
(2016) 01 TP CK 0036
In the Tripura High Court
Case No : Crl. A (J) No. 16 of 2014

Nayan Deb

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 376(1)

Citation : (2016) CriLJ 1063

Hon'ble Judges : Deepak Gupta, C.J. and S.C. Das, J.

Bench : Division Bench

Advocate : R. Purakayastha, for the Appellant; R.C. Debnath, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, C.J.

1. This appeal by the convicted accused is directed against the judgment dated 26.03.2014 passed by the learned Sessions Judge, West Tripura, whereby he convicted the accused of having committed rape under Section 376(1), IPC and sentenced him to undergo imprisonment for 10 years and to pay fine of Rs. 2000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of two months. Briefly stated the prosecution story is that the accused raped the victim (name withheld and hereinafter referred to as the victim). According to the prosecution the accused caught hold of the victim on the eve of Durgapuja at the tube well near their house. Thereafter the accused forcibly took the victim to a vacant room inside the house and had forcible sexual intercourse with her. The complaint was made by the brother of the victim (PW 6) on 16th March, 2013, i.e. about seven months after the occurrence had taken place. In this complaint it was stated that his sister had become pregnant as a result of the rape. In this complaint it was also stated that since the accused had promised to marry the sister and because she was scared she had not disclosed anything to her family members. However, after she

became sick on account of pregnancy and when the pregnancy was physically apparent they came to know that the sister was pregnant and it was only then that the family members realized that there had been sexual intercourse. On asking the sister told them about the occurrence. Thereupon they pressed on the accused Nayan Deb to marry the sister but he refused to marry the sister and therefore the case was lodged. The averments in the complaint clearly indicate that there were no eyewitnesses to the occurrence and that the victim had not disclosed the factum of being raped to any family member till the pregnancy itself was discovered.

2. The brother appeared in witness box as PW 6 and has given a totally different version. According to him one day after the occurrence his younger sister Papiya Deb informed him that on the previous night the accused had forcibly taken away the victim from the tube well to an empty room and committed rape on her. He also states that this fact was confirmed by the victim. Thereafter he told some persons, namely Biplab Chakraborty, Hare Krishna Sarkar and Samar Deb, etc. about the occurrence. Due to the rape the victim got pregnant. He also states that when the pregnancy was in an advanced stage Nayan Deb ultimately married the victim but did not take her to his house. Therefore, he lodged a complaint with the Women Police Station. As per his statement the accused married the victim but when the accused did not take the victim to his house then the complaint was lodged.

3. The sister of the victim appeared as PW 5 and states that she saw the victim being dragged by the accused to a vacant room and thereafter she was informed by the victim that after taking her to the room the accused had raped her. She immediately informed the mother of the accused. She also states that the accused slapped her and told her not to inform others. She does not say a word that she informed her brother about this fact on the next date. According to her she had only informed the mother of the accused and that too on the date of the incident itself.

4. As far as the victim is concerned, she appeared in the witness box and has made a statement that she was forcibly taken to the room and raped. She also states that her elder sister had seen her being dragged to the spot. According to her after she became pregnant her brother lodged the complaint. In cross-examination she has stated that after filing of the case she was married to accused, Nayan Deb. She has also in cross-examination stated that after the first incident she and the accused Nayan Deb had sexual intercourse on different occasions. She also states that her marriage took place at her house.

5. It is not necessary to refer to the statements of other witnesses. From the statement of the victim herself it is more than apparent that this is a case of consensual sex. There is only one allegation that on the first occasion she was forcibly raped. That story is not believable. Firstly, according to the prosecution the sister i.e. PW 5 saw the occurrence. If an elder sister sees her younger sister being forcibly taken away the natural consequence would have been that she

would have raised an alarm or both the sisters could have easily fought one man and resisted the rape. The story of rape seems to be totally false. Secondly, no complaint was lodged immediately after the occurrence. It is true that delay by itself is not always fatal to the prosecution but there must be some explanation for the delay. In this case there is no explanation at all as to why the complaint was not lodged at the first instance. The only explanation given is that the accused was asked to marry the sister. It is also an admitted fact that he did marry the sister. The prosecution has failed to prove what was the date of marriage. As far as the victim is concerned she has made two contradictory statements. In the opening portion of the statement she states that she was married to the accused Nayan Deb all along, whereas in the cross-examination she states she was married after the case was filed. Be that as it may, the fact remains that the victim married the accused. It is also a fact that she had consensual sex with him on a number of occasions after the first incident. With regard to the first incident we are unable to accept the statement of the prosecutrix because of the contradictory stand taken by her sister and her brother and also for the reason that the version of the brother in the FIR is totally contradictory to what he has stated in the Court. The statements are being changed on every occasion and therefore one cannot rely on such statements to convict the accused.

6. The learned trial Court has relied totally on the statement of the prosecutrix. The law in this regard is very clear that the statement of the prosecutrix can be relied upon and even if there is no other corroboration an accused can be convicted. However, one important caveat is that the statement of the victim should inspire confidence. This is not a case where the statement of the victim inspires confidence. Her statement is contradicted by her own brother. Her statement does not appear to be true because if her sister had seen her being dragged men she and her sister could have made some resistance. The alleged rape has taken place near the house of the victim and the sister could have easily raised an alarm, called her family members or the neighbours and prevented her sister being raped. There is no explanation why no alarm was raised and this leads us to the only conclusion that the sister did not see the occurrence and the victim remained silent. The family members came to know about the occurrence only after the victim was showing physical signs of pregnancy and only thereafter the entire story of rape was concocted. Therefore, we do not agree with the view of the learned trial Court. In this view of the matter the appeal is allowed. The judgment of the learned trial Court is set aside. The accused is acquitted.