
(2012) 04 GAU CK 0043
In the Gauhati High Court

Laskar Dutta, S/o.Punaram Dutta, R/o.Vill.Rangdhali Gaon,
PS.Dergaon, Golaghat, Assam

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:

Citation : (2012) 04 GAU CK 0043

Hon'ble Judges : I.A.Ansari, J

Bench : Single Bench

Advocate : For the petitioner : Mr. T.J. Mahanta, Advocate??For the respondents : Mr. Z. Kamar, P.P. Assam, Advocates appearing for Parties

Judgement

1. Aggrieved by the judgment and order, dated 06.08.2003, passed, in GR Case No.725/2002, by the learned Judicial Magistrate, First Class, Golaghat, convicting the present petitioner under Section 354 IPC and sentencing him to suffer simple imprisonment for four months and pay fine of Rs.300/ and, in default of payment of fine, undergo simple imprisonment for one month, the petitioner herein preferred an appeal, which gave rise to Criminal Appeal No.33/2003. By judgment and order, dated 27.03.2004, as the learned Session Judge, Golaghat, while sustaining the conviction, reduced the sentence of simple imprisonment to a period of two months in stead of four months, the petitioner, feeling still aggrieved, has come to this Court with the present revision.

2. Before I enter into the merit of the present revision, let me set forth, in brief, the prosecution's case, which runs as under:

The informant (PW1) and his wife (PW3) are close relatives of the accusedpetitioner. On 27.07.2002, the accusedpetitioner came, in the evening, to the house of PW1 and PW3 and requested PW3 to stay, at the night, at the house of the accusedpetitioner on the ground that he (accused) would be away from his house and someone was needed to be present at his house to look after his wife and children during the period of his absence. PW3 accordingly went to the house of the accused; but, on arriving there, she found neither the wife nor the children

of the accused present there. When PW3 enquired from the accused as to where his wife and children were, the accused asked PW3 to stay, at his house, at night, by showing her money. The accused also pulled the clothes of PW1 and gagged her mouth by placing weapons on her neck and belly and wanted to have sex with her. During the course of the scuffle, which took place between the accused and PW3, PW3 managed to, somehow, free herself from the clutches of the accused and went running to her house and informed her husband (PW1), her sisterinlaw and brotherinlaw. PW3's sisterinlaw (PW2) asked PW3 to wait till morning as it was night. A bichar (i.e., sitting for settlement of dispute) was held in the village; but no settlement was arrived at and, then, PW1 informed the police by lodging a written information with regard to the occurrence. In course of time, treating the said written information as First Information Report, a case, under Sections 342/354 IPC, was registered against the accused and, on completion of investigation, a chargesheet was accordingly laid against him under Sections 342/354 IPC.

3. The accused was accordingly put to trial for offences having been allegedly committed by him under Sections 342 and 354 IPC.

4. In support of their case, prosecution examined altogether six witnesses including the investigating officer. The accused was, then, examined under Section 313 Cr.PC and, in his examination aforementioned, the accused denied that he had committed the offences alleged to have been committed by him, the case of the defence being that of total denial. No evidence was, however, adduced by the defence.

5. The learned trial Court, while acquitting the accused of the offence under Section 342 IPC, convicted him of the offence under Section 354 IPC and pass sentence against him as mentioned above. Since the learned Session Judge has maintained the conviction, though reduced the sentence, as indicated above, the accused is, as mentioned above, before this Court with the present revision.

6. I have heard Mr. T.J. Mahanta, learned counsel, for the accusedpetitioner, and Mr. Z. Kamar, learned Public Prosecutor, Assam.

7. While considering the present revision, it needs to be noted that PW3, who is claimed to be the victim, is the sole eye witness of the occurrence. Her evidence is, therefore, pivotal in nature. According to her evidence, on the day of the occurrence, the accused came, in the evening, to their house and informed them that he would be away from his house and he, therefore, requested PW3 to attend to the wife and children of the accused during his absence from his house at night. PW3 accordingly went to the house of the accused; but on not finding his wife and children at home, when she (PW3) asked the accused as to where his wife and children were, the accused asked her to stay in his house by showing her money. PW3 has also deposed that the accused pulled her clothes and gagged her mouth, he tried to have sex with her and also threatened her with sharp weapons, but, somehow, she managed to escape from the grip of the

accused and went running to her house and informed her husband, sisterinlaw and brotherinlaw. It is in the evidence of PW3 that as her sisterinlaw (PW2)told her that since it was fairly late at night, the matter should be taken on the following day, nothing should be done by them on the night of the occurrence and, then, a bichar(i.e., sitting for settlement of dispute) was called, but no settlement was arrived at, whereupon her husband informed the police.

8. Close on the heels of the evidence of PW3 is the evidence of her husband (PW1), who has deposed that on the day of the occurrence, the accused came to their house and called PW3 to his house and requested PW3 to be at the house of the accused and attend on his family, whereupon he (PW1) sent his wife to the house of the accused, but, after some time, PW3 came back and told him about the occurrence.

9. Though crossexamined by defence, the material aspects of the evidence of PW3 and also PW1 have remained wholly unshaken.

