
(2016) 01 GAU CK 0024
In the Gauhati High Court
Case No : Crl.A. No. 172 of 2007

Masheek Ahmed (MD.) and others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 354, 366, 448, 511

Citation : (2016) 3 GauLJ 355 : (2016) 2 GauLT 608

Hon'ble Judges : C.R. Sarma, J.

Bench : Single Bench

Advocate : K. Munir, Addl. Public Prosecutor, Assam, for the Respondent

Final Decision : Disposed Off

Judgement

C.R. Sarma, J. - Heard Ms. B. Sarma, learned Amicus Curiae, appearing for the appellants and Mr. K. Munir, learned Addl. Public Prosecutor, Assam, appearing for the State respondent.

2. This appeal is directed against the judgment and order, dated 3.7.2007, passed by the learned Additional Sessions Judge (FTC), Karimganj, Assam in Sessions Case No. 55/2006 (G.R. Case No. 1052/2004) under Sections 448/ 366/ 511/ 354/ 34 IPC.

3. By the impugned judgment and order, the learned Addl. Sessions Judge, FTC, Karimganj convicted the appellants for the offence under Sections 448/ 366/ 511/ 354/ 34 IPC and sentenced them to suffer rigorous imprisonment for 5 (five) years and pay fine of Rs. 1,000.00 (Rupees one thousand) in default suffer simple imprisonment for 6 (six) months for their conviction under Section under Sections 366/511/34 IPC and undergo rigorous imprisonment for 2 (two) years under Section 354/34 IPC and rigorous imprisonment for 1 (one) year under Sections 448/34 IPC. It has been directed that all the sentences shall run concurrently.

4. Aggrieved by the said conviction and sentence, the convicted persons, as

appellants, have come up with this appeal.

5. The prosecution case, in brief, is that the informant, who was a divorce wife of the appellant No. 1, was staying in her parents' house and on 3.12.2004 at about 4.00 p.m., the appellants, taking the opportunity of absence of other members of the family in the house of the informant, trespassed into her parents' house and made an attempt to abduct her, but due to alarm raised by the informant, her mother, who was nearby her house and some other persons arrived in the place of occurrence and the accused persons had fled the place. The informant further alleged that her husband i.e. the appellant No. 1, at the time of leaving her parents' house, had forcefully snatched away her gold chain, valued at Rs. 4,000.00 (Rupees four thousand) and outraged her modesty by tearing her blouse.

6. The informant lodged the FIR, on 11.12.2004, with the Inspector Officer-In-Charge of Karimganj Police Station and on receipt of the said FIR, Karimganj P.S. Case No. 458/2004 (G.R. Case No. 1052/2004) under Sections 448/ 366/ 511/ 354/ 34 IPC has been registered against the accused-appellants.

7. During the course of the investigation, police examined the informant (PW 1), her mother (PW 2) and two other persons, as PW Nos. 3 and 4.

8. At the close of investigation, police submitted charge sheet under Sections 448/ 366/ 511/ 354/ 34 IPC. The case, being committed to the court of Sessions, the learned Addl. Sessions Judge (FTC), Karimganj framed charges under Section 448/ 366/ 511/ 354/ 34 IPC. The charges were read over and explained to the accused persons, to which they pleaded not guilty and claimed to be tried.

9. In order to prove its case, the prosecution examined as many as 5 (five) witnesses, including the Investigating Police Officer (PW 5). At the close of the evidence, the accused persons were examined under Section 313 Cr.P.C., they denied the allegations, brought against them and declined to adduce defence witness.

10. The learned Additional Sessions Judge (FTC), Karimganj relying on the evidence, on record, more particularly the evidence of the informant (PW-1) and her mother (PW 2) came to the findings that the appellants committed the offenses charged against them and accordingly convicted and sentenced them, as indicated above.

11. Ms. B. Sarma, learned Amicus curiae, referring to the evidence, on record, has submitted that there is no substantive and convincing evidence to hold that the accused persons had made attempt to abduct the informant, who was the married wife of the appellant No. 1. The learned amicus curiae has also submitted that there is no corroboration in the evidence given by the PW 1, that her modesty was outraged by the appellants by tearing her blouse and snatching her chain. The learned Amicus Curiae, referring to the FIR, has submitted that the occurrence took place, on 3.12.2004, and the matter was reported to Police,

on 11.12.2014, and that the unexplained delay in lodging the FIR, raises serious doubt about the veracity of the prosecution version.

12. In view of the above, the learned Amicus Curiae has submitted that the prosecution failed to establish, beyond all reasonable doubt, that the appellants had committed the alleged offences.

13. Mr. K. Munir, learned Addl. Public Prosecutor, Assam, referring to the evidence, on record, has submitted that, in fact, the chain alleged to be snatched away by the accused persons, has not been recovered by the police and that the torn blows or any wearing apparels were also not seized by the I.O.

14. The learned Addl. Public Prosecutor, supporting the impugned judgment and order, has submitted that there is evidence, more particularly, the evidence given by PW 1(informant) and her mother (PW 2) to show that the appellants had visited the house of the informant and made an attempt to abduct her and that failing to do so, the appellants had outraged her modesty by tearing her clothe.

15. In view of the above, the learned Addl. Public Prosecutor has submitted that the impugned conviction and sentence need no interference.

