

Putul Chetri Vs. the State of Assam.

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Court : Guwahati

Decided On : Jun-22-2010

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

Acts : Sexual Connection - Section 375 IPC

Appeal No. : CRIMINAL APPEAL NO. 381 OF 2002

Appellant : Putul Chetri.

Respondent : The State of Assam.

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

Advocate for Pet/Ap. : MR. AS CHOUDHURY; MR. I. HUSSAIN; MR. R. MAJUMDAR; MR. R. ALI, Adv.

Judgement :

1)This appeal is directed against the judgment and order dated 13/8/2002 passed by the learned Additional Sessions Judge (Adhoc), Kokrajhar in Sessions Case No. 2/2001 convicting the accused u/s 376 IPC and sentencing him to undergo 7(seven) years of rigorous imprisonment and to pay fine of Rs. 5000/-, in default to suffer another six months simple imprisonment.

2)I have heard Mr. I. Hussain, learned counsel led by Mr. AS Choudhury, learned counsel for the appellant and Mr. BB Gogoi, learned Public Prosecutor for the State.

3)The prosecution case in brief is that an FIR was lodged on 23/4/98 by one Smt. Menoka Barman alleging that on 22/4/98 at about 6-30 PM in her absence, the accused /appellant entering into her house committed rape on her minor daughter aged about 7 years. On the basis of the aforesaid FIR, the Gossaigaon PS Case No. 62/98 u/s 376 IPC was registered against the accused and the process of investigation started. The Investigating Officer (for short, ?I/O?) during the course of investigation visited the place of occurrence, seized articles and got the victim medically examined and arrested the accused. After completion of the investigation having found a prima-facie case, police submitted chargesheet against the accused u/s 376 IPC. The case being exclusively triable by the court of Sessions, after registering the case as GR No. 334/98 the learned CJM, Kokrajhar committed the case to the court of learned Sessions Judge, Kokrajhar.

4)The learned trial Judge, upon consideration of the materials produced by I/O u/s 173 Cr. P. C. , so far collected during the course of investigation, upon hearing learned counsel for the parties and having found sufficient materials, framed charge u/s 376 IPC against the appellant. The charge having been read over and explained, the accused pleaded not guilty and claimed to be tried.

5)During the course of trial, the prosecution examined as many as 7(seven) PWs including the Doctor and the I/O. After completion of the prosecution side, the circumstances that appeared in the evidence against the accused have furnished to him during his examination u/s 313 Cr. P. C. to which the accused denied. The accused did not adduce any defence witness.

6)The learned trial Judge, upon consideration and appreciation of the evidence and materials available on record, convicted and sentenced the accused in the manner as indicated above and hence this appeal.

7)During the course of argument, learned counsel for the appellant submits that there is no independent corroboration of the statement of the victim girl, PW. 2 who admittedly was a child of 7 years at the time of occurrence and admittedly she was aged about 10 years at the time of her evidence and in the in the absence of corroboration of her statement, it is not safe to rely upon her evidence. It is further contended that the Doctor, PW. 1 having specifically found that there was no sign

of rape upon the victim girl and also in terms of the result of the medical examination of the victim girl, no case u/s 376 IPC has been made out and at best it may be a case falls u/s 366 A IPC. Accordingly, the conviction u/s 376 IPC is not sustainable in law. It is further submitted that at the relevant time the accused was a minor of 14 years and he ought to have been tried by a juvenile court and on failure of the prosecution to do so, the entire process is vitiated.

8) Learned Additional Public Prosecutor, however, submits that although the victim girl who was examined as PW. 2 was a minor of 7 years at the time of occurrence, she had sufficient capacity to understand what she has deposed and on such consideration and satisfaction her statement was recorded by the learned trial Judge. That apart, her statement was also recorded u/s 164 Cr. P. C. after necessary satisfaction by the learned Magistrate. The evidence of victim girl is sufficiently corroborated by other evidence, more particularly, of PW. 3 and PW. 5. in spite of the evidence of Doctor, PW. 1, who stated that there is no sign of rape, the learned trial Judge is perfectly justified to hold the accused guilty of the offence committed u/s 376 IPC on the basis of the facts as proved by the prosecution witnesses including the victim girl. It is contended by the learned Public Prosecutor that it is a full proof case which needs no interference, more particularly, considering the gravity of offence committed upon the a minor girl.

9) Submissions of the learned counsel for the parties have received due attention of this Court and their submissions have led me to go through meticulously through the evidence and materials on record including the statements of prosecution witnesses.

