
(2015) 01 GAU CK 0001
In the Gauhati High Court
Case No : Criminal A 162/2005

Debojit Choudhury

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 366, 376

Citation : (2015) CriLJ 1464 : (2015) 3 Crimes 69

Hon'ble Judges : Biplab Kumar Sharma, J.

Bench : Single Bench

Advocate : M.R. Das, for the Appellant; D. Das, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Biplab Kumar Sharma, J.—Heard Mr. M.R. Das, learned counsel for the accused/appellant and Mr. D. Das, learned Additional Public Prosecutor, Assam. I have also perused the entire materials on record.

2. This appeal has been presented against the judgment of conviction dated 30.06.2005 passed by the learned Ad-Hoc Additional Sessions Judge, Bongaigaon in Sessions Case No. 52(B)/04. By the said judgment, he has been convicted u/s. 376 IPC and has been sentenced to undergo rigorous imprisonment for 07(seven) years with fine of Rs. 2000/- (Rupees two thousand) and in default to undergo rigorous imprisonment for further periods of two months.

3. The father of the victim girl had lodged an FIR with the Bijni Police Station on 21.11.2002 alleging that his daughter was subjected to rape by the accused/appellant. In the FIR her age was stated to be 14 years. According to the FIR, the incident occurred in the toilet. With the lodging of the FIR, Bijni P.S. Case No. 171/02 was registered u/s. 376 IPC. In due course investigation was carried out and thereafter charge having been framed upon submission of charge sheet u/s. 376 IPC, trial started. During trial, the prosecution examined 06(six) witnesses

including the Medical Officer, who had examined the victim girl. The defence also examined one witness as D.W.-1.

4. PW-4 is the doctor who had examined the victim girl, who in his deposition proved the Medical Report, which reads as follows.

"On 21.11.2002 I was posted at Bhetagaon C. H. C as M and H. O-I. On that day, I examined Smti Mamoni Roy, D/o. Binod Das on police requisition and found as follows:--

1) Findings:--No any blood stain or any other stain, recent tear or cut mark seen on her dress.

2) No any blood stain or other stain or injury marks on her any part of the body.

3) During the time of examination no any sign of rape and no any sign of sexual violence on her private part was detected.

Actual age of the victim according to X-Ray report is below 18 years."

5. PW-1 is the father of the victim girl, who in his deposition stated that on the day of incident while coming back home at about 8.00 P.M., when he found his daughter not at home, enquired from his son about her whereabouts. His son reportedly told him that she had gone to the toilet. Thereafter, he went to the toilet in search of her and called her. Upon such calling, she came out of the toilet and the accused/appellant followed her. She reportedly told him that the accused/appellant committed rape on her in the toilet. In the cross examination, he stated that the distance of the toilet from the house was about 100 feet. He further stated in his cross examination that after the incident in question, the victim girl had fled away with another boy of the same village. As regards the wearing apparels, he in his deposition stated that his daughter was with "Suridar Pajama".

6. PW-2 is the alleged victim girl, who in her deposition stated about visiting the toilet on the particular night. According to her, when she had come out of the toilet, the accused/appellant forcibly took her again inside the toilet and committed rape on her. According to her he did so by gagging her mouth with hand. In the cross examination, she admitted that no force was applied on the other parts of the body including her hands. She also admitted that her wearing cloths remained intact and the accused/appellant indulged himself in the act of rape for about 15(fifteen) minutes. As per her own admission, she had failed twice in Class-IX examination. It is in this context the learned counsel for the appellant submits that the girl was above 17 years of age, which is also evident from the Medical Report referred to above. As per the said report, her age was below 18 years, which could be 17 years 11 months also.

7. PW-3 is the mother of the victim girl and is a reported witness and so also the PW-5. PW-6 is the Investigating Officer, who in his deposition generally stated about the investigation that was carried out.

8. As per the deposition of PW-5, on the date of incident, there was quarrel between PW-1 and PW-3 and the land lord advised them not to indulge in such quarrel. They were asked to leave the house. Be it stated here that PW-1 was the tenant of one Uma Charan Chaudhury and the accused/appellant is his son. In the cross examination of PW-5 he stated that there were about 20 houses in and around the house of Uma Charan Chaudhury and that he had seen the victim girl at night on the day of incident and she did not tell him anything.

9. D.W.-1 in his deposition stated about the purported quarrel between the landlord and the PW-1. He also stated that on the night of the incident when he returned home, the PW-1 did not tell him anything about the incident. In the cross examination, he also stated that there were other tenants of Uma Charan Chaudhury with a common toilet.

10. Above are the evidence on the basis of which the learned Trial Court has convicted the accused/appellant. Mr. D. Das, learned Additional P.P., Assam has drawn my attention to the statement made by the victim girl u/s. 164 Cr.P.C. On perusal of the said statement, it is found to be cryptic in nature. No material particulars have been disclosed in the said statement regarding the commission of the purported offence by the accused/appellant.

11. On perusal of the entire evidence on record and as submitted by Mr. Das, learned counsel representing the accused/appellant, it appears that the girl was a consenting party. Along with the appeal, the appellant has enclosed the copy of the judgment dated 30.12.2014 passed in another case, namely, Sessions Case No. 11(B)/2004 (State v. Manik Saha). Same was also a case u/s. 366 IPC with the allegation that the accused Manik Saha had taken away the victim girl from her house. However, on the basis of the evidence adduced, the learned Trial Court exonerated the accused as the prosecution failed to establish the case.

12. While entertaining this appeal, the accused/appellant was allowed to go on bail vide order dated 28.09.2005 passed in Misc. Case No. 2407/2005. While doing so, it was noted that there was variation of age of the victim girl and that she was also involved in the other case referred to above, in which the accused was acquitted. In the totality of the circumstances/evidence and the posture in which the accused/appellant allegedly committed the offence punishable u/s. 376 IPC, it appears that such commission was not possible unless the PW-1 was a consenting party. As regards the age of the victim girl, as noted above, the Medical Report suggests that her age was below 18 years, which could be 17 years 11 months also. In such circumstances, it cannot be said to be a case of commission of the offence u/s. 376 IPC by the accused/appellant. I am of the considered opinion that the appellant is entitled to benefit of doubt.

13. Accordingly, this appeal is allowed by setting aside the judgment of conviction dated 30.06.2005 passed by the learned Ad-Hoc Additional Sessions Judge, Bongaigaon in Sessions Case No. 52(B)/04.

14. Registry shall send down the Case Record to the Court below with a copy of

this judgment and order.

15. Bail bond stands discharged.