
(2012) 07 GAU CK 0055
In the Gauhati High Court
Case No : Criminal Appeal No. 23 of 2009

Nantu Majumder & Anr Agartala

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Penal Code, 1860 — Section 376(2)(g)
Penal Code, 1860 (IPC) — Section 376(2)(g)

Citation : (2012) 4 GLT 1138

Hon'ble Judges : S.C.Das, J

Bench : Single Bench

Advocate : Advocate appeared for the Appellants: Mr. Somik Deb??Advocates appeared for the Respondent: Mr. D. Sarkar, PP , Mr. P. Bhattacharjee, Addl. PP, Advocates appearing for Parties

Judgement

S. C. Das, J.—Appellants were tried by learned Addl. Sessions Judge, Belonia on charges framed against them under Sections 457,376(2)(g) of IPC in connection with Sessions Trial No. 48(ST/B) of 2008, and they were found guilty of committing offence charged against them by judgment and order of conviction and sentence dated 16.02.2009 and sentenced them to suffer RI for ten years and to pay a fine of Rs.5,000/ each, in default of payment of fine to suffer SI for six months under Section 376(2)(g) of IPC and again to suffer RI for two years and to pay a fine of Rs.5,000/ each, in default of payment of fine to suffer SI for six months, hence this appeal.

2. Heard learned counsel, Mr. Somik Deb for the appellants and learned P.P., Mr. D. Sarkar, assisted by learned Addl. P.P., Mr. P. Bhattacharjee for the State respondent.

3. The material facts, relevant for disposal of this appeal, may be noticed thus:

3.1 "Kamala"(actual name kept withheld, hereinafter mentioned as victim/prosecutrix), aged about 25 years, deserted by her husband, by profession a

daily labour, used to reside in her hut with her infant child, aged about five years.

3.2 On 06.07.2008, at about 1930 hrs., she appeared at Santirbazar Police Station, accompanied with one Ratan Das, UpaPradhan of Paschim Kathalia Gaon Panchayat and lodged an FIR, alleging that on 21.06.2008, a Saturday, at about 11.15 pm, she lighted the hurricane lamp, and thereafter, was preparing to go out of her hut to answer natural call, and at that moment, accused persons, namely Madan Choudhury and Nantu Majumder, both her covillagers, forcibly opened the door, trespassed in her hut and caught her, gagged her mouth and laid her on a cot, and thereafter Nantu Majumder first raped her, while Madan Choudhury was holding her forcefully, and thereafter, Madan Choudhury raped her, while Nantu Majumder was holding her. She could identify both of them with the light of the hurricane lamp. There was none else in her hut at that time except her five years old baby, who was sleeping. Her son working in a shop at Santirbazar used to stay there. After committing rape they left her room, giving threat to her not to disclose the incident. Her husband deserted her long ago. She was shocked and could not take a decision as to what to do during night time. On the following day, she reported the incident to the Pradhan of Kanchannagar Gaon Panchayat, and thereafter, UpaPradhan of the Panchayat. A wrist watch was left in her room, which belonged to Nantu Majumder. She, thereafter, spoke to the villagers, and ultimately appeared before the P.S. in the midst of the fear of public disgrace and shame.

3.3 Officer Incharge of Santirbazar P.S., Inspector Jhunu Lal Das, recorded the statement of the prosecutrix and registered Santirbazar P.S. CaseNo.42 of 2008, under Sections 457, 376(2)(g) of IPC and SI, Gautam Paul was entrusted with the charge of investigation.

3.4 In course of investigation, I.O. examined the prosecutrix, recorded her statement and forwarded her to the Court of learned SDJM, Belonia for recording her statement under Section 164 of Cr.P.C., and accordingly, her statement was recorded. She was also produced before Santirbazar Primary Health Centen (PHC) for her medical examination, and accordingly medical examination was done. I.O. examined all the material witnesses and recorded their statements. I.O. seized the wearing apparels of the victim woman and the hurricane lamp, which was burning at the time of occurrence and was broken by the accused persons and also seized the wrist watch alleged to have left by the accused. Accused persons were arrested on 08.07.2008 and they were also medically examined. On completion of investigation, I.O. submitted charge sheet against the accused persons for commission of offence punishable under Sections 457 and 376(2)(g) of IPC.

3.5 Cognizance was taken on the basis of the police report and the case was committed to the Court of learned Addl. Session Judge for trial.

3.6 In course of trial, charges were framed against the accused persons for commission of offence, punishable under Sections 457 and 376(2)(g) of IPC, to

which they pleaded not guilty and claimed to be tried.

