

(2011) 06 GAU CK 0043

Gauhati High Court (Agartala Bench)

Case No: Criminal Appeal No. 41 of 2003

Sri Gopesh Debnath

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision: June 8, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 375, 376

Hon'ble Judges: P.K. Musahary, J

Bench: Single Bench

Advocate: P.K. Biswas, for the Appellant; P. Bhattacharjee, Addl. P.P. Tripura, for the Respondent

Final Decision: Allowed

Judgement

P.K. Musahary, J.

Heard Mr. P.K. Biswas, learned Counsel for the Appellant and Mr. P. Bhattacharjee, learned Additional Public Prosecutor, for the State of Tripura.

2. This appeal has been preferred against the judgment and order dated 20.5.2003, rendered by the learned Addl. Sessions Judge, Dharmanagar, North Tripura in Case No. ST 48(NT/D)/2001, convicting the Appellant u/s 376(I) Indian Penal Code and directing that the Appellant be kept in the custody of his father on probation of good conduct on furnishing a bond to the satisfaction of the learned Sub-Divisional Judicial Magistrate, Dharmanagar.

3. The prosecution story, in short, is that the accused/Appellant committed rape on the prosecutrix forcibly against her will and consent. The accused/Appellant also had assured her that he would marry her. The accused/Appellant asked her not to disclose the matter to any one. Consequently, she became pregnant. Finding no alternative, the father of the prosecutrix met the father of the accused/Appellant and requested him to settle the matter, who advised him (father of the victim girl to take Rs. 15,000/- from him in order to terminate the pregnancy of his victim

daughter and to solve the problem, to which the father of the prosecutrix did not agree.

4. Thereafter, on receipt of the FIR, the police registered a case, investigated the matter and submitted charge sheet against the accused/Appellant. Ultimately charge was framed against the accused/Appellant u/s 376(I) of Indian Penal Code, to which the accused/Appellant pleaded not guilty and claimed to be tried.

5. The learned trial court on appreciation of the evidence on record, convicted and sentenced the accused/Appellant as stated herein before. The finding of the learned trial court is that the victim girl was 19 years in age at the time of alleged occurrence while the accused/Appellant was only 14 years i.e. 5 years younger than the prosecutrix.

6. The prosecutrix as per the aforesaid finding attained majority as she turned above 16 years of age. She was at the age of consent, which means, she was capable of giving consent. From the FIR as well as the evidence of the prosecutrix, who was examined as PW-1, it is found that the prosecutrix was a consenting party. From her evidence, it is found that she never protested the alleged sexual act committed by the accused/Appellant. In her cross examination, she stated that- "prior to the incident the door of our house was not closed from the inside. The accused/Appellant entered into my room. But I did not raise any hue and cry looking the accused/Appellant in my room. I also did not raise any hue and cry at the time of commission of rape with the accused/Appellant. The accused/Appellant is 2/3 years younger than I".

7. The prosecutrix admittedly being elder in age, there is no question of allurements or inducement by the accused/Appellant to marry her or to influence her otherwise to establish and maintain such relationship. The consent and willingness of the prosecutrix in indulging in such sexual relationship writ large. In such a position, it cannot be held that the accused/Appellant is guilty of commission of the offence u/s 376 Indian Penal Code.

8. The learned trial court failed to appreciate the evidence on record in the desired manner. It also misconstrued the provision u/s 375 and 376 Indian Penal Code relating to offence of rape and punishment there under. In the facts and circumstances attached to the present case and the evidence on record, no case of commission has been made out or proved against the Appellant.

9. In view of the above, I could not persuade myself to agree with the finding and conclusion of the learned trial court in convicting and sentencing the accused/Appellant u/s 376 Indian Penal Code. In my considered view, the aforesaid impugned conviction and sentence is not sustainable in law and, as such the same is liable to be quashed and set aside. It is accordingly quashed and set aside. The accused/Appellant is acquitted. Bail bond stands discharged.

10. Consequently, appeal stands allowed. Send down the LCR forthwith.