

Thingom Sashikumar and ors. Vs. Manipur Administration

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SooperKanoon Citation : sooperkanoon.com/126248

Court : Guwahati

Decided On : May-02-1962

Judge : T.N.R. Tirumalpad, J.C.

Appellant : Thingom Sashikumar and ors.

Respondent : Manipur Administration

Judgement :

T.N.R. Tirumalpad, J.C.

1. Criminal Appeals Nos. 4, 5, 6, 7 and 8 of 1962 are appeals filed by Messrs. Sashi-kutnar Singh, Mangi Singh. Khoidum Singh, Nilo Singh and Gourahari Singh respectively. They were the accused in Sessions Trial No. 13/5/7 of 1961 before the First Additional Sessions Judge.

Manipur. They were convicted under Sub-section 366 and 376, I.P.C. Sashikutnar Singh, Mangi Singh and Gourahari Singh were each sentenced to two years' r.i. under Section 366, I.P.C. and to 5 years' r.i. under Section 376, I. P. C., the sentences to run consecutively. Khoidum Singh and Nilo Singh were each sentenced to one year's r.i. under Section 366, I.P.C. and to 2 1/2 years' r.i. under Section 376, I. P. C, the sentences to run consecutively. Against the convictions and sentences the said appeals have been filed.

2. The Govt. Advocate has filed Criminal Revision Case No. 11 of 1962, for enhancement of sentences particularly against Khoidum Singh and Nilo Singh

stating that they did not deserve any leniency and against all the convicted persons stating that in addition to the imprisonment, sentences of fine also should have been imposed on them.

3. The learned Sessions Judge has written a very elaborate judgment discussing the evidence and the objections raised by the defence before arriving at his conclusion. The points argued before me in appeal were more or less the same as those raised before the Sessions Judge which were considered by him and rejected.

4. The facts are as follows:

On 8-9-60, after sunset, the appellants in the 5 appeals and one Biren Singh who turned approver and was examined as P. W. 2, went in a Jeep No. MNSection 1046 and stopped near the Rupmahal Theatres. They had all consumed alcoholic liquor. They saw two women P. Ws. 3 and 19 along with a man P, W. 4 Nabin Singh going from the Khawairamband Bazar towards Sanjenthong Bridge. On seeing them, they proceeded in the jeep upto the Assam Rifles Monument in front of the Imphal Post Office and waited there. When the two women with their companion were found proceeding towards Sanjenthong Bridge, Sashikumar Singh, Mangi Singh and Gourahari Singh got down from the jeep and asked the remaining 3 persons to proceed in the jeep and wait on the eastern side of Sanjenthong bridge, keeping the engine running. While the jeep was thus waiting on the other side of the bridge, the two women and their companion along with Sashikumar Singh, Mangi Singh and Gourahari Singh arrived at the place and the latter forcibly lifted the younger woman Tharo Devi (P. W. 19) into the jeep and after gagging her mouth drove away with her in the jeep, in spite of her shouting and the shouting of her two companions. It was a lonely place and the alarm raised by P. W. 3 and P. W. 4 were not of any avail. Nabin Singh (P. W. 4) flashed his torch inside the jeep and he was able to identify one of the persons subsequently in the identification parade as Khoidum Singh.

5. The jeep was driven upto a lonely place near the Koirengei Airfield and then proceeded along a path to the east for about 11/2 furlongs and it was stopped. Sashikumar Singh, Mangi Singh and Gourahari Singh got down from the jeep and

