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Court : Guwahati

Decided On : Nov-30-2006

Judge : Amitava Roy, J.

Appellant : Manash Ali

Respondent : State of Assam

Disposition : Appeal dismissed

Judgement :

Amitava Roy, J.

1. The appellant being convicted under Section 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs. 1,000/, in default, to undergo rigorous imprisonment for another three months by the judgment and order dated 11.12.2002 passed by the learned Sessions Judge, Sonitpur, Tezpur in Sessions Case No. 25 of 2002 is in appeal.

2. I have heard Mr. Z.H. Khan, learned Amicus Curiae, for the appellant and Mr. K. Munir, learned Public Prosecutor, Assam.

3. On a F.I.R. being lodged on 12.11.2001 by Md. Sahar Ali before the Officer-in-charge, Dhekiajuli Police Station alleging that the accused/appellant had on 10.11.2001 and 11.11.2001 committed rape on his wife Mustt. Anowara Begum,

Dhekiajuli P.S. Case No. 259 of 2001 was registered under Section 376, I.P.C. On completion of the investigation, a charge-sheet was laid against the accused/appellant under the above provision of law. The case being exclusively triable by the Court of Sessions, charge was framed against the accused/appellant under Section 376 of the I.P.C., (hereinafter also referred to as the Code) which, being read over to him he pleaded not guilty and claimed to be tried.

4. The prosecution examined as many as 9 witnesses including the doctor who had examined the victim and also the Investigating Officer. After the closure of the evidence of the prosecution the accused/appellant was examined under Section 313, Cr. P.C. and by the impugned verdict he was convicted and sentenced as above.

5. The learned Amicus Curiae has submitted that the prosecution case is liable to be rejected on the sole ground of delay in filing of the F.I.R. The alleged incident having taken place on 10.11.2001 and 11.11.2001, and, no explanation for the delay in filing of the F.I.R. on 12.11.2001 forthcoming, the learned trial Court ought to have rejected the prosecution case on that ground alone. Referring to the evidence of the prosecutrix (PW 8) and PW 5, Sarifa Khatun, learned Amicus Curiae has contended that it is apparent therefrom that the imputations levelled against the accused/appellant are wholly unfounded. Not only the prosecutrix has contradicted herself with regard to the sequence of events and the time of commission of the alleged offence; the medical evidence being clearly opposed to the allegations made, the learned trial Court fell in error in holding the accused/appellant guilty of the offence charged. Without prejudice to the above, the learned Amicus Curiae has urged that the sentence awarded is disproportionately harsh and the accused/appellant being a family man he ought to be let off by setting off the period of imprisonment already suffered by him till date. In support of the submissions, Mr. Khan, has placed reliance on the decision of the Apex Court in the case of Thulia Kali v. State of Tamil Nadu, reported in : 1972 CriLJ1296 , and another decision of the Andhra Pradesh High Court in the case of Anmula Raji Reddly v. State of A.P., reported in 2005 CRI. L.J. 220.

6. As against this, Mr. Munir, learned Public Prosecutor, has argued that the prosecution have been able to establish the charge against the accused/appellant beyond all reasonable doubt and thus, the learned Trial Court was perfectly justified in holding him guilty and sentencing him with an appropriate punishment in law. As the materials on record disclose a desperate and immoral character of the appellant, no leniency in the matter of sentence need be shown to him.

7. I have carefully considered the rival submissions advanced on behalf of the parties. Being the final Court of facts it would be apt to have a brief survey of the evidence on record. The F.I.R. referred to above clearly implicate the accused/appellant to have committed the offence of rape on the imformant's wife, the proseuctrix (PW 8) on 10.11.2001 and 11.11.2001 during his (informant's) absence from home.

8. PW 1, Md. Faizuddin, has testified about a village meeting over the incident in which he was present. According to him, while the prosecutrix asserted that the appellant had committed rape on her, the latter denied the allegations. In the same line is the evidence of Md. Nobi Hussain (PW 4) as well as Nur Mustafa Ali (PW 7).

9. PW 2, the informant Sri Sahar Ali, deposed that his house and the house of the accused is intervened by two houses. He stated that on a Sunday when he returned home from work at 7.00 P.M., his wife informed him that the accused/appellant had forcibly raped her. On the following day he placed the matter before the villagers who assembled in the evening and though the issue was taken up, no decision could be arrived at. In cross-examination, he inter alia, denied the existence of any land dispute between him and the accused/appellant.

10. PW 5, Mustt. Sarifa Khatun, stated that on the date of incident as she was returning from the house of a neighbour in the evening, she found the accused/appellant sitting along with the prosecutrix at about 5.00 P.M. In cross-examination she further disclosed that at the same time the brother of the informant was also present there.

11. PW 6, Sri Ramjan Ali, stated that he having enquired of the prosecutrix, he was told that the accused/appellant had raped her. He, however, stated that a village meeting had been held in that connection.

