

Lasonowal Vs. State of Assam

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Court : Guwahati

Decided On : Mar-13-2007

Judge : P.G. Agarwal, J.

Appellant : Lasonowal

Respondent : State of Assam

Disposition : Appeal dismissed

Judgement :

P.G. Agarwal, J.

1. Heard Mr. K.H. Choudhury, learned Senior Advocate appearing for the appellant and Mr. D. Das, learned Public Prosecutor, Assam.

2. This appeal is directed against the judgment and order dated 26.06.2001 passed by the learned Sessions Judge, Golaghat in Sessions Case No. 93/2000 convicting the accused appellant La Sonowal under Section 376 IPC sentencing him to undergo imprisonment for seven years and to pay fine of Rs. 1000/-, in default in payment of fine, to undergo rigorous imprisonment for three months.

3. Prosecution case, in brief, is that on the night of 4th March, 2000 at village Barichowa Gaon under Ghiladhari Police Station, while the victim (PW-3) (name withheld) was preparing herself to appear in the ensuing matriculation (HSLC)

examination scheduled to be held on 9.3.2000, her elder sister was preparing food in the kitchen. There was none else in the house as their mother, a cancer patient, was undergoing treatment in the Assam Medical College, Dibrugarh and their two brothers were attending her. Around 8 P.M. the accused appellant came to the house of the victim in a bicycle and thereafter forcibly pulled out PW-3 by showing a dagger and dragged her to a nearby field and laid her over straws and forcibly committed rape on her. After satisfying his lust, the accused fled the scene. The poor victim thereafter came back to home and reported the incident to her aunt, who reached their house, in the meantime, on being informed by her elder sister Minakshi Chutia (PW-2).

4. The First Information Report was lodged on 10.3.2000 whereupon the victim was examined by Dr. Hiranya Kumar Saikia (PW-1).

5. In this case, the prosecution examined as many as six witnesses. The defence did not adduce any evidence. Defence took the plea of simple denial. The learned trial Court relying on the evidence of the prosecution witnesses found the appellant guilty of offence under Section 376 IPC and sentenced him to undergo imprisonment and fine as stated above.

6. Learned Counsel for the appellant has submitted that in view of the medical evidence on record the conviction of the accused appellant under Section 376 IPC is not maintainable as the Doctor found hymen present and did not find any mark of tear or injury. So, far the absence of injury is concerned, it is immaterial because the medical examination took place after six days of the incident. The trial Court did not accept the defence plea that as the hymen found intact by the Doctor, there can be no offence under Section 376 IPC and held that in exceptional cases there may not be rupture of hymen even after sexual intercourse.

7. Mr. Choudhury, learned Senior counsel appearing for the petitioner further submits that in absence of any other medical evidence, the trial Court has no jurisdiction to record the above finding. Law is well settled that medical evidence is opinion evidence only and the Court is not bound to accept the same. In case of Aman Kumar v. State of Haryana : 2004 CriLJ1399 , the Apex Court held that:

Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the women, no matter how little. The depth of penetration is immaterial in an offence punishable under Section 376 IPC. Even a slight penetration in the vulva is sufficient to constitute the offence of rape and rupture of the hymen is not necessary. Vulva penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur with the hymen remaining intact. The actus reus is complete with penetration. Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law.

8. We, therefore, hold that the trial Court did not commit any error in law in holding that this is a case of commission of forcible sexual intercourse on the victim PW-3. We find from the evidence of the victim that the accused had entered into the person of the PW-3 and there was penetration of the genetic organ. She has given a detailed statement as to how she was ravished. In this case, we find that the victim is a teenaged girl who was preparing herself for appearing in the Matric (HSLC) examination. Ext-4 is the Admit Card, which shows her date of birth as 27.4.1984 and thus he had not completed 16 years of age even. Consideration of the Doctor's opinion as regards the age of the victim girl is not material in the present case as it is not a case of consensual physical relationship or intercourse. Moreover, in view of the provisions of Section 114-A of the Evidence Act and in absence of any rebuttal to the prosecution evidence, consent cannot be presumed.

9. The next submission of Mr. Choudhury is that there was delay of six days in lodging the FIR and as such the prosecution case cannot be believed. In support of the statement learned Counsel has placed reliance on the decisions of the Apex Court in *State of Karnataka v. Mapilla P.P. Soopi* : 2004 CriLJ44 and *Sudhangshu Sahu v. State of Orissa* (2002) 10 SCC 742. The ratio law laid down by the Apex

Court in these cases being on a different context and against the order of acquittal holding that undue delay in lodging the complaint without acceptable evidence has also contributed to the doubt in the prosecution case, this Court finds it difficult to accept the submission. In *Sudhangshu Sahu (supra)* the Apex Court held:

It is true that in view of social condition prevalent in India, there may be delay in giving the first information of such offence to the police. A rape victim may think seriously before giving the information of the police about rape as the onslaught of a social stigma may haunt her for life.

10. In the case of *Sone Lal and Ors. v. State of U.P.* : 1978 CriLJ1122 , the Apex Court considering the fact of delay in lodging FIR has held that it depends upon various factors which may vary from case to case and even long delay can be condoned, if it is found that the informant has no motive to falsely implicate the accused person. Apex Court also observed that even prompt filing of FIR is not a guarantee of truthfulness of the prosecution version.

11. Let us examine as to what is the explanation for the delay in the present case. The evidence on record shows that the victim and her sister were only occupants of the house when the incident took place. Their mother, a cancer patient, was undergoing treatment at Dibrugarh and their two brothers were attending her. Thus, there was no other male member in the house. We further find from the Ext-4 and the evidence of the victim that she was preparing for the matriculation examination scheduled to commence on 7th March, 2000. We thus find that the explanation given by the prosecution for delay in lodging the FIR is quite convincing and reliable. Further, in this case neither the PW-3 nor the PW-2 had any animus with the accused appellant and there was absolutely no earthly reason on their part to falsely implicate the accused person for no apparent reason. PW-3 has stated that the accused used to come to her school and tease her.

12. In *Aman Kumar (supra)*, the Apex Court further observed a victim of rape cannot be considered as accomplice. Law is well settled that conviction can be based on sole testimony of prosecutrix, if considered reliable and truthful. Both PW-2 and 3 have deposed that the accused came to their house in a bicycle wealing Hawai Chappal and those were left behind their house when the accused

fled from the field itself. We find the above hawai chappal and bicycle were seized by the police, which goes to support the prosecution story about the arrival of the accused at their house on the fateful evening.

13. On perusal of the evidence on record, we find that PW-3 is a wholly reliable witness and she has stated the truth only. An young school going girl has been forcibly violated by the accused appellant and hence we affirm his conviction and sentence under Section 376 IPC.

14. The appeal has no merit and is accordingly dismissed. Send down the records to the learned Sessions Judge, Golaghat, who shall forthwith take the accused appellants in to custody to serve out the sentence.

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