16. Having heard the learned counsel, appearing for both the parties, I have carefully perused the evidence on record and the impugned judgment and order. Admittedly, except PW 1, i.e. the informant and her mother i.e. PW 2, there was no other eye-witness to the occurrence. PW 3 and 4 arrived at the place of occurrence after the incident. PW 3 in his evidence stated that hearing hue and cry, in the house of the informant, he visited her house and found that the appellants i.e. the accused persons were coming out from her house. Though this witness stated that he got the information from the informant about the occurrence, the informant was (PW 1 did not state that she had informed PW 3 and PW 4 about the occurrence.

17. PW 4 clearly stated that he came to know about the occurrence from PW 1, as indicated above. PW 1 did not disclose that she had informed PW 4 about the occurrence.

18. Therefore, it is doubtful that PW 3 and PW 4 came to know about the incident that took place before their arrival from the informant. The learned trial Judge has also refused to accept the said statement, made by PW Nos. 3 and 4.

19. From the evidence of PW 3 and PW 4, it is found that the accused persons were coming out from the house of the informant. Admittedly, the informant was the married wife of the appellant No. 1 and she after obtaining a decree of divorce against her husband was staying in the house of her parents. However, from the cross examination of PW 1, it appears that the said decree of divorce was subsequently set aside by the appellate court. Hence, their marital status was restored.

20. In view of the said relation, visit of the appellant No. 1 (husband) and his

brothers i.e. appellant Nos. 2 and 3 to the house of the PW 2 i.e. the mother of the informant, where the informant was staying, was not unwarranted.

21. The informant in her evidence, given as PW 1, stated that at the time of the incident, her mother (PW 2) was near the pond i.e. outside the house and finding her alone in the house, the appellants tried to abduct her, but due to alarm raised by her, they failed to do so.

PW 1 further stated that at the time of leaving the house, her husband i.e. appellant No. 1 had snatched away her chain, valued at Rs. 4,000.00 and outraged her modesty by tearing her wearing clothes.

From her above evidence, it appears that hearing alarm, raised by the informant, her mother had arrived at the place of occurrence.

22. The mother of the informant, who deposed as PW 2, stated that the appellants made attempt to abduct PW 1 and that due to alarm raised by them (i.e. PW 1 and PW 2) they failed to do so. She did not whisper anything regarding snatching of chain and tearing of wearing apparels i.e. regarding outrage of modesty of PW 1.

23. As the mother had arrived in the place of occurrence, immediately after the incident i.e. during presence of the appellants in her house, she ought to have supported the evidence of PW 1, regarding snatching of chain and outraging modesty. Her silence in this regard indicates that no such incident had taken place.

24. Therefore, there is no difficulty in holding that the PW 1 i.e. the informant had exaggerated the incident by adding that her chain was snatched and her modesty was outraged by the appellants. Neither PW 3 nor PW 4 also supported the said version, given by PW 1.

25. Therefore, I find no corroboration in the evidence given by PW 1, regarding snatching of chain and outraging her modesty. Both PW 1 and PW 2 i.e. the informant and her mother stated that the appellants made attempt to abduct PW 1. They did not state as to in what manner, the appellants i.e. the accused persons had tried to abduct her. The said statement, given by PW 1 and PW 2 appears to be vague and bald statement.

26. Fact remains that the appellants made the alleged attempt to abduct PW 1, before arrival of her mother (PW No. 2) in the place of occurrence. Hence, it is doubtful, if PW 2 had seen the appellants making attempt to abduct the PW 1.

27. In view of the said exaggeration, made by the PW 1, it is not safe to believe her evidence that the appellants made attempt to abduct her. That apart, PW 1 i.e. the informant did not state that she had informed PW Nos. 3 and 4, who arrived in the place of occurrence, about the alleged attempt for abduction. This omission, on the part of PW 1, also raises doubt about the evidence given by PW 1. The failure of the Investigating Agency to seize the torn wearing apparels, if

any, also raises doubt about the evidence, given by PW 1.

28. In view of the above and considering the entire aspect of the matter, I am of the considered opinioned that the prosecution failed to establish, beyond all reasonable doubt, that the appellants made attempt to abduct the informant and outraged her modesty.

29. As the appellants i.e. the accused persons had social relation with the informant and her mother (PW Nos. 1 and 2) their visit of the house of the PW No. 2 by the appellants, cannot be treated as an offence.

30. Therefore, in the absence of cogent evidence regarding committing offences under Sections 448/ 366/ 511/ 354/ 34 IPC, it cannot be held that the appellants had committed the offence under Sections 448/ 366/ 511/ 354/ 34 IPC.

31. In view of what has been discussed above, I am inclined to hold that the prosecution failed to prove, beyond all reasonable doubt, that the appellants had committed the charged offences. Hence, I find sufficient merit in this appeal, requiring interference. Accordingly, the impugned conviction and sentence are set aside. The appellants are acquitted and set at liberty.

32. Return the LCR.

33. Before I part with the judgment and order, I acknowledge with appreciation the assistance, rendered by Ms. B. Sarma, learned Amicus Curie. It is ordered that an amount of Rs. 7,500/- (Rupees seven thousand five hundred) only be paid to Ms. B. Sarma, as her remuneration, by the State Legal Service Authority.