

Promod Das Pathak Vs. State of Assam

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Court : Guwahati

Decided On : Jan-09-2008

Judge : I.A. Ansari, J.

Appellant : Promod Das Pathak

Respondent : State of Assam

Disposition : Appeal allowed

Judgement :

I.A. Ansari, J.

1. By the impugned judgment and order, dated 5-6-2004, passed by the learned Assistant Sessions Judge, Barpeta, in Sessions Case No. 5(B)/1993, the accused-appellant stands convicted under Section 376, I.P.C. and sentenced to undergo rigorous imprisonment for seven years and pay fine of Rs. 2,000/- and. in default of payment of fine, undergo rigorous imprisonment for a further period of four months.

2. The case of the prosecution, in brief, is thus : The prosecutrix (SP) used to go, occasionally, to the house of the accused to help his sister-in-law in her domestic works. On 9-1-1992, on being asked by the sister-in-law of the accused, SP came to the house of the accused at about 12 noon and on that day, while the sister-in-law of the accused went to the nearby pond to wash clothes, SP started brooming

the house. At that very moment, the accused came there, grabbed SP, pinned her down to the ground, gagged her mouth by a piece of cloth and forcibly had sexual intercourse with her. After satisfying his sexual urge, the accused removed the piece of cloth with which he had gagged SP and, showing her a dagger, threatened her not to scream. The accused further told SP that if she ever discloses the occurrence to anyone or if any case is filed against him, SP and her parents would be killed. Because of the intimidation, which she has been so subjected to, SP did not report the matter to anyone. Even after she had conceived as a result of the forcible sexual intercourse, which the accused had with her, she did not report the matter to anyone; but when she was carrying pregnancy of 7 1/2 months, she was no longer in a position to conceal the fact of her pregnancy and, therefore, disclosed to her parents about what the accused had done to her. Her parents called a 'mel' (i.e., sitting of the elders of the village for resolution of disputes); but the co-villagers of SP could not obtain any relief for her. She, then, lodged a complaint with the Court of the Chief Judicial Magistrate. A learned Judicial Magistrate, after holding an inquiry under Section 202, Cr. P.C., committed the case for trial to the Court of Sessions.

3. To the charge framed under Section 376 of the I. P. C. at the trial, the accused pleaded not guilty. In support of their case, the prosecution examined altogether six witnesses. The accused was, then, examined under Section 313, Cr. P. C. In his examination aforementioned, the accused denied that he had committed the offence, which was alleged to have been committed by him, the case of the defence being that of total denial. No evidence was, however, adduced by the defence. On finding the accused guilty of the offence under Section 376, I.P.C., the learned trial Court convicted the accused accordingly and passed sentence against him as mentioned hereinabove. Aggrieved by his conviction and the sentence passed against him, the accused has preferred this appeal. I have heard Mr. J. M. Choudhury, learned Senior Counsel, for the appellant, and Mr. D. Das, learned Additional Public Prosecutor, appearing on behalf of the respondent.

4. While considering the present appeal, what may be noted, at the very outset, is that during the course of the trial, the alleged victim, SP, had delivered a baby and in the discharge certificate, her age was mentioned as 18 years. This apart, having

discussed other evidence on record, the learned trial Court has proceeded by treating the age of SP as 18 years or above. The learned trial Court has also concluded that SP's evidence is reliable and since the sexual intercourse, which the accused had with her, was forcible and without her consent, the said sexual intercourse amounted to commission of offence of rape. These findings have not been challenged by the prosecution. In order, therefore, to decide the present appeal, this Court has to proceed on the premises that according to the evidence on record, SP was 18 years of age at the time of the alleged occurrence of rape to anyone.

5. In view of what has been indicated above, what falls for determination, in the present appeal, is the question as to whether the accused had sexual intercourse with SP and if so, whether such sexual intercourse was against her will or without her consent. While considering the present appeal, it is also worth pointing out and reiterating that the alleged occurrence of rape was disclosed by SP to her parents after more than 7 months of the occurrence. As already indicated above, it is the admitted case of the prosecution that until the time she had started running pregnancy of more than 7 months, SP had not reported the alleged occurrence of rape to anyone. There is, thus, delay of more than seven months in not only lodging the complaint, but even in disclosing the alleged occurrence of rape.