10) Let us now examine how far the prosecution has been able to prove the case keeping in mind the basis of criminal jurisdiction regarding proof beyond reasonable doubt, on the basis of the evidence on record.

In this case, out of 7(seven) witnesses proved by the prosecution, PW. 1, Dr. H. C. Brahma is the Doctor who examined the victim girl on 23/4/98 while he was serving as Superintendent of RNB Civil Hospital, Gossaigaon, in his evidence before the court he deposed that on 23/4/98 he medically examined the victim girl, PW. 2 and on her examination he found that her labia-majora of both sides were

swollen and reddish in colour, hymen intact, no semen stains on her private parts, no male pubic hair was found on her private parts, no external injuries were found on her cheeks and body and as per x-ray finding her age was 7 to 8 years. There was no sign of rape. The medical report was proved as Ext. 1 and Ext. 1(1) is his signature.

In cross, he stated that if there was penetration question of intact hymen does not arise.

11)PW. 2, Anima Barman, the victim girl at the time of her production before the court, she was aged about 10 years. Before her examination, the learned trial Judge by putting certain questions tested her general intelligence about her capacity of understating and after such consideration and satisfaction, he proceeded to examine her witness as PW. 2. In her deposition, she stated that on the date of occurrence about 4 years ago at about 7-30 PM the accused came to their house in absence of her parents. She identified the accused in the dock. The accused asked her to press his back. Then he lied her down in the bed and opened her pant. The accused put his male organ on her female organ. She felt pain and tried to raise alarm. But the accused gagged her mouth and did not allow her to shout. The accused penetrated his male organ into her vagina with saliva. She further deposed that when her parents returned home she narrated the incident to them and she further intimated regarding the occurrence to Kamala and Subodh.

In her cross, she stated that nobody came to their house when the occurrence took place but a girl saw the occurrence through a window. There was bleeding from her female organ. She further denied that the accused did not committed rape on her. Suggestion of false evidence was also denied by her.

12)PW. 3, Smti. Menaka Barman, the mother of the victim girl who lodged the FIR, in her deposition, stated that about 4 years ago the accused came to their house at about 6-30 PM and at that time her daughter was alone in their house. When she returned home the witnesses Purnima and Uma told her that the accused has forcibly committed sexual intercourse with her daughter and when her daughter tried to cry, the accused gagged her mouth. She also told about the incidence

when the father of the victim girl returned. The victim girl was medically examined at Kokrajhar RNB Civil Hospital on the next day. She lodged an ejahar on the next day which was written by one Subudh Sarkar. She further deposed that she saw bleeding from the vagina of the victim girl and the pant wore by the victim girl was seized by police and a 'kupi' which was burning inside the room at the time of occurrence. She further deposed that the accused penetrated his male organ into her female organ.

In cross, she denied that Purnima and Uma did not tell her anything regarding the occurrence. She further denied the suggestion that she told the I/O that her victim daughter did not tell her about the occurrence in details. She saw semen on the pant of the victim girl, PW. 2. The suggestion given by the accused that he did not committed any sexual intercourse with her daughter was denied.

13)PW. 4, Subodh Sarkar wrote the ejahar on 23/4/98 as per the dictation of PW. 3 wherein he put his signature vide Ext. 2(1). He had no personal knowledge about the occurrence.

14)PW. 5, Smti. Uma Baskey who is one of the vital witness of the prosecution, deposed that on the date of occurrence about 4 years ago at about 6-30 PM while the victim girl was reading book in the veranda of their house, the accused came to the house and took her inside. The accused asked the victim girl to press his body and when they did not come out for some time, PW. 5 peeped through the window and saw that accused committed sexual intercourse with the victim girl. The victim girl was lying on a bed. At that time, parents of the victim girl were not present at all. She could identify the accused and the victim girl with the help of the light of the lamp which was burning in the house.

In cross, she stated that the victim girl did not tell her about the occurrence and the lamp was burning in the table inside the room. She denied that there was darkness in the room. She also denied the suggestion that the accused did not commit rape on the victim girl.

15)PW. 6, Anukul Barman, is the father of the PW. 2, victim girl. In his statement, PW. 6 stated that the occurrence took place at 6-30 PM on 22/4/98 while he and

his wife were not at home. In return to his house, his wife informed that her daughter was raped by the accused. After the occurrence, the accused was not found at home and was absconding. The FIR was lodged by his wife. At that time her daughter was 6 years old. He denied the suggestion that his daughter tell anything regarding the occurrence. He further denied the suggestion that the accused did not commit rape on her daughter and the case was instituted on grudge.

