
(2008) 01 GAU CK 0027

Gauhati High Court

Case No: Criminal Appeal No. 18 of 2007

Ankur Dutta and Ors.

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Jan. 8, 2008

Acts Referred:

- Penal Code, 1860 - Section 376
- Penal Code, 1860 (IPC) - Section 376

Citation: (2008) 2 GLR 477

Hon'ble Judges: I.A.Ansari, J

Bench: Single Bench

Advocate: B.S.Sinha, J.M.Choudhury, Advocates appearing for Parties

Judgement

1. By judgment and order, dated 4.1.2007, passed, in Sessions Case No. 173k/2004, by the learned Sessions Judge, the appellants herein stand convicted under section 376(2)(g), IPC and sentenced to undergo rigorous imprisonment for six years each with fine of Rs. 2,000 and, in default of payment of fine, rigorous imprisonment for a further period of six months.

2. The case against the accusedappellants, as unfolded at the trial, may, in brief, be described as under : The prosecutrix (DM) lodged an FIR, on 23.3.1998, at Dispur Police Station, alleging, in brief, thus : DMs husband, JS, is a grade IV employee in the Fishery Department, his office being situated near Digholipukhuri par, Guwahati, but they used to reside at Beltola Road, Guwahati. On 19.3.1998, at about 7.30 p.m., when DM was alone in her house, accusedappellant No. 1, namely, Ankur Dutta, came to her house on a motorcycle, forcibly entered into her house and committed rape on her. When she protested, accusedappellant No. 1 threatened her with dire consequences. The accusedappellant No. 1, then, took her, on his motorcycle, to his residence at Japarigog. On the following day, i.e., 20.9.1998, at about 12.00 noon, accused Ankur Dutta along with two other accused, namely, Prafulla Injal and Abu Bakkar Siddique (i.e., the

accusedappellant Nos, 2 and 3 respectively), committed rape on her. Even Ankur Dutta's mother had assaulted her and took away her gold earrings. Somehow, a she managed to escape from the house at about 3 a.m. on 21.3.1998, whereupon she reported the occurrence to her husband. Thereafter, the couple reported the matter to the then Fishery Minister, Babul Das, and, on the instructions of the Minister, the FIR was lodged. Based on this FIR, a case was registered under section 376/342/379/34, IPC , against all the accused aforementioned. As Ankur Dutta's mother expired, the case proceeded against the three male accused, who are, now, appellants in this appeal.

3. Ib the charge framed under section 376(2)(g), IPC at the trial, all the present accusedappellants pleaded not guilty. In support of their case, prosecution examined altogether seven witnesses. The accused appellants were, then, examined under section 313, Cr.PC and in their examination aforementioned, all of them denied that they had committed the offence alleged to have been committed by them, the case of the defence being that of total denial. No evidence was, however, , adduced by the defence. Having found the accusedappellants guilty of the offence charged with, the learned trial court convicted them accordingly and passed sentence against them as mentioned hereinabove. Aggrieved by their conviction and the sentence passed against them, the convicted persons have preferred this appeal.

4. I have heard Mr. J.M. Choudhury, learned senior counsel, appearing on behalf of the accusedappellants and Mr. B.S. Sinha, learned Additional Public Prosecutor, Assam.

5. While considering the present appeal, what needs to be pointed out, at the very outset, is that according to the undisputed evidence on record, DM and her husband used to live, as tenants, at Ankur Dutta's house and during the period of their stay, as tenants, at Ankur Dutta's house, Ankur Dutta's maid servant disappeared. Ankur Dutta and the members of his family suspected that DM and her husband, JS, were involved in causing disappearance of their said maid servant. This event strained the relation between Ankur Dutta and his family members, on one hand and DM and her husband, on the other. It was because of such strained relation that DM and her husband, JS, left Ankur Dutta's house and shifted to a house at Beltola Road,Guwahati.

6. Thus, it is the admitted case of the parties that the prosecutrix and her husband, on the one hand and accused Ankur Dutta and his family members, on the other, had strained relation. A strained relationship is a doubleedged weapon, for, such a strained relationship may lead aperson even to commit rape ; at the same time, such a strained relationship may give rise to either totally false accusations or substantially improved version of an occurrence.

7. Bearing in mind what is indicated above, when I turn to the evidence on record, what attracts the attention, prominently, is that according to PW5 (i.e., the prosecutrix), on 19.3.1998, at about 7.30 p.m., while she was alone in her house, accused Ankur Dutta came there and committed rape on her and, when she protested, she was threatened

with dire consequences and, thereafter, accused Ankur told her that her husband had been kept confined in the house of accused Ankur Dutta and she too was, then, taken by accused Ankur Dutta, on his motorcycle, to his house. It is also in the evidence of PW5 that when she reached the house of accused Ankur Dutta, she found her husband there, but she could not talk to him and, after she was brought by accused Ankur Dutta to his house, her husband was allowed to go, though she was detained and kept confined inside the said house. PW5 has deposed that on the following day, at about 12.30 p.m., when accused Ankur Dutta's parents had left home, accused Ankur committed rape on her and, thereafter, the remaining two accused too committed rape on her. PW5 has further deposed that on the following day of her being brought to the house of accused Ankur Dutta, she, somehow, managed to escape from the said house at about 3.00 a.m. and reached her home. The prosecutrix, thus, according to her evidence, could escape from the house of accused Ankur Dutta at about 3 a.m. on 21.3.1998.