dragged Tharo Devi to a lonely place in the midst of paddy field and the 3 of them successively committed rape on the woman. The other two appellants Khoidum Singh and Nilo Singh and the approver Biren Singh were sent to put petrol in the jeep and after they came back, they also raped the woman. The approver Biren Singh, no doubt tried to minimise his part in the occurrence and said that he was unwilling to commit rape and at first refused as he had never had sexual intercourse with a woman before, but he was persuaded and he also raped the woman who was by that time quite fatigued. Biren Singh said that subsequently, Gourahari Singh again committed rape on her. Afterwards all of them got into the jeep again with the woman and after crossing the Minuthong . bridge in the. Ukhrul Road, they proceeded to Chekkol and dropped the woman near a pipal tree and drove away in the jeep. Immediately P. W. 19 raised an alarm and 3 or 4 persons on hearing the alarm ran out and chased the jeep and threw stones at it. One piece of wood thrown at the jeep hit the front glass pane and it was broken. After proceeding some distance and reaching near the Heirangoithong Bazar, the party removed the broken windscreen of the jeep and threw it down in the Nala and subsequently they all dispersed to their respective houses.

6. In the meantime, F.I.R. Ext. A/4 was lodged with the O/C, Imphal Police Station on the same night by P. W. 5 the brother-in-law of Tharo Devi stating that Tharo Devi had been kidnapped at about 7-30 p.m. while returning from Khwairamb and Bazar, in a jeep by some unknown persons near the Sanjenthong bridge and that it was feared that it was for committing rape on her. P. W. 33, the S. I. attached to the Imphal P. S. took up the investigation at about 8-30 p.m. and on getting information he traced the jeep MNS. 1046 with a Khukri in the front seat. This Khukri was said to have been used to threaten the woman and to keep her quiet, while the rape was being committed on her, This was spoken to by P. W. 2. The jeep was seized from the house of the appellant Nilo Singh. P. W. 33 also seized the broken pieces of the glass of the wind-screen as also the wooden log with which the glass had been broken, as produced by P. W. 7. Subsequently, on 27-9-60, the windscreen which had been thrown in the Nala was also recovered by the S. I. Ibopishak Singh (P. W. 36), who later took up the investigation.

7. In the meantime, the Police had got information regarding the persons who committed the offences and search was conducted, in the houses of the appellants to arrest them, but none of them were available in their houses. The appellant Sashi kumar Singh was employed as a driver in the Manipur State Transport and it was found that after the date of this incident, namely, 8/9/60, he had absented himself from his Office. Ultimately, Khoidum Singh was arrested on 24-9-60, Gourahari Singh on 25-9-60 and approver Biren Singh on ' 27-9-60 and Nilo Singh on 3-10-60.

The confessional statements Ext. A/2 from Biren Singh, Ext. A/12 from Khoidum Singh and A/17 from Gourahari Singh were recorded by P. W. 18 B. Ahmad, First Class Magistrate on 29-9-1960 and the confessional statement Ext. A/26 was recorded by the same Magistrate from Nilo Singh on 7-10-60. In all the confessional statements, the names of all the 5 appellants and of Biren Singh as having joined in the kidnapping of the woman and as having committed rape on her in the place near the Koirengei Airfield was admitted.

8. In the meantime, the Police had recovered the petticoat Ext. M/10 from P. W. 19 containing semen. The other articles of apparels worn by her had also been seized. She was sent for medical examination and was examined by the lady doctor, P. W. 13 and she found 5 injuries on her, mainly abrasions, of which one was a bruise near the vaginal orifice and she gave the injury report; Ext. A/7 on 9-9-60. As according to P. W. 19 she had washed her private parts before examination by the Doctor, no spermatozoa was discovered in the vaginal orifice, but the Doctor detected the signs of recent intercourse including the injury No. 5 already mentioned. As P. W. 19 was a married woman, more evidence of the rape could not be obtained in the examination by the Doctor.

9. After the arrest of GouriHari Singh, Khoidum Singh and Biren Singh and after the recording of their confessional statements, a test identification parade was held on 5-10-1960 by P. W. 18, the same Magistrate, who had recorded the confessions. In the parade, Tharo Devi (P. W. 19) identified all the 3 of them, as seen from Ext. 31. On the same date, another T. I. parade was held in respect of the same 3 persons by the same Magistrate and P. W, 4 Nabin Singh who had

accompanied P, Ws. 3 and 19 on the date of the occurrence and had flashed his torch inside the jeep when P. W. 19 was being carried away after kidnapping, identified appellant Khoidum Singh. But he could not identify Gourahari Singh, or Biren Singh.