16)PW. 7, Ranjit Kr. Basumatory, S. I. of Police of Gossaigaon Police Station is the I/O of the case. He stated that O/C of the police station received an ejahar and registered the same. The O/C endorsed the same in the name of the PW. 7 for investigation as the I/O of the case. Visiting the place of occurrence, he prepared sketch map and recorded the statement of witnesses and sent the victim girl to RNB Civil Hospital, Gossaigaon for medical examination. He also seized one Jangia vide Ext. 4 and a Chaki vide Ext. 5. He could not arrest the accused who was absconding. On 9/8/98, the accused surrendered and he was arrested by the police. After completion of the investigation, he submitted the chargesheet vide Ext. 6 against the accused u/s 376 IPC.

In cross, he mentioned that victim girl did not tell before him that the accused penetrated his male organ into her female organ with the help of saliva. It is further stated that PW. 3 did not tell him that chaki was burning inside the room. He further stated that PW. 6 told him that the victim girl felt pain on her female organ.

17)The victim girl, PW. 2 was admittedly a minor and aged about 6 + years at the time of occurrence and her age was not challenged by the defence. Few days after the occurrence, her statement was recorded by a Magistrate u/s 164 Cr. P. C. Before recording her statement, the learned court below was fully satisfied about the understanding capacity of the victim girl. Right from the recording of her statement made us/ 164 Cr. P. C. by the Magistrate to her examination before the court during trial as PW. 3, the victim girl maintained the same stand that the accused committed rape on her. Although she was subjected to cross examination at length by the defence, but her clear and cogent statement could not be dislodged at all by the defence in cross examination. She maintained the same

stand that the accused committed rape on her inside the room on the date of occurrence in absence of her parents by putting inside his genital organ into her genital organ. The statement of PW. 2 is further corroborated by another eye-witness of the occurrence i. e. PW. 5, whose statement was also recorded u/s 164 Cr. P. C. . In her cross examination, PW. 5 specifically stated that she had personally seen the occurrence. The description of the occurrence as narrated by PW. 5 fully corroborated to the description given by the victim girl, PW. 2. Immediately after arrival of the parents, PW. 5 narrated the story. PW. 3, the mother of the victim girl was informed by the victim girl as well as by PW. 5. PW. 3 saw the bleeding through the genital organ of the victim girl and she lodged the FIR. So also the father of the victim girl, PW. 6 was immediately intimated about the occurrence by the victim girl as well as by PW. 3 has narrated the occurrence as disclosed before them by the eye-witness of the occurrence i. e. , PW. 5.

18)Now let us see how far the medical evidence can rescue the accused. PW. 1 is specific in his statement that upon medical examination the age of the victim girl was found to be 6 years. Although he has stated that the hymen of the victim girl was found to be intact and he found her labia-majora was swollen and reddish in colour. There is no cross examination as to cause for such unnatural stage of labia- majora as disclosed in the report. From the face of the facts as proved by the prosecution witnesses such unnatural stage of female organ, namely labia-majora to be swollen or reddish cannot be but for the reason of the actions and acts committed by the accused. PW. 1 was of the impression all along that there was no sign of rape. Such impression certainly was expressed by PW. 1 on the ground that hymen was found to be intact.

19)It has been projected by the learned counsel for the appellant that intact position of hymen as found by PW. 1 would not attract the offence under Section 376 IPC upon the accused and thus the medical evidence belies the testimony of the prosecutrix as well as other PWs. But we find that the prosecutrix specifically stated that the male genital organ of the accused was inserted into her female genital organ and it caused her pain and she cried. The corresponding medical evidence to the effect that the labia-majora of the genital organ of the victim girl was found to be swollen and become reddish and this is sufficient proof of the fact

that in fact there was some penetration of the genital organ upon the female organ of the victim girl, howsoever less it may be. In the case of penetration, however, slight penetration is sufficient. In certain cases of such nature it cannot be conclusively held that there was no rape as because the Doctor did not find that hymen was not ruptured. Direct, specific and clear statements of the prosecutrix tested by cross-examination will not be evaporated along with statement of eye-witness, the PW. 5 only on such observation of the Doctor, PW. 1.

20) Rape is a crime and not a medical condition and it is a legal term and not a diagnosis to be made by the Doctor by examining the victim. The Doctors is only to examine the victim and to narrate the finding and he is not required to state whether there was a sign of rape or not. Such fact can be proved only by the statement of witnesses including that of the prosecutrix.

