

Mahesh Das Vs. the State of Assam.

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Court : Guwahati

Decided On : Aug-31-2010

Judge : Mr. Justice H.N. Sarma, J.

Acts : IPC - Section 376/313

Appeal No. : CRIMINAL APPEAL NO. 29(J) OF 2005

Appellant : Mahesh Das.

Respondent : The State of Assam.

Advocate for Def. : Mr. B.B. Gogoi, Adv.

Advocate for Pet/Ap. : Mr. A. Nath, Adv.

Judgement :

1. Being aggrieved by the conviction of the appellant u/s 313 IPC passed by the learned Sessions Judge, Bongaigaon in Sessions Case No. 55/05 convicting the accused /appellant under Section 376/313 IPC sentencing him to undergo R. I. for 7 years and to pay a fine of Rs. 5,000/-, in default, to undergo further R. I. for 1 month, the present appeal is preferred from jail.

2. Mr. A. Nath, learned counsel was appointed as amicus curiae to assist the Court in the jail appeal. Learned amicus curiae was not present in the court on 24/9/10 and accordingly the appeal could not be heard on that day, today at the initial stage, he was not present but after hearing Mr. BB Gogoi, the learned Public

Prosecutor, Assam appearing for the State respondent for a considerable period, the amicus curiae appears in the Court and prays for adjournment. The appeal is taken up today itself since the case relates to jail appeal.

3. On the basis of an FIR lodged by one Shyamoli Das on 2/11/02 with the officer-in-charge, North Salmara police outpost alleging inter alia that the informant hails from a very poor family and was engaged as a domestic maid in the house of the accused about 3 years back. On 2/8/01 when she went to the firm house of the accused, situated at a distance of 1 km. away from the house of the accused, to give him rice, the accused forcibly committed rape on her taking advantage of non-presence of any other person. It is further alleged that he threatened her that she would be killed if she discloses the fact to others. It is further alleged that her younger brother was passing nearby the firm and he saw the occurrence. She did not inform the incident to anybody out of fear. It is further alleged that on apprehension of being pregnant, she informed the accused and the accused gave some medicines. Thereafter, the accused also drove her out from his house. Accordingly, she compelled to lodge a complaint with the Ghilaguri Gaon Panchayat and wherein the accused confessed his guilt and agreed to pay an amount of Rs. 16,500/- to the complainant. But subsequently, the accused refused to make such payment and there has been delay in filing the FIR.

4. Upon receipt of the FIR, a GD Entry No. 23 dated 2/11/2002 and forwarded the ejahar the officer-in charge, Abhayapuri Police Station wherein it was registered as Abhayapuri PS Case No. 131/02 u/s 376/313 IPC. During the course of investigation, the I/O visited the place of occurrence and recorded the statement of witnesses u/s 161 Cr PC, got the victim medically examined and arrested the accused person. After completion of the investigation, having found a prima facie case submitted charge- sheet against the accused person u/s 376/313 IPC. The learned SDJM, North Salmara committed the case to the Sessions Court being the case is exclusively triable by the Court of Sessions Judge, Bonagaion wherein it was registered as Sessions Case No. 55(A)/03.

5. Upon consideration of the materials and documents submitted by the I/O recorded u/s 173 Cr PC and upon hearing the prosecution witnesses, the learned

Adhoc Additional Sessions Judge, Bongaigaon, in the meantime, examined the accused u/s 313 Cr PC and when explained before the accused, he pleaded not guilty and claimed to be tried.

6. During the course of trial prosecution examined as many as 6 witnesses including the informant (victim girl), the Doctor and the Investigating Officer. After closure of the examination of the prosecution witnesses, the trial Judge found the appellant guilty and on examination u/s 313 Cr PC, the accused denied the same but no defence witness was examined by him.

7. The learned trial Judge after consideration of the materials and evidence available on record, convicted the accused/ appellant u/s 376/313 IPC and sentenced him in the manner as indicated above vide impugned judgment and order dated 24/5/05. Not being satisfied with the same, the accused/appellant preferred this appeal from jail.

8. Amongst all the 6 prosecution witnesses, the PW. 1 (Shamoli Das) is the most important one as she being the victim of the offence and being a major girl. In her deposition, PW. 1 stated that the occurrence took place in the year 2005 and since 3 years prior to the occurrence, she was working in the house of the accused as maid servant. Accused had a firm house about 1 km. from his residence and on 2/1/01 when she went to the firm house taking rice for the accused, he committed sexual intercourse on her laying her down forcibly by inserting his penis into her vagina. She further deposed that the accused threatened her not to disclose the fact to anybody. Six months thereafter she realize that she became pregnant and having told the accused, he gave him some medicine and on the following day abortion was caused. After termination of her pregnancy, the accused drove her out from his house. Then she approached the Gaon Panchayat and accordingly a ?mel? was convened at the office of the Gaon Panchayat wherein the accused confessed his guilt and agreed to pay the expenditure to be incurred in her marriage. Subsequently, the accused refused to pay any money and accordingly she lodged an FIR vide (Ex. 1) wherein she put her signature as (Ext. 1(1)). She further deposed that during the course of investigation, police investigated her and examined her by a doctor and her statement was also recorded by a Magistrate. In

her statement, she further stated that after the occurrence, the accused committed such intercourse with her for 4/5 days, sometime in the morning and sometime in the evening, when she went to give him rice. She also stated that she did not tell the incident to anybody.

