
(2012) 02 GAU CK 0060

Gauhati High Court

Case No: Criminal Appeal No. 236 of 2004

Jonaram Bora

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Feb. 13, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164, 313
- Penal Code, 1860 (IPC) - Section 354, 376, 511

Citation: (2012) 3 GLT 279

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

Bench: Single Bench

Advocate: B.M. Choudhury, for the Appellant; D. Das, PP, for the Respondent

Judgement

P.K. MUSAHARY, J.

Heard Mr. B.M. Choudhury, learned counsel for the appellant. Also heard Mr. D. Das, learned Additional P.P., Assam, appearing for the respondent State. This appeal has been preferred against the judgment and order dated 12.08.2004 passed by the learned Additional District and Sessions Judge (Ad hoc), Nagaon in Sessions Case No. 171(N)/2003 convicting the appellant u/s 354 IPC and sentencing him to undergo R.I. for two years.

2. The prosecution case, in brief, is that in the night of 5.2.2003 at about 11 P.M., the appellant, chowkidar of the Primary Health Centre, Kathiatoli O.P. called the victim girl and told her that there was an emergency case and she should come to the hospital. When she came to the hospital she found none and there was no emergency case in the hospital. The appellant attempted to commit rape on her but somehow she managed to escape from there. However, the accused outraged the modesty of the victim girl as he forcibly laid her on her bed tearing her wearing apparels. On the next day she lodged a written FIR and a case being Kampur P.S. Case No. 9/2003 was registered u/s 376/511 IPC. The I.O. visited the place of

occurrence, recovered the torn apparels of the victim and examined some witnesses. The victim was produced before the Medical Officer who examined him and submitted the medical report. The victim was also produced before the I/O and her statement was recorded u/s 164 CrPC. The accused was arrested by police and forwarded to the court.

3. After completion of the investigation charge sheet was laid against the accused u/s 354 IPC. On the basis of the materials collected and upon hearing the learned counsel for the parties, the learned court of Ad hoc Additional Sessions Judge, Nagaon framed charge u/s 376/511 IPC against the accused appellant. The charge being read over and explained to the accused person, he pleaded not guilty and claimed to be tried. During trial the prosecution examined 10 witnesses including the victim girl and the Medical Officer while the accused examined none in his defence. The learned trial Court on consideration of the materials and the evidence on record and upon hearing the learned counsel for the parties, convicted and sentenced the appellant as mentioned above.

4. Mr. Choudhury, learned counsel has taken me through the evidence on record, particularly, the evidence of the victim, who was examined as PW1 and PW3, Deepa Dey, maid servant of the victim. In the FIR, it has been alleged that the appellant came to the official quarter of the victim and asked her to come to the hospital at 11 P.M.(night) on the pretext that some patients have come and he forcefully took her to his nearby bed and attempted to commit rape on her. But in her evidence before the court, she stated that the accused came and called her by using the calling bell in her quarter. At that time she was sleeping. She accordingly came to the hospital and when she found none in the hospital, she rebuked the accused. Then the accused forcibly laid her on his bed and in the process her wearing apparels were torn. She could somehow save herself and came back to her quarter but he still followed her. On the basis of the evidence on record, Mr. Choudhury submits that the evidence of the victim PW1 is not at all reliable. Her evidence is not sufficient and trustworthy to convict the accused appellant. The charge u/s 376/511 IPC, according to Mr. Choudhury could not be proved by the prosecution and as such the accused cannot be convicted u/s 376/511 IPC. According to him, the learned trial court on mis-appreciation of evidence on record convicted the accused u/s 354 IPC which is liable to be quashed and set aside.

5. I have gone through the evidence of PW 3, maid servant of the victim. She categorically stated that the accused came to the house of her mistress on 5.2.03 at about 11 P.M. Her victim mistress accompanied the accused. What happened thereafter is not known to her but she proved the fact that the accused came to the house in that night. It has been pointed out by the learned counsel for the appellant that PW3 stated that there was no electric connection in the quarter and calling by the accused by using the calling bell is unbelievable. This may be a minor contradiction in the evidence of PW3. The defence did not put any suggestion that

she deposed falsely against the appellant as tutored by PW1.

6. The Medical Officer, PW2, stated that the victim girl did not give her consent to get her private parts examined. However, he found some tenderness over both shoulders and back of the victim but he found no redness or swelling. There was abrasion on the person of the victim which was old one. The victim was medically examined on 6.2.2003 i.e. on the next day of the alleged incident. It has been argued that the abrasion or tenderness found on the person of the victim are not sufficient for coming to a conclusion that the victim suffered physically due to the alleged attempt to outrage the modesty of the victim. As per seizure list the I/O seized the following articles-

Seizure list M.R. No. 5/2003 Ext. 2

Ref: Kathiatoli P.P. GDE No. 88 dt. 6.2.2003.

I S.I. M.N. Saikia Kathiatoli P.P. do hereby seize the below descriptive garment as produced by the complainant namely Smt. Ranjita Hazarika D/O Digen Saikia of Kathiatoli P.H.C. quarter P.S. Kampur today on 6.2.2003. The seizure is made in presence of following witnesses and in connection with the above noted GDE.

Particulars of Seizure

- 1) One nighty black and light yellow colour spot (small flower) on the whole nighty.
- 2) (approx.) 10 x 10" torn in the front side of the nighty.

Sign of Witnesses.

1) Mrs. Labanya Devi

W/O Abul Kalam Azad of

Vill-Dakhi Haiborgaon

P.S. Nagaon

2) Amala Deka

D/O Madhab Bora

of Lachitnagar, Kathiatoli,

These wearing apparels are found in torn condition. Unfortunately the articles seized were not sent for FSL examination and therefore no value can be attached to the seizure list.

7. I have perused the statement of the accused recorded u/s 313 CrPC. He has totally denied the visit to the official quarter of the victim and the alleged attempt to commit rape or outraging the modesty of the victim. As stated earlier PW3 proved the visit of the accused to the official quarter of PW1 and calling her to the hospital

to attend an emergency case on the date and time mentioned in the FIR. Once it is proved that the accused visited the official quarter of the victim it is difficult to disbelieve the story of the defence that he never visited the house of the victim. In cross examination of PW1, no suggestion was put that the victim had bad relation and grudge with the appellant and out of such grudge she made false accusations against him. The minor contradiction here and there in the evidence of PWs 1 and 3 are not sufficient to disbelieve the prosecution story. In my considered view, the prosecution has been able to prove the allegation/charge u/s 354 IPC.

8. It is stated at the Bar that the appellant is at the verge of his retirement or he might have retired by this time and it is considered fit and proper to take a lenient view on the sentence. Accordingly, the conviction of the appellant is affirmed and the sentence is reduced to the period already undergone.

9. The appeal stands disposed of with modification in the sentence. Return the LCR forthwith.