
(2013) 04 CAL CK 0089
In the Calcutta High Court
Case No : C.R.A. No. 781 of 2006

Manik Ruidas (In Jail)

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 120B, 363, 366, 376

Citation : (2013) 04 CAL CK 0089

Hon'ble Judges : Nadira Patherya, J;Asim Kumar Ray, J

Bench : Division Bench

Advocate : Jayanta Narayan Chatterjee, Mr. Sougata Mitra, Ms. Debapriya Mukherjee, Mr. Apalak Basu and Mr. Dwaipayan Biswas, for the Appellant; Manjit Singh, Public Prosecutor and Mr. Kallol Mondal, for the Respondent

Final Decision : Allowed

Judgement

Nadira Patherya, J.—This Appeal has been filed from the judgment and order of conviction dated 29th April, 2006 passed by the learned Additional Sessions Judge, 1st Court, Purulia in Sessions Trial No. 30 of 2005 arising out of Sessions Case No. 226 of 2005. By the said order dated 29th April, 2006 the appellant has been convicted u/s 363, I.P.C. and sentenced for 5 (five) years and under Sections 366 and 376 I.P.C. sentenced for 10 (ten) years. The sentences were to run concurrently. Being aggrieved by the said order of conviction and sentence this appeal has been filed.

2. The case of the Prosecution is that on 23rd November 2004 the victim girl aged 15 years left her house for school but thereafter she did not return home till recovered by the police on 12.01.2005. When the girl continued to remain missing, an FIR was lodged on 3rd December 2004. On the basis of the FIR Balarampur Police Station Case No. 38 of 2004 dated 03-12-2004 was started against the appellant under Sections 363, 366 and 120B I.P.C.

3. On completion of investigation Chargesheet under Sections 363, 366, 120B

and 376 I.P.C. was submitted against the appellant. The case was committed to the Sessions Judge, Purulia and thereafter transferred to the Additional Sessions Judge, 1st Court, Purulia on 26th October, 2005. Charge was framed u/s 376 I.P.C. and under Sections 363 & 366 I.P.C. against the appellant.

4. The prosecution in all examined 16 (sixteen) witnesses and the appellant was also examined u/s 313 Cr.P.C.

5. On consideration of the evidence of the witnesses and the exhibits the Additional Sessions Judge, 1st Court, Purulia passed the order of conviction and sentence against the appellant. Hence, the instant appeal.

6. Counsel for the appellant submits that although the appellant was chargesheeted alongwith Madhusudan Ruidas and Gobardhan Ruidas - brother and father of the appellant, the brother Madhusudan Ruidas and father Gobardhan Ruidas have been acquitted.

7. The de facto complainant in his evidence has stated that the age of the victim girl was between 14 1/2 years to 15 years. He came to know from some villagers that the appellant had kidnapped the victim girl. The victim girl and the appellant were recovered from Punjab but the person in whose house they stayed in Punjab has not been examined.

8. Dr. Bikram Singh is the other person in whose house the victim girl and the appellant resided but he has also not been examined.

9. Arun Mudi with whom both of them left for Punjab has also not been examined.

10. The evidence of P.W.s 3, 5, 6, 7 and 8 is of no assistance to the case of the prosecution as the said witnesses have no personal knowledge and came to know only from the police. Therefore, their evidence will be of no assistance.

11. The evidence of P.W. 4 is an improvement, as she did not state anything to the I.O.

12. P.W. 9 is the Headmistress of the school. She was called to produce the School Register wherein the date of birth of the victim girl was registered.

13. From the evidence of the Radiologist being P.W. 11, it will appear that the victim girl was above 17 years of age.

14. The evidence of P.W. 12 is nothing but hearsay and Santi Mahato with whom the victim girl was walking to school before she met the appellant has not been examined.

15. P.W. 13 is the victim girl who has stated initially that she was made to forcibly cohabit with the appellant but she has also admitted in her cross-examination that she did not state the factum of co-habitation to the Judicial Magistrate.

16. In her 164 statement also she has not stated about forcible cohabitation.

17. Therefore, the offences under Sections 366 and 376 I.P.C. was not proved or established by the prosecution and the sentences could not have been imposed.

18. The intent of Section 366 I.P.C. also does not emerge from the evidence of the victim girl or the statement u/s 313 Cr.P.C. of the appellant.

19. P.W. 11 has stated that the victim girl was above 17 years of age and the two-year theory can easily be applied in this case. On the date of the incident she was 16 years and application of the 2-year theory would make her 18 years of age. Therefore she was a major on the date of incident and the offence u/s 363 I.P.C. also was not proved by the prosecution.

20. In the light of the above therefore, the order of conviction and sentence dated 29th April 2006 be set aside.

21. Counsel for the State-respondent in opposing the said appeal submits that the charges levelled against the appellant is under Sections 363, 366 and 376 I.P.C. That she was removed from her lawful guardianship has been proved by the prosecution and therefore the conviction and sentence u/s 363 I.P.C. has been proved by the prosecution.

