

## In Re: Santosh Giri

**Court:** Calcutta High Court

**Date of Decision:** June 25, 2012

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 307, 323, 354, 379, 451

**Citation:** (2012) 4 CHN 453

**Hon'ble Judges:** Kanchan Chakraborty, J

**Bench:** Single Bench

**Advocate:** Prabir Kumar Mitra, Somnath Majumder and Amal Kumar Dutta, for the Appellant; Partha Pratim Das for the State of W.B., for the Respondent

### Judgement

Kanchan Chakraborty, J.

The challenge in this appeal is to the judgment and order dated 20.3.2010 passed by the learned Additional

Sessions Judge, Fast Track, 2nd Court, Asansol in Sessions Trial No. 2 of 2008 thereby convicting the appellant Santosh Giri u/s 354 of the IPC

and sentencing him to suffer simple imprisonment for one year with a fine of Rs. 1,000/-. On 02.12.2003 at about 8.30 p.m., an incident had taken

place in the staff quarters of Bonjemari Colliery field. The appellant allegedly broke open the door of the quarters belonging to Dinanath Yadav

and entered into the room in his absence with an intention to outrage the modesty of his wife Lalbachia Devi. The appellant also used criminal force

and assaulted her. The children of Lalbachia Devi started crying and the appellant left the place after snatching gold necklace from Lalbachia Devi.

The local people took Lalbachia Devi to the E.C.L. Hospital. On the basis of one FIR to that effect lodged by Dinanath Yadav on 05.12.2003,

Salampur Police Station Case No. 46 of 2003 dated 05.12.2003 under sections 451/354/323/307/379 of the IPC was started and on conclusion

of the investigation, charge sheet was filed against the appellant for prosecuting him under the abovementioned sections. The appellant Santosh Giri

was arrayed to face charges under sections 451/354/323/307/379 of the IPC. As he pleaded not guilty to the charges, the trial commenced. The

learned Judge, upon consideration of the evidence on record came to a conclusion that the appellant Santosh Giri although did not commit any

offence u/s 451/323/307/379 of the IPC but, committed the offence u/s 354 of the IPC. Accordingly, the learned Court recorded his conviction

order and sentence which has been impugned in this appeal.

2. Mr. Mitra, learned Counsel appearing on behalf of the appellant contended that the prosecution has miserably failed to establish that the

appellant has committed offence u/s 354 of the IPC. Simply causing hurt does not amount to outrage of modesty in the absence of any such

intention. He contends further that the evidence led by the prosecution is full of contradiction, uncorroboration, embellishment, exaggeration and

entirely false.

3. Mr. Mitra contends further that Dinanath Yadav, the husband of the victim, lodged the FIR stating the facts that the appellant entered into the

room with an intention to outrage the modesty of his wife. When his wife tried to raise a hue and cry, she was beaten badly. Santosh Giri also

throttled the neck of his wife with an intention to kill her. Before he left, Santosh snatched away gold chain and locket of his wife. The neighbours

rushed to the place of occurrence hearing the alarm and took his wife to the hospital where she was treated medically.

4. Mr. Mitra submits that the lodger of the FIR, Dinanath Yadav who happens to be the husband of the victim has denied the facts stated by him in

the FIR as P.W. 1. No neighbour has come forward to support the prosecution case. The son of the victim has not supported the prosecution

case. The evidence of the Doctor does not indicate that the victim was assaulted in the manner stated by her as P.W. 8. The P.W. 8, the victim

was not examined by the I.O. but she has stated that she disclosed everything to the I.O. There are discrepancies in her evidence on material facts

which has made the prosecution case not acceptable.

5. Mr. Mitra contends that the impugned judgment is suffering from perversion and is liable to be set aside. Mr. Mitra, in addition to all his

submissions, contends that there was inordinate delay in lodging the F.I.R. which has not been explained at all.

6. Mr. Das, learned Counsel appearing for the respondent/State of West Bengal contends that when a lady herself came forward in the Court and

had given the vivid description of the incident which to some extent supported by her sons and Doctor, no mistake has been caused by the Court

to pass the order impugned. When a lady was attacked, section 354 of the IPC comes in or attracted. He takes this Court to the deposition of the

victim Lalbachia Devi (P.W. 8) and submits that she stated categorically that the appellant broke open the door, caught hold her neck and tried to

strangle when she started shouting. She also stated that the appellant/accused stabbed her on the back of her shoulder with a knife and right cheek.

Her golden chain and two earrings were snatched away by the appellant also before leaving the place.

7. Therefore, according to Mr. Das, learned counsel appearing for the State of West Bengal, the judgment impugned is not required to be

interfered with.

8. In the instant case, the alleged incident had taken place on 02.12.2003 at 8.30 p.m. in the staff quarters of a colliery. The FIR was lodged three

days thereafter, i.e., on 05.12.2003, No explanation, whatsoever, has been given by the prosecution for such inordinate delay in lodging the FIR.

This part of the prosecution case was ignored by the learned Judge completely. This fact is important in the context of this case because lodger of

the FIR is none but the husband of the victim. He heard, according to the FIR, about the incident but has not stated from whom. He has not stated

also when he came back to his quarter.

9. It is already stated that the incident alleged had taken place in the staff quarters of the colliery. Naturally, there were other quarters nearby

wherein the staffs of the colliery had been residing. But, one of them came forward to support the prosecution case although in the FIR, it is stated

that the neighbourer of the quarters rushed to the place of occurrence hearing the hue and cry and admitted the victim, Lalbachia Devi to the

E.C.L. Hospital.