Ext. A/32 is the memo of the same. From Exts. A/31 and A/33, we find that the suspects were mixed up with 25 other persons who had put on more or less similar dress and they were allowed to choose their positions and that no objection was raised by any one of them regarding the identification. Subsequently, on 17-10-60 another T. I. parade was held for Nilo Singh by the same Magistrate and Ext. A/33, shows that he was mixed up with 15 other persons and he was allowed to choose his position and that P. W. 19 identified Nilo Singh. But Ext. A/34, the memo of another T. I. parade held on the same day showed that P. W. 4 Nabin Singh was not able to identify Nilo Singh.

10. Subsequently, on 23-11-60, Sashikumar Singh and Mangi Singh were arrested at Pandu near Gauhati and they were brought to Imphal and on 8-10-60 in the identification parade held by P. W. 18, Tharo Devi (P. W. 19) identified both of them as seen from Ext. A/35 the memo thereof. Neither Sashikumar Singh, nor Mangi Singh made any confession like the other 3 appellants Nilo Singh, Gourahari Singh and Khoidum Singh.

11. Subsequently, after investigation was completed the 5 appellants and the approver Biren Singh were charge-sheeted and in the Committal Court a prayer was made by the Police under Section 337 Cr. P. C. to treat Biren Singh as an approver and permission was granted and he was examined both, in the Committing Court and after the committal of the case to the Sessions Judge in the Sessions Court as an approver.

12. Both in the Committing Court as well as in the Sessions Court appellants Gourahari Singh, Khoidum Singh and Nilo Singh retracted their confessions and stated that they were given on account of compulsion and beating by the Police. The approver had given a detailed version of the whole incident in his evidence in the Committing Court. All the 5 appellants stated in the Committing Court that the approver has falsely implicated them and all the appellants except Mangi Singh

and Gourahari Singh stated that their photographs were taken and that they might have been identified by Tharo Devi, because the photographs were shown to her. Gourahari Singh said that he might have been identified because a Jail warder pointed him out to her and Mangi Singh also made a similar statement.

13. In the Sessions Court, appellant Khoidum Singh stated that the Magistrate did not take down the statement Ext. A/12 correctly from him and further said that he did not know of the confessional statements by the other accused. With regard to his identification by P. W. 19 Tharo Devi and P. W, 4 Nabin. Singh, he said that they might have seen his appearance when he was taken occasionally to the Court of the Magistrate without his face being covered. The appellant Gourahari Singh stated that he was tortured by the Police and so he made the confession. Regarding the identification by Tharo Devi, he said that he was identified by a woman at the T. 1. parade, according to a sign given by a Jail warder with his leg. The appellant Nilo Singh also said that his confession was the result of Police torture and that at the identification parade he was made to wear a special chaddar and so he was identified by Tharo Devi at the instance of the Jail warder who gave a sign with his leg. Sashikumar, Singh stated that prior to the T. I. Parade, he was photographed by Shyamkishore Babu, P. W. 33 and was taken out near a restaurant before he was sent to Jail and that he was identified by a woman at the instance of a Jail warder. When he was asked how he happened to go to Assam immediately after the occurrence and had to be arrested there, he said that he did not go to avoid arrest, but that he had gone there to trace his personal handyman who was said to have been living in Assam. Appellant Mangi Singh stated that on the date of the T. I. parade he was asked to wear a red cloth and to sit in the 12th position in a row along with other persons and, before identification ' he was watched carefully by a woman and by one Jail warder through a window and that he was identified by a woman at the instance of the Jail warder. Ho said that he went to Assam as a trader in cloth and not as an absconder. All the appellants said that the approver Biren Singh was inimical towards them and that they had nothing to do with the occurrence.