3.7 In course of trial, prosecution examined eight witnesses, namely P W. 1 (the victim woman, name kept withheld), PW.2 Sri SantoshNama, PW.3 Sri UttamNama, PW.4 Sri Bhagyabati Nama, PW.5 Sri Manik Nama, PW.6 Sri Manik Biswas, PW.7 Sri Jhunu Lal Das and PW.8 Sri Gautam Pal.

3.8 Out of the aforesaid witnesses, PW. 1 is the victim prosecutrix and is the maker of the FIR. PWs.2 and 4 are the neighbours of the victimprosecutrix and PWs.5 and 6 are the Pradhan and UpaPradhan of the Gaon Panchayat, to whom the prosecutrix reported the incident on the following day of the night of occurrence. PW.3 is the seizure witnesses of the wearing apparels, etc. PW.7 is the Officer Incharge of the PS., who recorded the FIR and PW.8 is the I.O. of the case.

3.9 After closure of the prosecution evidence, accused persons were examined under Section 313 of Cr.P.C. and they declined to adduce any defence evidence. Defence case is simple denial of the prosecution case.

3.10 Learned Addl. Sessions Judge, considering the evidence on record, found both the accused guilty of the charges framed against them and sentenced them accordingly as aforesaid.

4.1 The first submission of learned counsel, Mr. Somik Deb is that the alleged incident, according to the prosecutrix, occurred on 21.06.2008 at about 2315 hrs. in her residential hut at Kali Bazar. The FIR was lodged on 06.07.2008 at 1930 hrs. In the FIR she simply stated that due to fear of public disgrace she did not lodge the FIR immediately after the occurrence. But in her deposition she brought another story that her son, who used to work in a shop at Santirbazar, suffered fracture injury on falling down from a tree, and therefore, she remained busy with the treatment of her son and so could not lodge the FIR immediately after the occurrence. Such story was not stated by her in the FIR So, the delay of fifteen days in lodging the FIR cannot be said to have explained satisfactorily, and therefore, the entire prosecution case is liable to be disbelieved.

4.2 Learned P.P., Mr. Sarkar, on the other hand, has submitted that in the facts and circumstances, where the prosecutrix is a helpless woman, a daily labour, having none else to help her, has come out with an FIR, even after fifteen days, and the story narrated by her regarding her son's injury, for which the delay has been caused, has not been shaken in the crossexamination, and therefore, the Court may accept the explanation given by her.

4.3 Learned trial Judge, as I find, considered the evidence on record on that point and observed that the delay has been properly explained in the evidence of the prosecutrix.

4.4 On perusal of the evidence and materials on record, it appears that the prosecutrix in the FIR made a very consistent statement. She stated that because of fear of public disgrace, she did not lodge the FIR immediately after

the occurrence. In her statement recorded under Section 164 of Cr.P.C, which is marked as Exbt.P.4, she stated that she informed the Panchayat about the incident. Her son was injured on falling down from a tree and she was busy with the treatment of her son and that has caused the delay in lodging the FIR. In her deposition she stated, on the following day of the night of the occurrence she informed the Pradhan and her covillager Santosh Nama, Bhagyabati Nama, etc. Panchayat suggested her to go to the P.S. On the next day of occurrence she went to P.S. Her son was staying in a shop of Swadesh Saha at Santirbazar at the time of incident. He fell down from a tree and suffered injury. She was busy for his treatment and so she could not file the case and after 14/15 days, she filed the case. She stated the fact to "Darogababu", who reduced her statement in writing. In cross examination she admitted that she did not mention in the Ejahar that due to illness of her son there was delay in filing the FIR. Except suggestion, there is nothing in the crossexamination to disbelieve her statement regarding the delay in lodging the FIR.

4.5 PWs.4, 5 and 6 categorically stated that they were informed by the prosecutrix about the occurrence on the very next day of the night of occurrence and PW.2 was informed by PW.4. Their evidence remained unrebutted and has not been shaken in any manner in the crossexamination.

4.6 The prosecutrix is a helpless woman, deserted by her husband. Helpless condition of the prosecutrix may be easily understood. It was not unnatural for the prosecutrix to think twice to go to the police station at once to report the incident. She resides in a remote village. In addition to what she stated in the FIR, she stated about her son's injury due to fall from a tree for which she might consider that at first she should take care of her son, and thereafter she reported the incident, which is supported by the independent witnesses. There is nothing in the evidence on record that the prosecutrix with an ill motive did not lodge the FIR immediately after the occurrence. There is also nothing in the evidence on record that the prosecutrix narrated a false explanation regarding the delay. At least, nothing came out to destroy her cogent oral evidence.