6. The question, now, is as to whether the delay is an aspect, which is irrelevant and not required to be considered in a trial of rape. The law, we must bear in mind, insists on reporting of commission of every offence at the first possible opportunity. The reason why law insists on prompt disclosure of offence is that delay provides enough time to make embellishments, manipulate and fabricate stories and thereby give not a true, but colourised, substantially improved or even wholly false version of an occurrence. The delay, in disclosure of commission of an offence, is, thus, an aspect, which is extremely relevant in every criminal trial. It cannot, therefore, as a principle of law, be contended that delay is not an aspect, which is relevant in a trial of rape. Considering, however, the Indian scenario, wherein it is the victim, who is put to greater embarrassment than even the rapist, the inherent social compulsions of a family, which does not permit it to put a scar on the character of its female member (i.e. the victim) by disclosing commission of

offence of rape, and the ethos of the Indian society, which look down upon a victim of rape and rarely sympathises with her, the Courts have been insisting that the veracity of a prosecutrix's evidence cannot be rejected merely on the ground of delay in making the disclosure of commission of rape or sexual assault, for, it is not uncommon for a girl or a woman not to disclose, in the Indian social conditions, an incident of sexual assault on her. In short, the tendency to feel embarrassed, when a female member becomes the victim of sexual assault, makes her and her family members hesitant to disclose such incident of sexual assault to anyone and, sometimes, a victim does not disclose such incidents even to the members of her own family. This does not, however, mean that merely because a woman alleges commission of offence of rape, prosecution has no responsibility to explain that, and the trial Court has no duty to ascertain if, the delay in making the disclosure of offence of rape is convincing and plausible. There need not be direct evidence offering explanation for delay; but there must be, if not direct, indirect or circumstantial evidence discernible from record explaining the delay, particularly, when the delay is considerable and inordinate.

7. Bearing in mind what is indicated above, when I revert to the facts of the present case, what attracts the attention, most prominently, is that according to SP, she had not reported the occurrence to anyone including her parents, because of the fact that the accused had threatened her by showing a dagger that if she discloses the occurrence to anyone or if any case was filed against him, she and her father would be killed. The evidence, so given by SP, makes one thing crystal clear that had there been no such intimidation, she would have disclosed the occurrence.

8. Situated thus, it has become the duty 'of this Court to determine if the threat, which SP had spoken of, was at all given by the accused-appellant and whether it was such intimidation, which prevented SP from making any disclosure of the occurrence for more than seven months. While considering this aspect of the case, what needs to be noted is that there is not even an iota of evidence on record that on any day, at any time, after the alleged rape had been committed on her by the accused, the accused ever met SP, threatened or intimidated her. In fact, there is no evidence on record that the accused had remained present in his

village after the alleged occurrence; rather, the evidence on record shows to the contrary inasmuch as the evidence discloses that after disclosure of the alleged occurrence of rape on SP, the accused was brought from another district to his village for the 'mel' (i.e. the sitting of the elders for settlement of disputes). There is no cogent evidence to show that the alleged threat, which SP spoke of, continued to have its influence on her even when she has found herself pregnant and that such state of influence continued so much that she could not disclose the occurrence to anyone, even within her family, for long 7 1/2 months until the time she could no longer keep the event a secret, because of the advanced stage of her pregnancy. In the circumstances, as indicated hereinbefore, the possibility of the accused having sexual intercourse with SP with her consent cannot, therefore, be confidently and boldly ruled out. When such was the nature of evidence on record, learned trial Court ought to have given, at least, benefit of doubt to the accused-appellant.

9. Because of what have been discussed and pointed out above, this appeal is allowed. The impugned judgment and order, dated 5-6-2004, shall accordingly stand set aside. The accused-appellant is hereby held not guilty of the offence charged with and is acquitted of the same under benefit of doubt. Let the accused be set at liberty forthwith unless he is required to be detained in connection with any other case. Send back the LCR

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