10. In fact, the prosecution case is rested solely on the testimony of the victim and partially on the evidence of the Doctor, i.e., P.W. 7. No doubt,

the star witness of this case is Lalbachia Devi, the victim. She has stated that on the relevant date and time, her husband was on duty. This fact has

not been corroborated by her husband as well as the FIR which has been marked as Ext. 1. Ext. 1 shows that the husband was in her native village

on the relevant date and time. She stated again that the appellant stabbed on the back of her left shoulder with a knife and right cheek. That fact

has not been corroborated by the Doctor, P.W. 7, as well as the injury report, which has been marked as Ext. 3. Nowhere within the four corners

of the statement of the P.W. 8, Smt. Lalbachia Devi, it is found that the appellant had any intention to outrage her modesty. He simply tried to

strangulate her catching hold her neck and assaulted her. The only eyewitness of the incident is the son of the victim Lalbachia Devi who has been

examined as P.W. 6. Interestingly, he has not stated what his mother has stated.

11. The Ext. 3, i.e., the report of the Doctor of E.C.L. Hospital (P.W. 7) shows that the appellant tried to throttle her. No injury excepting

superficial abrasion over neck, throat and right arm could be detected. The Ext. 3 is completely silent about the stab injury on the backside of the

left shoulder and right cheek of the victim. This part of the evidence of the P.W. 8 is not only suffering from exaggeration but can also be said to be

embellished on because the FIR was lodged three days after the date of incident. This fact was not mentioned in the FIR. The fact that she was

stabbed and her earrings were taken away by the appellant has not been stated in the FIR. There is no other witness to support the prosecution

case. It is stated already that none of the neighbour came forward to support the prosecution case. It is not clear who had taken Lalbachia Devi to

E.C.L. Hospital after the incident and who came to the P.O. hearing the hue and cry of Lalbachia Devi.

12. Another interesting part of this case is that the statement of the I.O., i.e., P.W. 9. He stated in his cross-examination that he could not examine

the victim lady of the case for want of her availability. On the contrary, the P.W. 8, the victim stated in her cross-examination that she herself went

to the Salampur Police Station and narrated the incident that the appellant broke open the main door of the quarter, entered into it, injuries

received by her and that the appellant told her that she received money in order to murder her. This fact obviously goes against the prosecution and

creates strong suspicion about the authenticity of the prosecution case.

13. The learned Judge, it appears to me, was entirely confused. Once, the learned Judge accepted that the victim was assaulted but acquitted the

appellant on the charge u/s 323 of the IPC. At the same time, the learned Judge came to a conclusion that simply because the victim was assaulted,

her modesty was outraged. This cannot be a correct position of law. At best, it could be a case u/s 323 of the IPC. In order to constitute an

offence u/s 354 of the IPC, prosecution has to establish that the overt act done by the accused with an intention to outrage the modesty or with the

knowledge that her modesty would be outraged.

14. In the instant case, excepting the FIR, nowhere it has been spelt out that the appellant had any intention to outrage the modesty or had

knowledge that for only snatching away the golden ornaments and assaulting a lady, her modesty would be outraged. This cannot be correct

position of law and I must say that the learned Judge made a mistake in coming to such a conclusion. The learned Judge was oblivious of the fact

that in the cross-examination, P.W. 8 stated categorically that she reported the entire incident directly to the police official. The I.O. of the case

(P.W. 9) has stated that the statement of the victim could not be recorded because of her non-availability. This fact carries lots of importance

specially because no other witness has supported the statement of P.W. 8 even her husband and son.

15. Taking everything into consideration, it appears to me that the learned Court did not take the following facts into consideration:-

a) that there was inordinate delay in lodging the FIR and no explanation was given to the prosecution for such delay;

b) that the lodger of the F.I.R. made a false statement that he was in his native village on the date of incident, if the evidence of P.W. 8 is accepted.

c) that nowhere it has been spelt out that the appellant had any intention to outrage the modesty or had any knowledge that the modesty of the

victim would be outraged by his overt act;

d) that the manner in which the injury was caused according to the P.W. 8 has not been supported by the P.W. 7 and Ext. 3. There was only

attempt of strangulation and no stab injury was detected;

e) that no local people having quarters in and around the place of occurrence came forward to support the prosecution case although according to

the prosecution case, hearing the hue and cry some of them reached there and had taken the injured to E.C.L. Hospital;

f) that the husband as well as the son of the victim have not supported the prosecution case.

16. All these factors if taken together leads to a strong suspicion about the truthfulness of the prosecution case. It is suffering from inconsistencies,

embellishment and exaggeration. The evidence of P.W. 8 is not credible and trustworthy. The learned Judge recorded the conviction simply

because of the fact that a lady was attacked by the appellant without any intention of outraging her modesty.

17. In the premises above, this Court disagrees with the findings of the learned Judge. The case u/s 354 of the IPC had not been established at all.

The learned Judge did not believe that the appellant committed any other offence. In view of the facts above, the judgment impugned is liable to be

set aside.

18. Accordingly, the appeal succeeds. The judgment and order under challenge is set aside. The appellant is found not guilty to the charge u/s 354

of the IPC and acquitted therefrom. He be set at liberty at once. The rule issued by this Court stands discharged.

19. L.C.R. be returned with the copy of the judgment. Urgent photostat certified copy of this order, if applied for, be given to the learned

Advocates of the parties upon compliance of necessary formalities.