14. There can be hardly any doubt in this case about the fact of kidnapping of Tharo Devi (P. W. 19) in the jeep MNS. 1046. We have on [this point the evidence

of the approver (P. W. 2) and also of the victim (P. W. 19) and of P. Ws. 3 and 4 who had accompanied the victim at the time of the kidnapping in the jeep. There is also the evidence of P. W. 7 and P. W. 8 who had noted the jeep that night with the flash light of the torch when it was returning from the side of the Koirengei Airport and both of them mentioned its number as MNS, 1046. We have also the evidence from the broken glass pieces and the broken wind-screen which was recovered and about which the approver had also given evidence. Thus the approver's evidence finds corroboration.

On too of this, we have the confessional statements, no doubt retracted, of appellants Nilo Singh, Gourahari Singh and Khoidum Singh. Their story of Police torture for making them give the confessions cannot be accepted at all as the confessions had been taken down after they were sent to Jail custody and were kept in the fail custody for two to three days and after they were given further time for reflection when produced before the Magistrate. There cannot possibly be any question of Police influence when the confessions were recorded. The jeep was recognised after it had dropped P. W. 19 in the village and hence there cannot be any doubt that this was the jeep in which the kidnapping took place.

Though the appellant's case was not only of their non-participation in the occurrence, but of a total denial of even the fact of kidnapping and the fact of rape, and necessarily they had to deny even the fact of kidnapping and the fact of raping, because if they accepted the said facts, then the evidence of the approver P. W. 2 would certainly have fastened the guilt on them -- there is no reason for any reasonable man to think that the Police and the P. Ws, 2 to 4, 5, 7 and 8 would all collude together in this case to concoct even a false story of kidnapping and rape. The fact of kidnapping of P. W, 19 in the said jeep is clearly established.

15. There is no doubt also about the fact that P. W. 19 was raped after the kidnapping. We have the evidence of the victim herself besides that of the approver. We have also the evidence of P. W. 3 that when Tharo Devi returned to her house in a weak condition that night, she enquired of her and she was told that she was taken in the jeep to a distant place near Koirengei Airport by six persona and that the six persons committed rape on her the same night. We have also the

evidence that the petticoat worn by Tharo Devi was recovered by the Police from her and that it was found to contain semen. We have the further fact that injuries were found on Tharo Devi including an injury in the vaginal orifice indicating that she had been forcibly raped. In addition to all this, we have the confessional statements of appellants Nilo Singh, Khoidum Singh and Gourahari Singh admitting that they along with Biren Singh, approver and Sashikumar Singh and Mangi Singh and committed rape on her.

I have already dealt with their confessional statements in dealing with the kidnapping and though the said confessions were retracted at the time of the trial, it is clear that the reason for the retraction, namely, Police torture mentioned by them was false and the evidence of P. W. 18 the Magistrate clearly showed that the statements were recorded after they had been remanded to Jail, and after they were given time for reflection when produced before him. Thus the fact that P. W. 19 was also raped after her kidnapping has been established.

16. Lot of argument was advanced before me also to indicate that the evidence of P. Ws. 3 and 4 regarding the kidnapping should not be believed, that the evidence of the approver should be rejected outright and that the evidence of the victim should not be relied on in support of the fact of kidnapping and raping. I have perused the evidence of those witnesses. They have all been cross-examined on behalf of all the accused persons and I must say that they were very stiff cross-examinations. It is unnecessary to go into details, but it is enough to say that the evidence of the approver tallies quite well with the evidence given by the victim P. W. 19 and by her companions P. Ws. 3 and 4. Their evidence has also been considered in detail by the Sessions Judge and the objections raised by the defence have also been dealt with by him and it is unnecessary to deal at length with the same in this appeal as it will be mere repetition.