8. Close on the heels of the evidence of PW5, her husband (PW4) has deposed that on the day of the occurrence, while he was in his office, accused Ankur Dutta came there and took him to Ankur Dutta's house and after keeping him confined in a room there, elicited from him his (PW4's) address and, then, brought DM on Ankur Dutta's motorcycle to Ankur Dutta's house and both of them were, then, kept confined inside the house of accused Ankur Dutta. It is in the evidence of PW4 that his wife (PW5) reported to him that accused Ankur had committed rape on her, while she was alone in her house. It is also in the evidence of PW4 that while his wife was kept detained at the said house, he (i.e., PW4) was allowed to go home and, on the following day, his wife was released and she reported to him that during the period of her confinement, all the three accused had committed rape on her at night.

9. A combined reading of the evidence of PW5 and PW4 shows that according to PW5, when she was brought to accused Ankur's house, though her husband was present there, she could not report to her husband about the rape committed on her at her house by Ankur Dutta ; whereas the evidence of her husband (PW4) is that when his wife was brought to the house of accused Ankur, she reported to him, at Ankur Dutta's house itself, that accused Ankur had come to their house and committed rape on her. This apart the evidence of PW5 gives no indication at all that she was subjected to rape on the night, when she was brought to the house of accused Ankur ; rather, her version is that it was on the following day, in the afternoon, that she was subjected to rape by all the three accused including Ankur, when his parents were not at the house.

10. Coupled with the above, what can also not be ignored is that according to PW5, she managed to, somehow, escape from the house of accused Ankur at about 3 O'clock at night; whereas her husband's evidence is that his wife had reached home at about 6 O'clock in the evening. Furthermore, PW4 does not support the accusations made by PW5 that she had managed to escape from the house of accused Ankur ; rather, the evidence of her husband reflects that she was allowed to leave the house of Ankur Dutta at about 6 O'clock in the evening.

11. From what have been pointed out above, what becomes unavoidable to notice is that on every material aspect, PW4 and PW5 have contradicted each other. In fact, with every passing moment, the contradictions inherent in their evidence mutually destroy each other's credibility. Based on such evidence, it is wellnigh impossible to confidently hold that the prosecutrix was subjected to rape as alleged by her. It is, no doubt, true that conviction for an offence of rape can be based on the sole testimony of the prosecutrix. In order to, however, make the evidence of a prosecutrix the sole basis of conviction, her evidence must be tested to ensure that she has deposed truthfully. In the case at hand, the learned trial court appears to have not marshalled the evidence carefully to determine the veracity and truthfulness of the evidence given by the prosecutrix; rather, it has based the conviction of the accusedappellants on the principle that a prosecutrix's lone evidence can be made the basis of conviction in a case of rape. Such an approach is completely fallacious and is impermissible in law. In fact, in the face of the nature of evidence as discussed above, it becomes transparent that the evidence of PW4 and PW5 could not have been made the basis for conviction of the accusedappellant unless there were some other cogent and convincing evidence on record proving the prosecutrix's version of the rape having been committed on her as true. Let me, therefore, look for some other relevant and credible evidence on record. When I turn to the remaining evidence on record, I notice that as far as the remaining evidence on record are concerned, they do not, admittedly, help the case of the prosecution, for, none other than PW4 and PW5 have deposed anything with regard to the alleged occurrence of rape.

12. Besides what have been discussed above, one can also not ignore the fact that PW4 had left the house of accused Ankur on the very night of the occurrence, while his wife (PW5) was kept confined by accused Ankur at their house. There is not even an iota of evidence on record to show that while letting PW4 go, accused Ankur or anyone else had cautioned PW4 not to report the occurrence to anyone; yet PW4 remained completely silent for three days, though he himself claims that on the very first day in the evening, when his wife was brought to the house of accused Ankur, his wife had reported to him (PW4) that accused Ankur had committed rape on her.

13. In the light of what have been discussed above, it becomes clear that the evidence given by PW4 and 5 do not inspire confidence. Their evidence contradict and destroy each other's credibility and such shaken and discredited evidence could not have been made and ought not to be made, the foundation for conviction of the present three appellants.

14. In the result and for the reasons discussed above, this appeal is allowed The judgment and order, dated 4.1.2007, aforementioned shall accordingly stand set aside.

15. All the accusedappellants are held not guilty of the offence charged with and they are hereby acquitted of the same,

16. Let the accusedappellants be set at liberty forthwith unless they are required to be detained in connection with any other case.

17. Send back the LCR.