4.7 The Apex Court in the case of State of Punjab Vs. Gurmit Singh & Ors. reported in (1996) 2 SCC 384, has held that:

"the Courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged."

4.8 In the case of Karnel Singh Vs. State of M.P. reported in 1995 Cri.L.J. 4173, the Supreme Court has held that delay in lodging complaints in such cases in India does not raise inference that complaint was false. Reluctance to go to police is because of society's attitude towards such women, victims.

4.9 In cases of rape, especially in our society, a victim always remains hesitant to disclose her plight since the society generally looks down her and a woman seldom comes out to publicly disclose it not only because of her shy but also of public disgrace. Here in this case, the victim prosecutrix stated that her husband deserted her. Her brotherinlaw was keeping no contact with her. She maintained livelihood working as a labour. PW.2 stated that her husband and brotherinlaw were not keeping relation with her being annoyed with her activities. There is nothing on record that the prosecutrix is a woman of easy virtue or that on any earlier occasion also she made such complaint against anybody else. Under such circumstances, the decision of the trial Court that the victim's evidence inspired confidence about the commission of offence cannot be termed as bad in law in the facts and circumstances of the case. Though delay in this case in lodging the FIR is of 15 days, but the facts and circumstances and the evidence on record, are so cogent and apparent that the delay cannot create any doubt in the authenticity of the prosecution case as a whole. Therefore, in my considered opinion, this argument of learned counsel, Mr. Deb, does not deserve any consideration.

5.1 The next argument advanced by the learned counsel, Mr. Deb is that the sole evidence of the prosecutrix, not supported by medical evidence, cannot be relied on. It is the rule of prudence that in cases of rape, Courts must look for some corroboration. Here the prosecutrix lodged the FIR after 15 days. Medical report, which is on record, though not proved in evidence, shows that her vaginal orifice admits two fingers easily. Mucous membranes are wrinkled and thickened. Vaginal space is roomy, which suggests that the prosecutrix is a woman of easy virtue, and therefore, her evidence should be disbelieved and the accused persons should be given the benefit of doubt.

5.2 On the other hand, learned P.P. has submitted that it is settled law if the evidence of the victim prosecutrix inspires confidence, it is enough, even without any corroboration, and the conviction can be sustained.

5.3 In the FIR prosecutrix stated that it was about 1115 hrs., she was about to go out of her room to answer natural call. She extended the flame of hurricane lamp and was preparing go out and at that time accused persons pushed the door forcibly and effected their entry in the room, jumped on her, dragged her on the cot and one after another raped her. There is nothing in the evidence on record that adjacent to her hut there was any other house. The accused persons after committing rape on her left her with a threat. One wrist watch of one of the accused was left. The prosecutrix stated that on the following morning she informed the matter to the Pradhan i.e. PW.5 and UpaPradhan i.e. PW.6. Such evidence of the prosecutrix has not been shaken at all in the crossexamination. She also stated that she narrated the incident to P W.4, a neighbour, who stated the incident to her husband i.e. PW.2. All these witnesses made a consistent statement what was reported by the prosecutrix. After lodging the FIR she was produced before the Magistrate and the Magistrate recorded her statement,

where also she made the same statement what she mentioned in the FIR. I find no room to doubt the cogent and consistent testimony of the prosecutrix. Admittedly, the FIR was lodged after fifteen days. Therefore, medical examination of the victim cannot afford any evidence in support of the prosecution case. The prosecutrix is a married woman, having two children. Under such circumstances, her vaginal orifice, admitting two fingers easily, and wrinkled and thickened mucous membranes, cannot suggest that she is a woman of easy virtue or that of she is an unchaste woman. There is no evidence on record that the prosecutrix is a woman of easy virtue or that she had any enmity with the accused persons to entangle them in a false case. During crossexamination of the prosecutrix it is simply suggested that the prosecutrix made a false complaint at the instance of PW.2 but in the crossexamination of PW.2, not even a suggestion was put to him that at his instance the prosecutrix made a false complaint. So the allegation made by the prosecutrix against the accused persons, virtually, remained unchallenged, leaving no room at all for the Court to have a second thought about her evidence. Medical evidence can in any way be said to be an essential evidence for determining the allegation of rape. The prosecutrix, being a married woman, can easily understand what amounts to rape and she has made definite statement about the rape, committed by the accused persons. PW.4 clearly stated that on the following day of the night of the occurrence she was reported by the prosecutrix that the accused persons trespassed in her room and forcefully raped her. PW.5 also stated in the same tune. But in his crossexamination attention was drawn to his earlier statement recorded by I.O. under Section 161 of Cr.P.C. to which he stated that he could not recollect whether he stated that an attempt of rape was made. That portion was marked as Exbt.D.2 and was proved by I.O. PW.6 stated that he was informed by the victim on the following morning that the accused persons trespassed in her hut breaking the door and attempted to molest her and outraged her modesty. These two statements show that the prosecutrix reported them about the sexual molestation done by the accused persons.