17. The fact has thus been clearly established beyond any manner of doubt that Tharo Devi (P. W. 19) was forcibly kidnapped on 8-9-60 by six persons from near Sanjenthong bridge and that the six persons carried her away in a jeep and that Tharo Devi was raped the same night and later left near her village from the same jeep and further that the jeep used for the purpose was this very jeep MNS, 1046.

18. The next question is whether it was the appellants and Biren Singh, who committed the kidnapping and the rape. In that connection, the main evidence is that of the approver Biren Singh and the victim Tharo Devi. The approver in his confessional statement -- Ext. A/2 and in the evidence which he gave subsequently in the Sessions Court has clearly stated that the appellants and he kidnapped P. W. 19 and that they all raped her. The details of his evidence have been mentioned by me in stating the facts earlier. It is a long story and he has described how they all assembled together in the jeep and how they consumed liquor and went in search of a woman and sighted P. W. 19 going along with P. Ws. 3 and 4 and how the appellants Gourahari Singh, Sashikumar Singh and Mangi Singh got down from the jeep near the Assam Rifles Monument, how the jeep with the approver and the other two appellants waited near the Sanjenthong bridge, how Gourahari Singh, Sashikumar Singh and Mangi Singh forcibly put P. W. 19 into the jeep when they arrived near the jeep and how they carried her near the- Koirengei Airport. It is unnecessary to deal with the revolting details of the actual commission of the rape on the woman. The graphic description given by P. W. 2 contained in itself the stamp of truth.

19. Much stress was sought to be laid on the evidence of P. W. 2 that, while they were bringing the woman back after committing rape on her, she asked for some money and from this an argument was advanced that even if sexual intercourse had taken place, it must be with the consent of the woman. I am surprised at this suggestion. Any subsequent request for money, even if true, will not mean the consent of the woman concerned. The fact that she was forcibly kidnapped, that she had raised an alarm when, she was being kidnapped, and had raised alarm again when she was dropped back in her village and the fact that she gave the story of rape to P. W. 3 immediately on her being released by the miscreants, all go to show that she could never have been a consenting party.

20. The evidence of P. W. 2 has been corroborated by the evidence of the victim herself. Even some gruesome details of the manner in which the rape was committed on her have been given by her. She had mentioned how she was over-powered by these six persons in spite of her resistance, how even her hands and legs were tied in the early stages in order to prevent her struggling. I would rather

not deal with the further sordid details. It was seriously argued that if her story of her hands and legs being tied was true, sexual intercourse would not have been possible in that position.

It is enough to say that P. W. 19 herself gave the answer to this argument by saying that the first 3 persons who committed rape on her made her pose in a kneeling position and committed the rape on her successfully and when the 3 persons came back after getting petrol in the jeep, her hands and legs were untied and the rape was committed by the remaining 3 persons, when she was in an exhausted stage and could not struggle any longer. The very ugly details mentioned by this lady clearly showed that the story could not have been invented by her and that she was giving a true picture of the harrowing experience which he underwent. One thing is certain and that is that the persons who were responsible for this premeditated kidnapping and rape could hardly be called human beings with normal human sentiments and emotions, but persons of the bestial type who probably because they were under the influence of labor had lost all sense of human decency and human dignity and the respect due to a woman.

21. Both P. Ws. 2 and 19 have mentioned the names of all the 5 appellants and also of the approver himself as the persons who kidnapped P. W. 19 and raped her. P. W, 2 knew his companions as he was with them throughout and he cannot possibly make any mistake, P. W. 19 stated that she saw the faces of these persons in the headlight of the jeep and again when they were lighting their cigarettes after the rape was committed and lastly again when she was being brought back, when the jeep passed in front of the B. O. C. Petrol Pump, where there was good light. As for appellant Khoidum Singh, we have the further evidence of P. W. 4 Nabin Singh who when he flashed the torch into the jeep when the woman was being kidnapped could see the face of Khoidum Singh and thus was able to, identify him in the identification parade subsequently.

