
(2020) 03 GAU CK 0019
In the Gauhati High Court
Case No : Criminal Appeal No. 39 Of 2013

Md. Mehbub Hussain Laskar @ Lilu

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2)
Indian Penal Code, 1860 — Section 376, 376(1), 448

Citation : (2020) 03 GAU CK 0019

Hon'ble Judges : Hitesh Kumar Sarma, J

Bench : Single Bench

Advocate : B. Sarma, B.B. Gogoi

Final Decision : Allowed

Judgement

1) This is an appeal under Section 374(2) Cr.PC against the judgment and order, dated 30.11.2012, passed by the learned Sessions Judge, Cachar,

Silchar, in Sessions Case No. 61/2009, convicting the appellant and sentencing him to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.

1,000/- with a default clause for offence punishable under Section 376(1) of the IPC.

2) The fact of the case, as unfolded during the trial, is that the appellant is the cousin brother of the victim and the families of the victim and the

appellant resided together earlier. The family of the victim was in good relation with the family of the appellant. The appellant used to visit her house

for the last 3 years regularly prior to the alleged commission of rape on her person by him. The family of the victim shifted the residence to Raipur 5

months prior to the date of occurrence. On 28.4.2009, while the members of the family of the victim were not available in home, the appellant had

come to her house and committed rape on her. While committing rape, the mother of the victim (PW1) had seen both of them in a compromising state.

Then, she (PW1) informed about the incident to her father and brother including other neighbours. They detained the appellant inside their house and

informed the police. Accordingly, the police came and had taken away the appellant.

3) On receipt of the FIR through the Arunachal Police Outpost, the Silchar Police Station registered a case being No. 813/2009, under Sections

448/376 IPC and after completion of investigation of the case, laid charge-sheet under the said sections of law.

4) The learned trial court, after exhausting all the required legal formalities, framed a formal charge against the appellant under Section 376 IPC. The

appellant pleaded innocence to the charge, and therefore, the trial commenced.

5) During the course of trial, the prosecution examined as many as 8 (eight) witnesses including the victim, medical officer and the investigating

officer.

6) I have perused the evidence on record and the impugned judgment.

7) I have also heard Ms. B. Sarma, learned Amicus curiae for the appellant and Mr. B.B. Gogoi, learned Additional Public Prosecutor for the state

respondent.

8) On examination of the evidence on record, it is found that PW1 is the informant who is the eyewitness to the occurrence and PW2 is the victim,

therefore, they are the most important witnesses in this case. PW7 being the medical officer, who had examined the victim, is also a very relevant

witness in the case.

9) From the evidence of PW7, medical officer, it is found that he had examined the victim on 29.4.2009 in the Forensic Medicine Department of the

Silchar Medical College and Hospital. On examination of the victim, the opinion of the doctor is as follows.

â??On the basis of physical examination, laboratory and radiological investigation done on Parveen Sultana Laskar, I am of the opinion that-

(1) Evidence of recent sexual intercourse not seen on her person. However, the genital examination findings suggests that she was used to sex acts.

(2) She was not pregnant on the date of examination.

(3) Her age was above 19 years on the date of examination.â??

It appears from the evidence of the medical officer that the victim was about 19 years of age on the date of occurrence and she is used to sex. The

medical officer also did not find sign of recent sexual intercourse.

10) The evidence of PW1/informant is to the effect that she came home back from her parental house at about 9:30 pm on the date of occurrence and

had seen the appellant committing rape on her daughter (victim) and then she had called her father and brother. It has also come out from her

evidence that her father, brother and uncle came to their house and had detained the appellant inside their house. From her such evidence, it clearly

appears that the appellant was having sexual intercourse with the victim at the relevant time of occurrence.

11) Now, let us consider the evidence of the victim herself. The learned trial court does not appear to have discussed the evidence of the victim

(PW2). But this court has gone through the evidence of PW2 (victim). She deposed that the appellant had forcefully raped her while she was alone at

her house on the date of occurrence and her mother (PW1) had seen the appellant committing sexual intercourse with her. But, in her cross-

examination, the evidence of the victim (PW2) is that the appellant is her cousin brother being the son of her paternal uncle. Prior to shifting to the

present location at Raipur, the victim along with her family was living in their house at Huribail. After they had shifted to Raipur from Huribail, the

appellant once or twice visited her house. She has categorically admitted in her evidence that before 28.4.2009, i.e. the date of occurrence, the

appellant had sometimes sexual intercourse with her forcefully, but she did not file any case against the appellant. Such evidence of the victim (PW2)

clearly shows that she is used to sex with the appellant and she had no complain to have such sex with him earlier. On an overall evaluation of the

evidence on record makes it appear to this court that had the mother of the victim (PW1) did not see the appellant and the victim in a compromising

state there would not have been a complaint this time also. That apart, the medical evidence also speaks about the fact that the victim is used to sex.

She is also a major of 19 years of age.

12) Such being the evidence on record, in the considered view of this court, the victim is a major and consenting party to the sex with the appellant,

and therefore, the appellant cannot be held guilty of commission of rape on her person forcefully and without her consent.

13) That being the evidence, in the considered view of this court, the judgment of the learned trial court is not based on evidence on record.

Accordingly, the judgment of the learned trial court, impugned in this appeal, is set aside.

14) Accordingly, the appeal is allowed.

15) This court records its appreciation for the assistance rendered by learned Amicus Curiae. The learned Amicus-curiae be paid an amount of Rs.

7,500/- as remuneration.

16) Send down the LCR along with a copy of this judgment.