For a woman, like the prosecutrix, it would be quite natural to say to the male villagers on the following morning that she was sexually molested by the accused persons. She may not say the exact word "rape" out of shy, which does not discredit her entire evidence. She made a categorical statement about the rape to PW.4, a woman, and the crux of the evidence of PW.5 and PW.6 also, is supporting her evidence.

5.4 The Apex Court in the case of *State of Andhra Pradesh Vs. Gangula Satya Murthy* reported in AIR 1997 SC1588 has held that in case of rape the Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out allegations of rape.

5.5 In the case of *State of Punjab Vs. Gurmit Singh & Ors.* reported in AIR 1996 SC 1393 the Apex Court held thus

"Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harms in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murderer destroys the physical body of the victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

5.6 In the case of *Bodhusattwa Gautam Vs. Subhra Chakraborty* reported in AIR 1996 SC 922 the Apex Court considered the mental and psychological sufferings, a raped victim suffered in the process, and has held thus

"Rape is not only a crime against the person of a woman (victim). It is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is violative of the victim's most cherished of the Fundamental Rights, namely, the right to life contained in Article 21."

5.7 In the case of *Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat* reported in AIR 1983 SC 753 the Apex Court held thus "A girl or a woman in the tradition bound nonpermissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be

difficult to secure an alliance with a suitable match from a respectable or an acceptable family. In view of these and similar factors the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a builtin assurance that the charge is genuine rather than fabricated."

5.8 In the case of Kundula Bala Subrahmanyam & Anr. Vs. State of Andhra Pradesh reported in 1993 Cri.L.J. 1635 : (1993) 2 SCC 684, the Apex Court observed the role of the Courts in cases relating to sexual offences, especially offence against women and held thus:

"The role of courts, under the circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacunas in evidence as otherwise the criminals would receive encouragement and the victims of crimes would be totally discouraged by the crime going unpunished. The courts are expected to be sensitive in cases involving crimes against women."

5.9 In the case of Gurmit Singh (supra) while considering the argument that the prosecutrix was a woman of easy virtue, the Apex Court observed even in cases, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse no such inference like the victim being a girl of "loose moral character" is permissible to be drawn from that circumstances alone. Even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. No stigma, should be cast against such a witness by the Courts, for after all it is the accused and not the victim of sex crime who is on trial in the Court.

5.10 On careful consideration of the evidence on record, I find that the trial court appreciated the evidence on record in right direction and properly considered the gravity of the offence and arrived at a conclusion. I find no merit in the argument advanced by learned counsel, Mr. Deb.

6. It is further argued by learned counsel, Mr. Deb that the examination under Section 313 of Cr.P.C. has not been properly done, explaining the circumstances appearing in the evidence to the accused persons and, so, the trial vitiated.

6.1 I have meticulously gone the memorandum of examination under Section 313 of Cr.P.C. and I find all incriminating circumstances, appearing in the evidence on record, were referred to the accused persons, and they simply denied it. The accused persons failed to make out a den in the prosecution case. They are covillagers of the victim and the victim has no personal enmity against them to implicate them in a false case. They, taking advantage of helplessness and loneliness of the victim, sexually molested her, which is evident in the evidence on record. and therefore, the trial Court rightly held them guilty of

committing offence, punishable under Sections 457 and 376(2)(g) of IPC.

7. Learned counsel, Mr. Deb, at the conclusion of his argument, has submitted that the accused persons are already in custody for about three and half years, and if this Court consider that they are guilty of the offence, they may be set free with the punishment, already suffered by them.

I have considered the submission of learned counsel, Mr. Deb. The appellants committed offence of gang rape for which the minimum punishment prescribed by law is ten years. The accused appellants failed to make out any special case to have a special consideration for further reduction of the punishment from the minimum punishment of ten years. Therefore, there is no scope for this Court to reduce the punishment, what the learned Addl. Sessions Judge inflicted on them. Further, in the facts and circumstances of the case, I find no justification at all to interfere in the sentence. The appeal therefore stands dismissed.

8. Send back the L.C. records along a copy of the judgment.