22. The fact that P. W. 19 had recognised these persons as spoken to by her is clear from her subsequent identification of all the 5 appellants and of the approver P. W. 2 in the subsequent identification parades as seen from Exts.

A/31 to A/35. A good lot of argument for the defence consisted of severe criticism of the manner in which the identification parades were held. It was argued that P. W. 19 did not give any description of the persons who kidnapped and subsequently raped her either to the I. O. or to the Magistrate who conducted the identification parades, that the delay in holding the parades showed that there was sufficient time and opportunity for the Police to show the accused persons to P. W. 19, that she must have had occasion to see the accused persons when they were being produced in Court and that the instructions contained in various High Court decisions including the decision of this Court, reported in *State v. Yumnam Babu Singh* AIR 1957 Manipur 21 were not observed in conducting the T. I. parades, that the list of persons who were mixed up with the accused during the parades with their names and addresses was not made out, that it was not mentioned in what connection the witness was identifying them and that it was not noted in some of the memos that any objection or complaint was raised by the accused at the time of the identification.

23. It is a pity that in spite of the decision of this Court, cited above, the Magistrates in this Union Territory when holding identification parades do not follow the detailed instructions contained therein, but persist in their old routine practice which give rise to the criticisms levelled against the parades. They must remember that they are called upon to hold such parades, so that the parades which take place during the investigation of the offences by the Police, may be beyond all suspicion and free from influence by the Police. Instructions are given to them in judgments of High Courts to aid them in such work and they are bound to follow them. An explanation will be called for from this Magistrate P. W. 18 B. Ahmad why he did not follow the instructions contained in the decision of this Court reported in AIR 1957 Manipur 21. It was his duty to have made a list of outsiders mixed with the accused persons for the purpose¹ of identification. It was his duty to have noted in what connection the witness was identifying them. Again, he should have noted whether the witness identified any wrong person. Further, he should ask the accused persons if they had any complaint or objection to make even before he held the parade and he should note whether they made any complaint or objection before the parade, in the course of the parade or subsequent to the parade. T. I. parades are not to be held in a mechanical or

routine fashion. While they constitute valuable corroboration, they are also a safeguard for the accused persons. The Magistrates must therefore see that the proceedings are conducted very fairly and in accordance with instructions given by decisions of High Courts and that the memos of the parades correctly and fully record what took place.

24. But the objections raised in the present case did not appear to me to be valid. None of the appellants have stated that they raised any objection either before or during or after the parade. In Ext. A/31 and Ext. A/32, the Magistrate has not stated that the suspects did not raise any objection. Though in Ext. A/33 and Ext. A/35, the Magistrate has not stated that no objection was raised, neither Nilo Singh nor Sashikumar Singh, nor Mangi Singh stated that they did raise any objection at the time. Thus, the present story of the appellants that they were identified because a Jail warder gave a sign with his leg cannot be accepted by me. I am sure that the Magistrate would not have accepted the identification under such circumstances and in any case would have noted the fact in the memo. I am also sure that the accused persons would have immediately raised objection if it was a fact. It is true that P. W. 19 was accompanied by a Jail warder when she was taken inside for the identification. But she had to be kept outside until the parade was arranged and she had to be taken inside by some person and the proper person to take her inside the Jail was a Jail warder and there can be nothing wrong in that. That will not prove that the said Jail warder gave her any indication. On the other hand, the objection raised at this late stage would only show that the appellants are taking advantage of the fact elicited in evidence that a Jail warder happened to accompany P. W. 19 to raise the contention. After all, the evidence of the identification parades is only to corroborate the identification in Court and we know from the evidence of P. W. 19 that she had ample opportunity of seeing the appellants in the course of the incidents which took place that night. I am satisfied after a perusal of the evidence of P. W. 18, the Magistrate and of the memos of the parades and from the evidence of P. Ws. 19 and 4 that the identification of the appellants in this case was true and can be relied upon as corroboration.