22. A missing diary was lodged on 23rd November 2004 that is the date on which the victim girl went missing.

23. The prosecutrix is the best witness. From a reading of her evidence and 164 Cr.P.C. statement corroboration of facts will be evident. The victim girl is a truthful, reliable and believable witness and the case under Sections 366 and 376 I.P.C. has also been proved.

24. The School Register which has been relied on and exhibited ought not to be disbelieved for determining the age of the victim girl.

25. Rule-12 of the Juvenile Justice Rules 2007 has laid down the procedure to be followed in determination of age and the matriculation or equivalent certificate so also the date of birth certificate from the school or corporation has been accepted as a valid piece of evidence for determining the age of a juvenile.

26. It is only in the absence of the aforesaid that a medical board is to be constituted to determine the age of the juvenile.

27. In the instant case as the School Register has been produced wherein the date has been recorded, the same be accepted as the correct age of the victim girl.

28. For the said proposition reliance is placed on 1983 (3) SCC page-1 (Bhoopram-Vs-State of Uttar Pradesh).

29. P.W. 13 has also stated about forcible cohabitation with the appellant.

30. That the victim girl was recovered from the custody of the appellant has also established the case of the prosecution with regard to the offence u/s 376 and

366 I.P.C.

31. P.W. 10, the doctor who examined the victim girl has also stated that in his opinion there had been intercourse. Therefore not only the offence u/s 363 I.P.C. but also the offence u/s 376 I.P.C. has been established by the prosecution and the order of conviction and sentence dated 29th April 2006 calls for no interference.

32. Having considered the submission of the parties, the prosecution in all examined 16 (sixteen) witnesses but the most relevant witnesses are P.W. 10, P.W. 11 and P.W. 13. Some of the witnesses namely, P.W. 5, P.W. 6, P.W. 7 and P.W. 8 have no personal knowledge.

33. The evidence of the mother, P.W. 4 is an improvement as regards the victim girl staying with the appellant in a room as she did not tell the police about the said fact.

34. The evidence of P.W. 3 and P.W. 12 brothers of the victim girl is of no use and is nothing but hearsay evidence.

35. P.W. 9 was examined. She is the headmistress of the school where the victim girl studied and the only reason for taking her evidence is to determine from the School Register the date of birth recorded therein.

36. In comparison to the evidence of P.W. 9 the evidence of P.W. 11 must also be considered who is a Radiologist and he while conducting the Ossification Test found the victim girl to be above 17 years.

37. Admittedly, no birth certificate has been produced. One is also not aware whether at the time of her admission any birth certificate was produced.

38. Therefore, it will not be incorrect to rely on the Ossification Test which is medically accepted and a scientific approach for determination of age.

39. From the evidence of P.W. 11 it appears that the victim girl on the date of incident was 16 years of age and by applying the two years theory she would be 18 years on the date of incident.

40. We need not labour much on this aspect of the matter for the offence u/s 363 I.P.C. as the order of conviction and sentence imposed u/s 363 I.P.C. is for a period of five years. Such five years has admittedly been served by the appellant and it is only u/s 366 and 376 I.P.C. that a sentence of 10 years was imposed.

41. Section 366 I.P.C. deals with kidnapping, abduction and inducement of a woman to compel her marriage. Both the victim girl and the appellant have in their respective evidence and statement u/s 313 Cr.P.C. stated that there was no love affair between them. The victim girl has also not stated in her evidence that there was a promise of marriage made to her by the appellant. Therefore no case of inducement or abduction or kidnapping with the intent to force a victim girl to marry or to have illicit intercourse was established by the prosecution against the

appellant on the basis of the evidence of the victim girl.

42. In fact the victim girl in her examination in chief has stated that the appellant forcibly cohabited with her but in her 164 statement made before the Judicial Magistrate she has not spoken of forcible cohabitation. This fact has been admitted by her in cross-examination. She has also stated in her evidence that she did not disclose her fate to the doctor. The only reason given is that for her own cause the disclosure was not made.

43. P.W. 10 is the doctor who examined the victim girl and he in his evidence has stated that the hymen was not intact. He has also given an opinion that she had been intercoursed. He has also stated in evidence that in his report there is no finding that the victim girl was intercoursed and in view of the conflicting evidence of the doctor (P.W. 10) the benefit of doubt ought to go in favour of the appellant.

44. Exhibit 3 is the medical report given by P.W. 10 and from a reading thereof it appears that no injury mark was found over the whole body of the victim girl. Nowhere has it been stated that the victim girl had been intercoursed and therefore in the light of such medical report and evidence of the Doctor the prosecution has also not been able to establish the case u/s 376 I.P.C.

45. For all the said reasons, therefore, the order of conviction and sentence in respect of the offence u/s 366 and 376 I.P.C. cannot be sustained in the eye of law and is accordingly set aside.

46. The appellant be released forthwith if not required in any other criminal case.

47. The offence u/s 363 I.P.C. is, however, upheld but as the appellant has served the sentence imposed, he need not be detained.

48. The appeal is, accordingly, allowed in part and the order dated 29th April, 2006 is modified as mentioned above. Urgent certified photocopy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

Asim Kumar Ray, J.

I agree.