21) The Apex Court in the case of State of H. P. vs Gian Chand reported in (2001) 6 SCC 71 categorically held that absence of any external bleeding mark on the body of the victim does not mean that rape did not take place. Modi's Medical Jurisprudence and Toxicology, 23rd Edn. at page 897 reflects that to constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with the emission of semen and the rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda, with or without the emission of semen, or even an attempt at penetration is quite sufficient for the purpose of law. It is therefore, quite possible to commit legally, the offence of rape without causing any injury to the genitals or leaving any seminal stains. In such a case, the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed.

22) The word intercourse has not been defined in IPC. The word intercourse for the purpose of Section 375 IPC means sexual connection (Concise Oxford Dictionary). In Khanu v. Emperor reported in AIR 1925 Sind 286, the meaning of the word 'intercourse' was considered. Intercourse may be defined as mutual frequent action by members of independent organization. Then commercial intercourse, social intercourse, etc. have been considered; and then appears, by a metaphor the word intercourse, like the word commerce, is applied to the relations

of the sexes. Here also here is the temporary visitation of one organism by a member of the other organization, for certain clearly defined and limited objects. The primary object of the visiting organization is to obtain euphoria by means of a detent of the nerves consequent on the sexual crisis. But there is no intercourse unless the visiting member is enveloped at least partially by the visited organism, for intercourse connotes reciprocity. Therefore, to decide whether there is intercourse or not, what is to be considered is whether the visiting organ is enveloped at least partially by the visited organism. In the instant case which are found on record, had there been no such envelope by the visiting organ and in that event both sides of the labia -majora of the prosecutrix would not have swollen and became reddish in colour (Ref. AIR 1969 CRLJ 818)

23)Although learned counsel strenuously urged about the non- corroboration of the evidence of prosecutrix, I am not impressed with the argument on that grounds that, firstly, in a case u/s 376 IPC, the conviction can be based on the sole evidence of the prosecutrix , if it is found to be reliable. In the instant case, as indicated above, right from the recording of statement u/s 164 Cr. P. C. till her examination in the court, the prosecutrix maintained the same stand. Infact no second story of the occurrence has been propounded. Defence of the accused is total denial. Secondly, the conduct of the accused that he absconded himself immediately after the commission of offence has not been explained which goes against him. Thirdly, there is another eye-witness, PW. 5, who saw the occurrence and her statement was also recorded u/s 164 Cr. P. C. Although the attack made on the veracity of the statement of PW. 5 on the ground of improvement of evidence to the effect that she has not given detail description before the I/O of the case while examination u/s 161 Cr. P. C. is also not acceptable on the ground that such an omission was not proved in accordance with the provision of Section 162 Cr. P. C. by putting them to the witnesses. It is now well settled that the conviction of the offence of rape can be based on the sole testimony of the prosecutrix if it lends support by other circumstances, short of corroboration.

24)In this regard, we recall the observation of the Apex Court rendered in the case of State of H. P. vs. Lekh Raj and another reported in (2000) 1 SCC 247, wherein the Supreme Court stated that?? The criminal trial cannot be equated with a mock

scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hyper technicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or other of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interest of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind. ?

25) Again the Apex Court in another case of State of Punjab vs. Gurmit Singh and others reported in (1996) 2 SCC 384 held as follows: ?The testimony of the victim of sexual assault is vital and unless there are compelling reasons which

necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman, who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her

statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of certain amount of suspicion, treating her as if she were an accomplice. Inference have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.

26)In the instant case, the evidence of prosecutrix who is a minor child of 7 years of age, is sufficient enough to inspire confidence and to accept the statement so far it relates to the occurrence and the act committed by the accused. That apart, the evidence of PW5, another eye-witness also corroborates the statement of the prosecutrix. In such a situation, want of corroboration as argued by the learned counsel for the appellant stands rejected.

27)In view of the above discussions, the prosecution in the instant case has been successful in proving the case that the accused committed the offence punishable u/s 376 IPC upon the prosecutrix by clear, cogent and impeachable evidence. Accordingly, the impugned judgment of conviction and sentence needs no interference.

28)Although, the learned counsel for the appellant submits that the accused at the time of occurrence was a juvenile of 14 years of age but the said fact is not borne

out of record rather it is on record that the accused was aged 21 years at the time of occurrence and hence he crossed over the age of juvenile.

29)The appeal stands dismissed. The accused is directed to serve out the sentence so imposed upon him by the learned trial court. The period already undergone shall be set off. Send down the LCR forthwith.

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