12. The prosecutrix, PW 8, stated that the accused/appellant was their neighbour. According to her, on 10.11.2001 while she was alone in the house, the accused/appellant entered the same and after gagging her mouth committed rape on her. She stated that though she desperately tried to raise alarm, she could not do so. When her mother-in-law returned home, she disclosed the incident to her but, the latter advised her not to narrate it to her husband immediately as she might be misunderstood. She stated that on the next day as well the accused/appellant frocibly committed sexual intercourse on her and thereafter, waited with a dao in hand threatening to assault her if she dared to disclose the incident to her husband. The accused/appellant, however, left sometime thereafter as he was called by his daughter. The prosecutrix further testified that in the evening, however, she narrated the above facts to her husband and her mother-in-law whereafter a village meeting was convened. The villagers attending the meeting having opined that the accused/appellant had indulged in such activities earlier as well and that no useful purpose would be served by taking a decision therein, suggested that the police be informed. In these circumstances, the F.I.R. was lodged. In her cross-examination the prosecutrix reiterated that as she was kept under constant fear of assault she could not raise alarm. She was categorical in stating that she desperately tried to free herself from the accused/appellant in vain. The prosecutrix also rendered her statement under Section 164, Cr. P.C. in course of the investigation. A plain reading thereof demonstrates that the same is in conformity with her testimony at the trial.

13. The evidence of Dr. Ranjan Kumar Das, PW 3, is to the effect that the body of the prosecutrix did not bear any mark of violence on her private parts and that there was no sign to suggest commission of rape on her. He, however, opined that her age was about 15 years but below 17 years. He proved the medical report Ext-1 with the signature thereon Ext-1(1).

14. The accused/appellant wholly denied the charge and claimed himself to be innocent of the offence. He, however, asserted that he had been falsely implicated in the case in view of a subsisting land dispute between him and the husband of the prosecutrix. He, however, declined to examine any witness.

15. On a consideration of the totality of the evidence on record, I do not feel persuaded to sustain the contention advanced with regard to the delay in filing of the FIR. The prosecutrix has explained the reason for delayed disclosure of the incident to her husband. It is apparent that the informant at the first place sought redress by convening a village meeting. The same having failed, the F.I.R. was lodged. Having regard to the fact that the offending acts complained of had been perpetrated on 10.11.2001 and 11.11.2001, the case of the prosecution is not liable to be discarded, the F.I.R. having been lodged on 12.11.2001. There is no inexplicable delay in filing the F.I.R. The decision of the Apex Court in Thulia Kali (Supra) is distinguishable on facts and is, therefore, of no assistance to the accused/appellant.

16. True it is that the medical evidence, per se, does not establish any sign of rape committed on the prosecutrix. Noticeably she was subjected to medical examination after two days of the commission of the act of coitus. The prosecutrix being a married woman mere absence of sign of recent act of intercourse, by itself, would not discredit her evidence to the said effect, if, the same is otherwise acceptable. The testimony of the prosecutrix with regard to the sequence of events having a bearing on the commission of the act of intercourse both in course of the investigation before the concerned Magistrate and at the trial display a substantial element of consistency, which, in my opinion, makes it creditworthy. No attempt has been made by the defence to question the credibility of the prosecutrix. No allegation has been made with regard to her chastity. She has not been condemned as a woman of easy virtue. On the facts on the record, therefore, there is no convincing or cogent reason to disbelieve her. The plea of subsistence of a land dispute between the parties is, in my view, too inconsequential bearing in mind the dignity of a woman in the present Indian society. It is inconceivable that a husband would stake his wife's reputation and esteem for such a scanty consideration. The medical evidence is, after all, an opinion evidence and in my

view in the present fact situation cannot over-ride the version of the prosecutrix vis-a-vis the acts complained of. The decision of the Andhra Pradesh High Court in Anmula Raji Reddy (Supra) turns on its own facts. A reading thereof suggests that in the attending facts the prosecutrix was adjudged to be unreliable. The same analogy cannot be extended in the case in hand having regard to the quality of the testimony of the victim.

17. In the above view of the matter, the conviction recorded by the learned Trial Court cannot be faulted with. The same is therefore upheld.

18. Having regard to the proved charge against the accused/appellant which proclaims that he had repeated his act of sexual intercourse taking advantage of helplessness of the prosecutrix in the absence of her husband subjecting her to fear and force : I am not inclined to interfere with the sentence as well. The appeal, therefore, fails.

19. The learned Amicus Curiae would be paid his fees as permissible in law. Before parting, I would like to place on record my appreciation of the valuable assitance rendered by Mr. Khan, learned Amicus Curiae, in disposal of the appeal. Mr. Khan in his usual magnanimity suggests that the amount of fees payable to him as the Amicus Curiae be placed at the disposal of any organization dedicated to philanthropic ventures. While appreciating the gesture of Mr. Khan, learned Amicus Curiae, it is ordered that the amount of his fees be deposited with the High Court Legal Services Committee of this Court.

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