
(2015) 02 GAU CK 0009
In the Gauhati High Court
Case No : Criminal A 175/2010

Maleka Bibi

APPELLANT

Vs

Rafikul Hussain and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 313
Penal Code, 1860 (IPC) — Section 34, 354, 366, 376, 506

Citation : (2015) 02 GAU CK 0009

Hon'ble Judges : Biplab Kumar Sharma, J.

Bench : Single Bench

Advocate : M.H. Rajborbhuiyan, for the Appellant; A.R. Sikdar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—This is an appeal against the judgment of acquittal. The impugned judgment is dated 30.04.2008 of the learned Additional Sessions Judge (FTC), Bongaigaon in Sessions Case No. 69(CR)/2007, by which the accused/respondents have been acquitted of the charges u/s. 366/376/354/34 of the IPC.

2. CR case No. 03/2007 was registered on the basis of the complaint lodged by the alleged victim in the Court of the learned SDJM(M), Bijni on 03.01.2007. It was alleged that on 02.10.2006 at about 4.00 P.M., the two accused/respondents kidnapped the victim from the National Highway 31 by means of a Maruti Van. Thereafter, firstly she was taken to Kokrajhar and thereafter to Delhi. Although the complainant resisted, but the accused persons threatened her with a pistol and also of dire consequences. According to the complainant, taking her to Delhi, the accused/respondent No. 1 committed rape on her. Thereafter, on the basis of the request made by the complainant, the said accused took her back to Assam and after roaming around in different places, handed over her to Manikpur police station. The complainant further narrated that on 30.12.2006 at about 6 P.M.

when the complainant was proceeding towards the house of one Must Sakina Begum, the accused/respondent No. 1 caught her with the intention to commit rape. On raising alarm, the witnesses, namely, Sakina Begum and Joybar Ali appeared and rescued her.

3. On receipt of the complaint, the aforesaid CR case No. 03/2007 was registered and after preliminary examination of the complainant u/s. 200 Cr.P.C., cognizance was taken u/s. 366/376/506/34 IPC against the accused/respondents. After holding an enquiry u/s. 202 Cr.P.C., the learned SDJM(M), Bijni committed the case to the Court of Sessions finding materials against the accused persons u/s. 376/366/34 IPC. Thereafter, Sessions case was registered. The accused persons appeared and faced trial. Charges were framed against them u/s. 376/366/354/34 IPC. On being read over and explained, the accused/respondents pleaded not guilty and claimed to be tried.

4. During the trial, prosecution examined 05(five) witnesses including the complainant and other cited witnesses, while the defence examined none. In course of their examination u/s. 313 Cr.P.C., they pleaded their innocence and declined to adduce any evidence. The learned trial Court raising the following points for decision, having dismissed the complaint towards acquittal of the accused/respondents, the complainant has preferred this appeal.

"(1) Whether on 02.10.2006 at about 4 PM at Nagarjhar under Manikpur Police Station on the N.H.31 near the Manash river, the accused Rafiqul Islam and Zamirul Islam kidnapped the complainant Maleka Bibi and took her to Delhi with intent to commit illicit intercourse in furtherance of their common intention?

(2) Whether on (date and time not mentioned) after taking the complainant to Delhi by the accused Rafiqul Islam committed rape on the complainant?

(3) Whether on 30.12.2006 at Nagarjhar under Manikpur Police Station on the N.H. 31 near Manash river the accused Rafiqul Islam outraged the modesty of the complainant by catching her and pulling her on the ground with intent to commit illicit intercourse?"

5. PW-3 is the complainant and PW-2 is her husband. PW-1 is the younger sister of the complainant. PW-4 and PW-5 are the neighbourers of the complainant.

6. The complainant in her deposition stated that on the occasion of Durga Puja, she had gone for witnessing the emersion ceremony of Goddess Durga, but the accused/respondent No. 1 dragged her into a Maruti Van, in which the accused/respondent No. 2 was already there. Both the accused persons took her to Kokrajhar and thereafter to Delhi by train and the accused/respondent No. 2 left her at Kokrajhar railway station. In Delhi, she was accommodated in a room, wherein the accused/respondent No. 1 committed rape on her on three occasions against her will. Thereafter, she was taken to different places and finally they returned to Assam and the accused/respondent No. 1 left her at Manikpur chowk, wherefrom she was taken by police. She also stated that the accused/appellants

had threatened her not to disclose anything with the suggestions to tell that she had gone to Delhi in search of employment. Thereafter, she was taken back to her house by her husband.

7. PW-2 is her husband, who narrating the incident stated that his wife along with his son and daughter had gone to see the emersion ceremony, but she did not return. Thereafter, he searched for her and eventually informed the police. According to him, the accused/respondent No. 1 kidnapped her from the National Highway by a Maruti vehicle.

8. PW-4 and PW-5 are the neighbourers, who were informed about the alleged occurrence. During their deposition they stated that the complainant returned home after about 14 days.

9. The learned trial Court on the basis of the evidence on record disbelieved the story narrated in the complaint. The alleged incident occurred on 02.10.2006 nearby the house of PW-3, but there is nothing on record to show that the PW-2 being the husband of the victim lodged any FIR with the police. PW-3 being the mother of 07(seven) children and who was accompanied by her children (one son aged 10 years and one daughter aged 13 years) did not raise any alarm nor she informed any person while she was taken to Kokrajhar and from where she was taken to Delhi. If she had gone to Delhi boarding a train, she could have easily apprised the other inmates immediately.

10. PW-2 being the husband of the complainant, remained silent for such a long period till return of his wife. There is no evidence on record to show that the PW-2 lodged any complaint before the Court or the police. Although the PW-3 in her evidence stated that no complaint was lodged out of fear, but such story is unbelievable. The prosecution also did not examine her 10 years and 13 years old son and daughter respectively, in whose presence the alleged kidnapping took place. Although the alleged occurrence took place on 02.10.2006, but the complaint was lodged after three months on 03.01.2007 without any proper explanation.

11. In this context, Mr. A.R. Sikdar, learned counsel representing the accused/respondents submits that the complaint was frivolous and was with ulterior motive. He has also placed reliance on two decisions of the Apex Court reported in Surjan and Others Vs. State of M.P., and Abbas Ahmad Choudhary Vs. State of Assam, to buttress his argument that when there is inordinate delay in lodging the complaint, the story narrated by the complainant is unbelievable.

12. Considering all the above, I do not find any merit in this appeal and accordingly it is dismissed.

13. Registry shall send down the LCR along with a copy of this judgment and order.