10. From the unshaken evidence of PW1 and PW3, it becomes abundantly clear that the accused did come to the house of PW1, he (accused) requested PW3 to spend the night at the house of the accused in order to look after the family of the accused on the pretext that he (accused) would be away from his house on that night; but when PW3 arrived at the house of the accused, she did not find the wife and children of the accused present at the house of the accused and, having not found the wife and children of the accused present at the house of the accused, PW3 enquired about them from the accused, but the accused, in stead of responding to the query, proposed to have sex with her by showing her money and also pulled her clothes and tried to intimidate her by showing weapons and thereby have forcibly sex with her. However, PW3, somehow, managed to get out of the house of the accused, went to her house and informed her husband, her sisterinlaw and brotherinlaw.

11. Lending support to the PW1 and PW3, PW2 (sisterinlaw of PW3) has deposed that on the very night of the occurrence, while she was sleeping in her house, PW3 came and informed them about the occurrence and she (PW2) instructed PW3 not to do anything atnight and, on the next day, a bichar (i.e., sitting for settlement of dispute) was called. From the evidence of PW2, it becomes clear that PW3 did inform her family members about the occurrence on the very night of the occurrence.

12. What crystallizes from the above discussion is that PW3 did go to the house of the accused as indicated above for the purpose of spending the night at the house of the accused believing the statement of the accused, as true, that he would be away from the house and PW3 should look after the wife and children of the accused. However, PW3 came, admittedly, back to her house on the very night of the occurrence. There ought to be, it is obvious, some reason for PW3 to have returned to her house in stead of spending the night at the house of the accused. There is no animosity alleged between PW3 and the accusedpetitioner.

The prompt reporting of the occurrence, as narrated by PW3 to the members of her family, lends credence to her evidence and her evidence, having been supported by the evidence of her husband and sisterinlaw, fortifies this Court's inference that the learned Courts below were wholly justified in arriving at the conclusion that the accused did try to outrage the modesty of PW3 in the manner as has been described by her.

13. It was sought to be pointed out, in the appeal, that there was delay in lodging of the FIR. The learned Session Judge has rightly pointed out that there is clear explanation, as regards the delay in the FIR itself inasmuch as there was an attempt to settle the matter amicably, but as the matter was not settled, there was delay in lodging the FIR. It was also pointed out before the learned appellate Court that two of witnesses, namely, Bhola and Numal, had not been examined by the prosecution. Reacting to this discrepancy, the learned Session Judge has pointed out that nonexamination of the said witnesses was not fatal inasmuch as the sole witness to the occurrence was PW3 and her evidence has been fully supported by her husband and her sisterinlaw and nothing has been elicited from their crossexamination to show that what they had deposed were untrue. In fact, even at the time of hearing of this revision, the finding of guilt, reached against the accused, under Section 354 IPC, could not be shaken inasmuch as nothing specific could be pointed out to show as to why the prosecution witnesses, more particularly, PW3, should not be believed.

14. Situated thus, this Court is of the firm view that the finding of guilt, reached by the learned trial Court and affirmed by the learned appellate Court, does not suffer from any infirmity, legal or factual.

15. Though Mr. Mahanta, learned counsel for the accusedpetitioner, has passionately pleaded for allowing the accusedpetitioner to go on probation, it needs to be noted that the Supreme Court had the occasion to point out, in *Rupan Deol Bajaj (Mrs) and another Vs. Kanwar Pal Singh Gill and another*, reported in (1995) 6 SCC 194, at para 14 and 15, thus:

¶14. Since the word 'modesty' has not been defined in the Indian Penal Code we may profitably look into its dictionary meaning. According to Shorter Oxford English Dictionary (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third New International Dictionary of the English language defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Ed) the meaning of the word 'modesty' is given as "womanly propriety of behaviour; scrupulous chastity of thought, speechand conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

15. In *State of Punjab vs. Major Singh* (AIR 1967 SC 63), a question arose whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. In answering the above question Mudholkar J., who along with Bachawat J. spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the 'common notions of mankind' referred to by the learned Judge have to be gauged by contemporary societal standards. The other learned Judge (Bachawat J.) observed that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of 'modesty' and the interpretation given to that word by this Court in *Major Singh's* case (*supra*) it appears to us that the ultimate test for ascertaining whether modesty has been outraged is, is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman. When the above test is applied in the present case, keeping in view the total fact situation, it cannot but be held that the alleged act of Mr. Gill in slapping Mrs. Bajaj on her posterior amounted to 'outraging of her modesty' for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady "sexual overtones" or not, notwithstanding.?

16. In the case at hand, the fact that the accused has not only used criminal force, but he has also committed the offence of assault stands well proved inasmuch as he has, by his gesture of showing money, intended to outrage PW3's modesty and committed clearly thereby an offence under Section 354 IPC. This apart, the accused knew that by his gesture, and the force, which he was applying, will be outraging the modesty of PW3. If the facts of the case, as proven by the evidence on record, are taken in their correct perspective, the accused would have gone, had it been possible, far ahead than outraging the modesty of PW3. In such circumstances, the accused petitioner cannot be given the benefit of probation. PW3, in the light of the evidence on record, was lucky to have escaped with her sexual integrity remaining intact and has not become a victim of rape.

17. Because of what have been discussed and pointed out above, this Court does not find that either the conviction of the accused under Section 354 IPC and/or the sentence, as modified, in appeal, by the learned Session Judge, need further modification.

18. Situated thus, this Court is constrained to hold that this revision is wholly without merit and is, therefore, dismissed.

19. Send back the LCR.