
(2015) 06 TP CK 0063
In the Tripura High Court
Case No : Criminal A (J). 22 of 2012

Karna Debbarma and Others

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 03-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164(5), 207, 232, 313, 372(2)
Penal Code, 1860 (IPC) — Section 114, 302, 366, 376, 511

Citation : (2015) 06 TP CK 0063

Hon'ble Judges : Utpalendu Bikas Saha, J; S. Talapatra, J

Bench : Division Bench

Advocate : N. Majumder, for the Appellant; R.C. Debnath, Addl. PP, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J.

1. The appeal filed under Section 372(2) of the Cr.P.C is directed against the judgment of conviction dated 09.05.2012 delivered in case No. S.T. 58 (WT/K) of 1993 by the Additional Sessions Judge, West Tripura, Khowai.

2. By virtue of the said judgment both the appellants have been convicted under Section 366 IPC but they have been acquitted from the charge framed under Section 376 IPC for want of reliable evidence. Both the appellants have been sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5,000/- in default to suffer two months of simple imprisonment for committing offence under Section 366 IPC.

3. The genesis of the prosecution's case is rooted in the written ejahar filed by one Jogendra Debbarma (PW-1) stating that his sister whose name is withheld for the purpose of protecting her identity was kidnapped by a group of miscreants. He has stated in the ejahar that he could recognize the appellants and some other miscreants including one Sri Ashok kumar Debbarma. On the

basis of the said ejahar, Teliamura PS case No. 26(4) of 1980 under Section 366 IPC was registered on 26.04.1980 even though the occurrence took place on 24.04.1980 at 2300 hrs.

4. On completion of the investigation the charge sheet was filed against all the accused persons namely Ashok kumar Debbarma, Jammuda Debbarma, Ratiranjana Debbarma, Karna Debbarma, Ratan Debbarma, Biswarai Debbarma, Bipin Debbarma, Upendra Debbarma and Draunacharja Debbarma under Sections 366/114/376/511 IPC but Ashok kumar Debbarma and Jammuda Debbarma could not be arrested. Since the case was exclusively triable by the Sessions Judge, the police papers were committed to the Court of Additional Sessions Judge, West Tripura, Khowai after taking cognizance.

5. The Additional Sessions Judge, here-in-after referred to as the trial Court, framed the charge against both the appellants under Section 366 and 376 of IPC for kidnapping the victim and committing rape on her by way of collaboration.

6. In order to substantiate the charge, the prosecution has examined four witnesses including the informant, the victim and the Investigating Officer. In addition to the oral evidence as stated, the prosecution has introduced five documentary evidence including the written ejahar (Exhibit-1), the statement of the victim recorded under Section 164(5) Cr.P.C (Exhibit-2 series) and the medical examination report of the victim (Exhibit-5). On appreciation of the evidence, the trial Court by the impugned judgment returned the finding of conviction against the appellants under Section 366 IPC, as stated. Being aggrieved by that judgment of conviction, this appeal has been preferred.

7. Mr. N. Majumder, learned counsel appearing for the appellants has submitted that there is no convincing evidence on record to return the finding of conviction inasmuch as PW-1 has stated that the victim was recovered by the police. She has stated only the name of Ashok Kumar Debbarma to his brother, PW-1 and she did not disclose any other name to him. Even though PW-3, the victim has stated the name of the appellants at the trial but that has not been corroborated by the circumstances. Her statement has lost its worth inasmuch as the statement by the victim that she was raped has been completely discarded by the medical examination. Apart from that Mr. Majumder, learned counsel has submitted that the best witness, the mother of the victim has been withheld by the prosecution.

8. On the other hand, Mr. RC Debnath, learned Additional Public Prosecutor has fairly submitted that on such evidence, the judgment of the conviction can hardly be defended as the prosecution has not succeeded in proving the charge beyond reasonable doubt. We appreciate the fairness of Mr. Debnath, learned Additional Public Prosecutor.

9. For purpose of appreciating the submission made by the learned counsel for the appellants, we may take a brief survey of the evidence recorded by the trial Court.

10. PW-1, Jogendra Debbarma who lodged the complaint has stated in the trial that 25 years ago on a certain night at about 11.00 hrs. a group of miscreants entered his house and kidnapped his sister who was at that time aged about 20 years by force. He has categorically stated that he informed the incident to the police. After 2/3 days of the occurrence, the police recovered his sister and having that information he rushed to the police station and found his sister there along with the accused Ashok kumar Debbarma. He was told by his sister that she was kidnapped by Ashok kumar Debbarma. PW-1 has made a categorical statement that "at the time of kidnapping my sister could not identify any of the miscreants".

11. PW-2, Kshetra Mohan Debbarma did not disclose anything very material but he has categorically stated that PW-1 did not disclose to him any name of the miscreants who kidnapped his sister.

