

Dilip Borah Vs. State of Assam

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Court : Guwahati

Decided On : May-12-2003

Judge : I.A. Ansari, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376

Appeal No. : Criminal Appeal No. 68 of 2002

Appellant : Dilip Borah

Respondent : State of Assam

Advocate for Def. : B. Rajkhowa, Adv.

Advocate for Pet/Ap. : K. Paul, Adv.

Judgement :

I.A. Ansari, J.

1. This is an appeal against the judgment and order, dated 17.1.2002, passed by the learned Sessions Judge, Golaghat, in Sessions Case No. 60/2001, convicting the accused-appellant under Section 376(1) Indian Penal Code and sentencing him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 5000 and in default, to suffer rigorous imprisonment for a further period of 6 months.

2. The case against the accused-appellant, as unfolded at the trial, may, in brief, be stated as follows :

On the night of 14.1.2001, when Smti Manju Gogoi was asleep at her house along with her baby and her husband had gone to his neighbour's house to watch a TV show, the accused-appellant entered into the house, at about 10.00 pm, by forcibly opening its door, which was made of bamboo and was closed from inside with help of a bamboo pole, and on coming inside the room, the accused jumped upon Smti Manju Gogoi, gagged her mouth with a 'chador' (a sheet of cloth used as wearing apparel) and committed rape on her. After the accused left, the victim, Manju, raised alarm. When the neighbouring people including her husband came to the place of occurrence, the victim reported to all of them that the accused had tried to molest her. On the night of the occurrence itself, she went along with her husband and others to Ghiladhari Police Station and lodged there a written Ejahar (Ext. 3). Treating the same as an FIR, the police registered Ghiladhari PS Case No. 2/2001 under Sections 448/356 Indian Penal Code, but after a day or two, when she was further questioned by the Superintendent of Police, Golaghat, she revealed that the accused had actually committed rape on her. The victim was then, examined by a Doctor, her statement under Section 164, Cr.P.C. was recorded and on completion of investigation, police laid charge-sheet against the accused-appellant under Sections 448/376 Indian Penal Code.

3. During the trial, when a charge under Section 376 IPC was framed and read over the accused, he pleaded not guilty thereto.

4. In support of their case, the prosecution examined altogether 6 witnesses. The accused was, then, examined under Section 313 Cr.P.C. and in his examination afore-mentioned, the accused denied that he had committed the offence alleged to have been committed by him, the case of the defence being that of total denial and of the accused having been falsely implicated following a case, which had been lodged by the accused against the husband of the alleged victim woman. The defence also adduced evidence by examining two witnesses. The trial ended.

5. I have perused the records. I have heard Mr. K. Paul, learned counsel appearing on behalf of the accused-appellant, and Ms. B. Rajkhowa, learned

Additional Public Prosecutor, Assam, appearing for the respondent.

6. In the present case, it is not in dispute before me that Smti Manju Gogoi (PW-1) was the sole eye witness to the alleged occurrence inasmuch as none of the witnesses has deposed that any one had seen the accused either entering into the house of the prosecutrix or running away therefrom. The entire case of the prosecution, therefore, rests on veracity of the evidence given by PW-1.

7. While considering the veracity of the evidence of PW-1, it is of paramount importance to note that PW-1 had, initially, not disclosed to anyone that the accused had committed rape on her, rather, on hearing her cries, when her neighbours, who were all her relatives, and her husband came to the place of occurrence, she reported to them that the accused had tried to molest her. No wonder, therefore, that the FIR lodged by PW-1 merely alleges that the accused pushed open the door and attempted to commit rape on her by holding her tightly and when she cried aloud, the accused ran away, but after one or two days of the occurrence, when the Superintendent of Police question her, she revealed that the accused had committed rape on her. This apart, explaining the delay in disclosing the fact that the accused had committed rape on her, PW-1 has deposed that she was scared of her husband as he might misunderstand her and in order to protect her conjugal life, she did not initially report to any one that the accused had committed rape on her. Learned trial Court has relied on this explanation on the ground that a married women would be, naturally, hesitant to disclose commission of offence of rape on her to others, particularly, when a number of people had assembled at the house of PW-1 on hearing the cries of PW-1. Though the explanation, so offered by PW-1, cannot be rejected out-right as. unbelievable, what is imperative to note is that in the context of peculiarity of the facts of the case at hand, the Court must be satisfied that the evidence given by PW-1 is impeccable and unimpeachable. The learned trial court, it appears from the impugned judgment, has not dealt with this aspect of the case.

8. While considering the above aspect of the matter, it is essential to note that in her evidence, PW-1 has deposed that the accused had bitten her on her face. The alleged occurrence took place on 14.1.2001. The medical examination of PW-1

took place, admittedly, on 19.1.2001 and PW-1 (Dr. MC Gogoi) did not find any injury on the person of PW-1. Though the existence of injuries on the person of the victim of rape may not necessarily, in all cases, become a ground for suspecting the veracity of the evidence of the prosecutrix, the fact remains that in the present case, no explanation has been given by the prosecution nor is there any explanation discernible from the evidence on record to show as to why the mark of teeth bite on the face of the prosecutrix could not be found on her medical examination. It is also worth noticing that none of the prosecution witnesses, who appeared at the scene of the alleged occurrence on hearing cries of PW-1, noticed any injury on her face. This aspect of the matter appears to have been taken into at all account by the learned trial Court. This apart, the clear evidence of PW-1 is that the door of her house was made of bamboo and it was closed from inside with the help of a pole. The evidence on record does not disclose as to how the accused could push open the door, when the same was closed from inside.

9. Coupled with the above, the evidence given in the Court by PW-1 is that a lamp was kept lit in her room, when she was sleeping there. No such statement was made by PW-1, when her statement was recorded by the police. Though this omission, in normal circumstances, may not be very trial, but in the facts and circumstances of the case at hand, one cannot ignore the fact that the PW-1 has, indeed, not made any such statement in her previous statement before the police. It, therefore, logically follows that in her previous statement made before the police, PW-1 had given no indication as to how she could recognise the accused.

10. It is also immense of importance to note that the witnesses, who had assembled at the place of occurrence, were largely relatives of PW-1 and all of them shared the same courtyard. In a situation such as this, it was highly risky for an outsider to enter into the house of PW-1 by forcibly opening the door of her house, when her husband was watching a TV show within the hearing distance.

11. For what has been discussed above, it would be highly unsafe to hold that the testimony of PW-1 can be implicitly relied upon.

12. Upon a cogent and dispassionate scrutiny of the evidence on record, I am firmly of the view that the prosecution have not been able to prove beyond all

reasonable doubt that the accused-appellant had entered into the house of PW-1, as alleged by her, and had committed rape on her. The accused-appellant, therefore, ought to have been accorded benefit of doubt.

13. In the result, and for the foregoing reasons, this appeal succeeds. The impugned judgment and order are hereby set aside. The accused-appellant is held not guilty of the charge framed against him under Section 376 IPC and he is acquitted of the same under benefit of doubt. Let the accused-appellant be set at liberty forthwith if he is not required to be detained in connection with any other case.

14. Inform the Superintendents of District Jails, Jorhat, and Golaghat, accordingly.

15. Send a copy of this judgment and order to the learned Sessions Judge, Golaghat, along with the records.

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