25. Before I proceed to deal with the rest of the case, I must pause here for a moment and bring to the notice of the Magistrates that Article 22 of the Constitution of India provides that no person who has been arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest and that he should not be denied the right to consult or to be defended by, a legal practitioner of his choice. It is for the Court to ensure that this fundamental right of a citizen of being informed of the grounds of arrest and to consult and to be defended by a lawyer of his choice is guaranteed to the accused persons. When an accused person is therefore brought before a Magistrate under Section 167 Cr. P, C, it is the duty of the Magistrate to ask the accused person whether he has been informed of the grounds of arrest and whether he has been allowed the right to consult and to be defended by lawyer of his choice. If the Magistrate finds that this has not been done, it is his duty to ensure that the accused person is guaranteed this right. On the other hand, if the Magistrate does not safeguard this right, it is quite possible that many accused persons in Jail and particularly those who are illiterate or uneducated do not know the grounds for their arrest and are not allowed to consult a lawyer and are helpless to ventilate this grievance. If the accused person is allowed to consult a lawyer, many of the mal-practices which the Police may be prone to, can be put a stop to. It is frequently heard in this Union Territory in many criminal cases that confessions have been obtained by torture and pressure and that identification parades are not properly held. It may be that such accusations are sometimes made without any basis. But they can be avoided if the accused person is allowed to consult his lawyer immediately on arrest, so that the lawyer concerned can protect his client's interest. This has to be guaranteed to the accused person by the Magistrate before whom he is produced for purposes of remand. I hope this will be kept in mind by all Magistrates, so that any mal-practices which the Police in this territory may indulge in obtaining confessions and in holding T. I. parades can be minimised to a great extent.

26. I have so far dealt with the evidence of P. W. 2 and P. W. 19 in which the names of the appellants have been mentioned as the paragon who kidnapped and raped P. W. 19. I have also referred to the identification of the appellants by P. W. 19 and of appellant Khoidum Singh by P. W. 4. In addition to this, there is

further evidence against the appellants. It consists of the confessional statements made by appellants Nilo Singh, Gourahari Singh and Khoidum Singh. In all the confessional statements, they have incriminated themselves and they have incriminated the other appellants both of the charge of kidnapping and of the charge of raping. We have the evidence of the Magistrate P. W. 18 regarding the manner in which those confessions were recorded. There has not been any serious delay after the arrests in producing them before a Magistrate and they are remanded to Jail and they were produced from Jail custody before the Magistrate for recording the confessions and were again given time for reflection before the confessions were actually recorded. There cannot possibly be any question of Police torture and pressure under the circumstances. We have to take it therefore that their confessions have been properly obtained and further that the belated story given by them in the Committing Court retracting their confessions regarding the Police torture is false

27. The confessions have been detailed in the judgment of the Sessions Judge. They amount to admissions as far as the makers of the confessions are concerned. Thus, the confessions of Nilo Singh, Gourahari Singh and Khoidum Singh about their own part in the kidnapping and the rape amounted to admissions by them and even though they were retracted, the said admissions have been corroborated by the evidence of P. Ws. 2 and 19 and by the identification by P. Ws. 19 and 4. There can be no doubt therefore about the guilt of Nilo Singh, Gourahari Singh and Khoidum Singh.

28. In each of the confessions, the names of the other 4 appellants are also seen and Section 30 of the Evidence Act provides that the confessions made by one accused person affecting himself and the other accused can be taken into consideration against the other accused as well as the person who makes such confession. Thus, the fact that the other appellants are mentioned in the confessions given by Nilo- Singh, Goniahari Singh and Khoidum Singh as the persons who joined with them in the kidnapping and rape, is a matter which has to be taken account of by a Court. That by itself cannot be made use of to convict an accused person. But when along with such confessions implicating other accused persons, there is also strong evidence as in this case, namely of P. W. 2 and, P.