12. The most important witness is PW-3, the victim. She has stated that 20/25 years ago at midnight four persons namely Ashok Debbarma, Subal Debbarma, Karna Debbarma and Dronacharjya Debbarma trespassed into her room by breaking open the door. At that time she was sleeping along with her widow mother. After entering the room, one of the miscreants gagged her mouth and dragged her away to a nearby jungle by force. Ashoke Debbarma created pressure on her to marry him but she declined. Then Ashok Debbarma got enraged and committed rape on her. One of the miscreants took a joint photograph of Ashok Debbarma and her by force. After two days, the police rescued her from jungle. After recovery she was produced before a Magistrate at Khowai for giving statement. She gave the statement before the Magistrate voluntarily. She gave signature on the statement. She identified the said statement as Exhibit-2 series. She could not identify the appellants in the dock. She has stated without hesitation that "the miscreants who had kidnapped me are absent in the court today. The accused persons namely Ashoke Debbarma, Dronacharjya Debbarma and Karna Debbarma were known to me from before as they were the inhabitants of my locality". In her cross examination she has stated that she could not recollect whether she has stated to her brother that she had seen Ashok Debbarma and Karna Debbarma trespassed her house by breaking open the door at night.

13. PW-4, recorded as PW-5 in the deposition sheet, namely Joydeb Das is the Investigating Officer who has investigated the case. He has stated how he produced the victim for recording the statement under Section 164(5) CrPC. In the cross-examination he has clearly admitted that he did not record the statement of the mother with whom the victim was sleeping at the relevant point of time. After recording of the evidence led by the prosecution, both the appellants were separately examined under Section 313 CrPC when they have stated that they are completely innocent and have been falsely implicated in the case.

14. Even though it has not been reflected in the judgment, but from the order

dated 15.12.2005 delivered by the trial court it transpires that other four accused persons were discharged under Section 232 CrPC as no evidence has surfaced against them.

15. A sheer dereliction has not escaped our notice. In the judgment when it has been recorded that:--

"2. Based on the charge sheet and other documents Ld. S.D.J.M, Khowai, took cognizance of offence u/s. 302 IPC and after compliance of section 207 Cr.P.C. has committed the case to this Court on 22.4.93 for trial."

That was not the case before the trial court and there was no such charge.

16. Such observation not only smears the record but it stands to show how casually the final judgment was prepared by the trial Judge. We will not make any further comment in this regard as the said observation has not been made on proper scrutiny of the order by which the case was committed to the trial court as the said order, reads as under:

"Ld. A.P.P. is present.

Accused 1) Dronacharjua Deb Barma, 2) Ashok kr. Debbarma 3) Upendra Debbarma 4) Ratan Debbarma 5) Bipin Debbarma 6) Karnamani Debbarma &) Biswarai Debbarma are present. They are taken into custody

Accused Rati Ranjan Debbarma has expired and discharged on and accused Subal Debbarma was committed to the Sessions Court, West Tripura, Agartala on 22.12.88 and he has faced trial in c/w S.T. 6(WT/K/89).

This is a case U/S 366/114/376 and 511 I.P.C.

Out of these sections U/s 366 and 376 are exclusively triable by Sessions Court.

Hence, this case is to be committed to the court of Ld. Sessions Judge, West Tripura, Agartala.

Today the date was fixed for commitment of this case. Hence, I commit this case to the Court of Ld. Sessions Judge, West Tripura, Agartala.

Inform Ct. S.I. Khowai to sent all the lamats of this case to the Court of Ld. Sessions Judge, West Tripura, Agartala.

Also inform to Ld. Public Prosecutor, West Tripura, Agartala regarding the commitment of this case to the Court of Ld. Sessions Judge, West Tripura, Agartala.

Bail prayer is submitted on behalf of the accused persons for enlarging them on bail. Accused persons was all long present before this Court. Let these accused persons be enlarged on bail after furnishing bail bond of Rs. 3,000/- (three thousand) with one surety of like amount each with a condition that they should appear before the Court of Ld. Sessions Judge, West Tripura Agartala on or

before 20.5.1993 for facing trial. "

17. No identification of the appellants as the offender has been established either by the victim or anyone else as the witness. Moreover, if the conviction against the appellants is to be upheld by this Court we are to uphold that conviction solely on the basis of the statement of the victim, PW-3. If the statement of PW-3 is read with PW-1, we cannot exclude the manifest improvement. While making the statement under Section 164(5) Cr.P.C and subsequently in the Court, what had been stated by the victim are in conflict to each other. Her statements are substantially at variance, one stating the four names and the other stating of the nine names. Even if such omissions are results of the inordinate delay that occurred in the trial but this Court cannot brush aside her statement as to commission of rape. That has not been believed by the trial Court and we say that it had been rightly not believed, as no medical evidence has been laid. The Medical Officer who conducted the medical examination was not even examined in the trial. So was in the case of the Judicial Magistrate who recorded the statement of the victim under Section 164(5) Cr.P.C. Even if non-examination of the Judicial Magistrate for the purpose of admitting the statement recorded under Section 164(5) Cr.P.C may not be fatal but the varying statements when are verified juxtaposing the same with the statement of PW-1, this Court does not find those credit-worthy for returning the finding of the conviction. Mr. Debnath, learned Additional P.P. has fairly acceded that the prosecution has not succeeded in substantiating the charge beyond reasonable doubt, and as such the impugned judgment and order is interfered with and set aside.

18. The appellants are acquitted from the charge on benefit of doubt. Since the appellants are on bail, their sureties are discharged from the respective obligations.

19. In the result, the appeal stands allowed. Send down the LCRs forthwith.