9. PW. 2 (Ajit Das), is the President, Chilaguir Gaon Panchayat. He deposed that in the year 2002 a complaint was lodged by PW. 1 with the Panchayat alleging that the accused raped her and also caused miscarriage to her. Upon receipt of the complaint, he convened a 'mel' in the office of the Gaon Panchayat wherein the complainant and the accused and other people are present and the accused admitted his guilt. In the said meeting it was decided that the accused would give an amount of Rs. 15000/- to the complainant for the purpose of her marriage.

10. PW. 3, Rajat Das, younger brother of the prosecutrix deposed that the occurrence took place 3 years back and at the time of occurrence, the prosecutrix was working in the house of the accuse and he also sometime worked in the house. On 2/8/01 he was reported by the prosecutrix that she was raped by the accused and she became pregnant and the accused drove her out from the house. He also corroborated the statement of PW. 2 as regards deposition of payment and stated that Rs. 16,500/- was due and being the accused refused to pay the same and thereafter entire matter was reported to the police.

11. PW. 4 (Smt. Anjana Goswami) is the President of Anchalik Panchayat, who corroborated the statement of PW. 2.

12. PW. 5 (Dr. Abanikanto Sarma) who was serving as M&HO-I; during the relevant time at Abhayauri CHC. He deposed that he examined the accused on 15/1/02 and upon examination he was of the impression that there was no sign of forcible intercourse recently and the girl is above 18 years and there was sign of pregnancy in the past within one year. The reported examined by him is proved as Ext. 2 wherein he put his signature as Ext. 2(1).

13. PW. 6, (S. I. , Gajen Gohain), Incharge of Norh Salmara Police Outpost and the Investigating Officer of the case deposed that he received the written ejahar from the informant and he recorded the GD Entry No. 23 on 2/11/02 and

forwarded the case to the officer-in-charge Abhayapuri police station for registering a case and took up the investigation. On receipt of the ejahar, the O/C Abhayapuri registered Abhayapuri PS Case No. 131/02 u/s 376/313 IPC. He visited the place of occurrence on 4/11/02 and draw the sketch map and examined the witnesses Anjit Barman, Anjan Goswami, Rajat Das and the victim girl and recorded their statements. Te medical examination of the victim girl was done on 15/11/02 in the Abhayapuri CHC. Her statement was recorded by the Magistrate. After collecting necessary report, he arrested the accused and forwarded him to the Court. After completion of the investigation, he submitted charge-sheet against the accused u/s 376/313 IPC for his trial.

14. The circumstances that occurred against the accused during the course of trail having been brought before the accused on his examination u/s 313 Cr PC, the accused denied the same and claimed to be tried. Upon narration of the prosecution witnesses, it is apparent that PW. 1 is the star witness, on the basis of which the prosecution case rests. A close scrutiny of the prosecution witnesses as disclosed from the evidence on record, it is not found that after the first occurrence at the time of commission of offence by the accused, it is not clear whether the accused has been resisted in committing the offence. Thereafter, subsequently on 4/5 occasions sexual intercourse took place but she has not stated in her deposition that she resisted the accused. Nonetheless, the informant continued to work in the house of the accused inspite of such occasions. It appears that such action was taken only she was driven out from the house. When the prosecutrix reported about her pregnancy to the accused, the accused gave her some medicine and she got her pregnancy aborted. Thereafter, the accused drove her out from his residence. Initially, the offence took place on 2/8/01 and she filed by ejahar only on 2/11/02 i. e. after more than 1 year + months later. From the evidence of PW. 3 & 4, it transpires that the prosecutrix preferred to lodge the FIR only when the accused did not pay the awarded sum so fixed in the village trial.

15. Thus from the evidence on record, there is no clear-cut evidence as regards absence of consent of the prosecutrix in commission of the act alleged in the FIR. The accused was a married man and during the relevant time, his son was studying in college and having a daughter. The accused was arrested on 6/11/02

and was released on bail on 4/2/03. Thereafter, he is in custody from the date of the judgment i. e. from 24/1/05, till date. Thus, the accused spent in custody for almost 6 years, by now.

16. Considering the entire facts of the case and marshal of the evidence on record and taking note of the aforesaid circumstances, I maintain the conviction imposed upon the accused/appellant but modifying the sentence to the period already undergone.

17. Accordingly, the accused/appellant is sentenced to the period already undergone in custody. The accused be set at liberty forthwith, if not required in any other case.

18. In the result, the appeal stands allowed to the extent of the modification of sentence as indicated above.

19. Send down the LCR forthwith.

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