W. 19 taken along with the identification by P. W. 19, the confessions certainly go further in corroboration of such evidence. If we take all that into account, the case against Sashikumar Singh and Mangi Singh also must be taken as having been proved.

We have further the fact that all the accused persons were found absent from their respective houses and attempts by the Police to get them in their houses proved of no avail showing that they were absconding and avoiding arrest and it was many days later that even four out of the six persons concerned in the crime could be arrested. As for Sashikumar Singh, who was employed as a driver by the Manipur State Transport, he had absented himself from duty from 9-9-60 and had gone away to Ganhati and was in Pandu and the Police on getting information of his whereabouts had to get him arrested at Pandu 2 1/2 months after the occurrence. The same was the case with Mangi Singh. Thus, the fact of the very absconding by the accused persons goes against them when taken along with the evidence already discussed by me. I have no doubt that the finding of the learned Sessions Judge that all the appellants are guilty of kidnapping the woman and of raping the woman on 8-9-60 is correct. The fact of raping subsequent to the kidnapping shows that the kidnapping was for the purpose of intercourse and the charges under Sections 366 and 376 I.P.C. have been proved against them and they were rightly convicted by the Sessions Judge.

29. Regarding the sentence passed on Sashikumar Singh, Mangi Singh, and Gourahari Singh, viz., 2 years' r.i. each under Section 366, I.P.C. and 5 years' r.i. each under Section 376, I. P. C, the sentences to run consecutively, I find no reason at all to interfere. It was most bestial and inhuman conduct on their part on a defenseless woman and they deserve separate sentences for kidnapping and for raping and even the consecutive sentences do not amount to the maximum provided under Section 376, I.P.C. and so I do not consider it necessary to interfere, even though it was strenuously argued that the sentences were too severe. The sentences passed on appellants Sashikumar Singh, Mangi Singh and Gourahari Singh are therefore confirmed. I do not consider it necessary, as demanded by the learned Government Advocate* that they should be further sentenced to fine.

30. With regard to Khoudum Singh and Nilo Singh, the learned Additional Sessions Judge has taken a more lenient view. But the only reason given by him is that they participated in the offence under the influence of the other 3 accused persons. One fails to understand how the learned Sessions Judge arrived at such a conclusion. Khoidum Singh is aged 34 years and Nilo Singh is aged 24 years, while the other accused persons are aged 32, 33 and 25 years. We have no reason to think that Khoidum Singh and Nilo Singh, joined in the commission of the offences under the influence of the others. They took part in the kidnapping and they also committed rape on the woman just like the others. They are liable to as severe punishment as the other 3 accused persons and there is no reason why the sentences on them should be less either for the kidnapping or for the rape. The Government Advocate was perfectly justified in having filed the application for enhancement of the sentence's against them. Notices were also given about such enhancement and arguments were heard. There are no extenuating circumstances at all to give them any lesser sentences. The sentence of one year's R.I. each given to Khoidum Singh and Nilo Singh under Section 366, I.P.C. by the Sessions Judge is enhanced to two years' r.i. each and similarly the sentence of 2 1/2 years' r.i. each given to them under Section 376, I.P.C. is enhanced to 5 years' r.i. each, both the sentences to run consecutively as in the case of the other 3 appellants. Except for this enhancement of the sentences of Khoidum Singh and Nilo Singh on the application of the Government Advocate, all the appeals are dismissed and the convictions of the appellants are confirmed. The sentences passed on Sashikumar Singh, Mangi Singh and Gourahari Singh are also confirmed and the sentences passed on Khoidum Singh and Nilo Singh are enhanced to two years' r.i. each under Section 366, I.P.C. and 5 years' r.i. each under Section 376, I. P. C, both the sentences to run consecutively.