rs. 1000/-, in default to further 6 (six) months' rigorous imprisonment in Sessions case No. 87(K-G)/9(). 2. The prosecution case in brief is that on the night of 28-10-89 P.W. 1 Lila Devi w

Judgement :

P.C. Phukan, J.

1. This is an appeal directed against the Judgment and order dated 30-7-1992 passed by the learned Additional Sessions Judge, Kamrup at Guwahati convicting the accused appellant under Section 376, IPC and sentencing him thereunder to 4 (four) years rigorous imprisonment and to pay a fine of Rs. 1000/-, in default to further 6 (six) months' rigorous imprisonment in Sessions case No. 87(K-G)/9().

2. The prosecution case in brief is that on the night of 28-10-89 P.W. 1 Lila Devi was sleeping in the Railway Quarter at Bamuni-Maidan under Chandmari Police Station. Her children were also sleeping in the room. Her husband P.W. 2 Bhusan Poddar, a Marble Mistry, was away. He had gone to the house of P.W. 4 Robin Baruah. At about 12-30 a.m. the accused Ram Narayan Jha, who had let out one part of his Railway Quarter to P.Ws. 1 keeping the other part for himself knocked the door and told P.W. 1 that he had an urgent message for her from her husband. P.W. 1 opened the door. The accused entered and bolted the room from inside. She had her 8 months' old boby in her lap. He snatched the baby, kept him on the bed, forcibly made her to lie down on the floor and raped her. After twenty minutes he left the room. When her husband P.W. 2 returned' home she told him about the incident. Next morning P.W. 2 met P.W. 4 and along with him went to the Police Station and lodged the FIR Ext. 1.

3. The Police registered a case under Section 376, IPC. The Investigating Officer visited the place of occurrence at about 2-10 p.m. on the same day and got P.W. 1 medically examined by P.W. 5 Asstt. Professor, Forensic Medicine, Guwahati Medical College. On completion of investigation the police charge-sheeted the accused under Section 376, IPC. The learned Magistrate committed the case to the Court of Session under the said section of law.

4. In the Court of Session, a charge under Section 376, IPC was framed, read over and explained to the accused to which he pleaded not guilty and claimed to be tried. In the trial, the prosecution examined 5 witnesses. The statement of the accused was recorded under Section 313, Cr.P.C. The accused pleaded innocence. As it appears from his statement under Section 313, Cr.P.C. and the trend of cross-examination, the defence case is that the accused was falsely

implicated in this concocted case out of grudge as he asked the complainant P.W. 2 to vacate his quarter.

5. After considering the evidence on record and hearing the prosecution and the defence, learned Additional Sessions Judge convicted and sentenced the accused as stated above and hence this appeal.

6. I have considered the record of the case and heard Mr. C. R. De, learned counsel for the accused/appellant, as well as Mr. A.K. Bhattacharjee, learned Sr. Counsel with the consent of the learned Additional P.P. appearing for the State of Assam.

7. It has been argued on behalf of the accused appellant that the ingredients necessary to warrant a conviction under Section 376, IPC has not been proved, that the prosecution evidence is highly discrepant and contradictory, that the prosecutrix P.W. 1 stated before the Investigating officer that she raised hue and cry when the accused wanted to rape her but in her evidence before the Court she stated that she could not raise hue and cry as the accused gagged her mouth. It has further been argued that the Doctor P.W. 5 opined that there was no sign of recent sexual intercourse and hence the accused was illegally convicted under Section 376, IPC. It has also been argued that P.W. 1 did not disclose about the occurrence to her nighbours, that P.W. 2 in his first information report stated that he went to the house of one Bimal Borah and the prosecution did not examine Bimal Borah but examined Robind Baruah. It has also been pointed out that P.W. 2 told the Investigating Officer that the accused asked him to vacate the quarter but in his evidence before the Court he denied having made such statement.

8. Learned Sr. Counsel Mr. Bhattacharjee submits that there may be minor discrepancies and contradictions in the evidence of prosecution witness but such discrepancies and contradictions are no ground to discard their evidence. In support of his contention learned counsel has relied on the decisions reported in AIR 1983 SC 753 : (1983 Cri LJ 1096) (1996) 2 SCC 384 : (1996 Cri LJ 1728) and (1997) 1 SCC 272 : (1997 Cri LJ 774). In the first case it has been held that undue importance cannot be given to minor discrepancies, which do not go to the root of the matter and shake the basic version of the witnesses. In the second case it has

been held that the Court should deal cases involving sexual molestation with utmost sensitivity and minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Similar view was expressed by the Supreme Court in the third case. What are the discrepancies or the contradictions in the evidence of P.W. 1 in this case? It is submitted that P.W. 1 stated before the Investigating Officer that she raised hue and cry but in her evidence before the Court she stated she could not raise hue and cry as the accused gagged her mouth. Such discrepancy or contradiction was not brought to the notice of the Investigating Police Officer during his cross-examination and left unproved. It is submitted that P.W. 2 told the Investigating Officer that the accused asked him to vacate the quarter but in his evidence before the Court he denied having made any such statement. It is true that in examination-in-Chief Investigating Officer P.W. 3 stated that P.W. 2 told him that the accused asked him to vacate the quarter. Obviously, it is a minor discrepancy. So far non-examination of Robin Baruah is concerned, it has to be borne in mind that P.W. 2 a non Assamese Mistry unfamiliar with Assamese names, committed a mistake in mentioning the name of P.W. 4 as Bimal Baruah instead of Robin Baruah. The learned trial Judge has rightly held that a mere mistake in mentioning the name cannot given benefit to the defence. It transpires from the evidence of P.W. 1 that the occurrence took place at 12-30 a.m. When her husband returned home at about 1-30 a.m. she immediately reported the incident to him, who in turn, in the morning met P.W. 4 and told him about the occurrence. They came to the Police Station and lodged the FIR Ext. 1 narrating the incident in detail without any delay. Since the accused lived in the other part of the quarter and while knocking at the door, he said that he was carrying an urgent message from her husband P.W. 1 in good faith opened the door. This does not indicate that she was a consenting party to what followed thereafter. P.W. 1 and 2 corroborated one another in all material points. They were cross-examined at length but nothing material has been elucidated to discredit their evidence. Notwithstanding the minor discrepancies noticed in their evidence, I accept their sworn testimony as substantially true except on the point of actual rape on P.W. 1. For, the doctor P.W. 5, who examined P.W. 1 within 15 hours of the occurrence, found no spermatozoa or Ganococci in smears, no recent injury or

evidence of violence on her body and private parts. The doctor opined that evidence of recent sexual intercourse was absent. Learned Sr. counsel Mr. Bhattacharjee, however, contends that the absence of spermatozoa on vaginal smear and absence of injury in her person do not falsify the prosecution version of rape and in support of his contention referred to the decision reported in (1994) 5 SCC 728. Mr. Dey, learned counsel for the accused appellant, submits that the opinion of the Doctor on rape cannot be by passed and in this regard relies upon the decision reported in AIR 1981 SC 897 : (1981 Cri LJ 23) whereas it has been held that substitution of opinion of expert by its own conclusion by High Court is illegal. In any view of the matter, the evidence of Doctor P.W. 5 in this case cast a reasonable doubt as to whether P.W. 1 was in fact raped and the benefit thereof must be given to the accused appellant. However, I have already held that the accused appellant entered into the room of P.W. 1 at the dead of the night in the absence of her husband, bolted the room from inside, caught hold of her, gagged her mouth and forcibly made her to lie down on the floor and sat on her attempting penetration. Hence it has been proved beyond all reasonable doubts that the accused appellant attempted to commit rape on P.W. 1. It is true that in the instant case the accused appellant was charged with the offence of rape under Section 376, IPC and not with the offence of attempt to commit rape under Section 376/511, IPC. Section 222(3) Cr.P.C. provides that when a person is charged with an offence, he may be convicted of an attempt to commit such an offence, although the attempt is not separately charged. In the instant case, though attempt was not separately charged, the accused appellant was not prejudiced in his defence. In 1997 (8) SCC 386 (403) : (1997 Cri LJ 4657) it has been held that though there was no charge under Section 376 read with Section 511, IPC, under Section 222, Cr.P.C. when a person is charged for an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

9. In the result, the conviction of the accused appellant under Section 376, IPC is altered to one under Section 376/511, IPC and the sentence of 4 (four) years' rigorous imprisonment is reduced to 2 (two) years' rigorous imprisonment and fine of Rs. 1000/- (Rupees one thousand) to a fine of Rs. 500/- (Rupees five hundred) and in default to undergo further 3 (three) months rigorous imprisonment.

10. The appeal is allowed in part to the extent indicated above.

11. The accused appellant is now on bail. His bail shall stand cancelled. He shall surrender before the trial Court within 15 days from the date of receipt of this order to serve out the sentence, failing which, the trial Court shall proceed against him according to law.

12. Send down the lower Court records immediately with a copy of the Judgment and order of this Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com