
(2015) 10 TP CK 0020
In the Tripura High Court
Case No : Criminal A(J) No. 14 of 2014

Nibaran Debnath and Others

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 307, 323, 376(1), 417, 447

Citation : (2015) 10 TP CK 0020

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

Bench : Division Bench

Advocate : P.K. Biswas, Sr. Advocate and P. Majumder, Advocate, 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 accused is directed against the judgment dated 20th February, 2014 delivered by the learned Sessions Judge, North Tripura Judicial District, Kailashahar, whereby he has convicted accused No. 1, Nibaran Debnath of having committed offences punishable under Section 376(1) and Section 417 IPC and accused No. 2 of having committed offences punishable under Sections 447, 307 and 323 IPC and sentenced them as follows:-

".....Considering all aspects, I sentence convict Parimal, alias Nityananda Debnath to pay a fine of Rs. 200/- (rupees two hundred), in default to suffer SI for 15(fifteen) days for commission of offence punishable under section 447 IPC. I also sentence convict Parimal, alias Nityananda Debnath to pay a fine of Rs. 200/- (rupees two hundred), in default to suffer SI for 15(fifteen) days, for commission of offence punishable under section 323 IPC. I sentence convict Parimal, alias Nityananda Debnath to suffer R.I. for 7(seven) years and a fine of Rs. 3,000/- (rupees three thousand), in default to RI for 6(six) months, for commission of offence punishable under section 307 IPC."

".....Therefore, considering all aspects I sentence the convict Nibaran Debnath to suffer RI for 10(ten) years and to pay a fine of Rs. 5,000/- (rupees five thousand), in default to suffer RI for 6(six) months, for commission of offence punishable under Section 376(1) IPC. I also sentence convict Nibaran Debnath to pay a fine of Rs. 3,000/- (rupees three thousand), in default to suffer RI for 3(three) months, for commission of offence punishable under section 417 IPC."

"All the sentences awarded to the convicts shall run concurrently."

2. The prosecution was set in motion on the basis of a complaint made by the mother of the victim (name withheld). In this complaint it was stated that on 23rd October, 2012 the mother had seen her daughter roaming with the accused No. 1, Nibaran Debnath. When she questioned her daughter, the daughter told her that for the last three years the daughter had been maintaining sexual physical relationship with the accused No. 1 and he had promised to marry her. Thereafter the mother asked accused No. 1 to marry her daughter. The accused No. 1 refused to marry the daughter. Thereafter the complainant approached the father of the accused but he also rejected her request and threw her out of his house. She finally approached the village elders and a meeting was convened on 26th October, 2012. On that very day the accused No. 2, Nityananda Debnath @ Parimal, brother of accused No. 1, entered the house and forcefully dragged the victim, gave her blows and forcibly made her consume a bottle of poison. Thereafter the son of the complainant, Sushanta Das came to the spot on hearing the screaming of his sister and saved his sister. The victim was immediately shifted to the hospital at Kailashahar where she was admitted and thereafter the complaint was lodged.

3. On the basis of this complaint, investigation was carried out. The learned trial Court framed charges against both the accused. As far as accused No. 1 is concerned, he was charged with having committed rape under Section 376(1) and also having committed sexual intercourse on false assurance of marrying her and, therefore, committed offence under Section 417 IPC. As far accused No. 2 is concerned, he was charged with having committed offences of house trespass, punishable under Section 448 IPC, attempt to murder under Section 307 IPC and causing simple injury under Section 323 IPC.

4. We shall first take up the case of accused No. 1 who is charged with having committed rape on the victim and secondly, also whether he had cheated her.

The statement of the victim is most important to decide this issue. The victim has clearly stated that she had a love affair with the accused. According to her, for almost three years she and the accused were having sexual intercourse. She had not complained to any person, nor she had raised any issue about this at any stage. She has clearly stated that she had committed sexual intercourse with the accused in her own house on five to six occasions and at other places on four to five occasions. According to her, on 23rd October 2012, her mother saw her

sitting with the accused No. 1 and thereafter her mother gave her a slap. Despite this, the victim came back to her own house along with the accused and had sexual intercourse with him. When the mother came back she caught the two in a compromising position. This evidence of the victim herself clearly indicates that every sexual act was a voluntary consensual act of sex. These were not acts of forcible sex and as far as the last act of sex is concerned, according to the victim herself, even after the mother has slapped her outside she came back to her own house and had sex with the accused No. 1. This clearly shows that the victim did not listen to her mother and was not under the control of the mother. It is also borne out from the record, especially from the statements of PW-4, Sunati Nath, PW-5 Gita Debnath, PW-6 Suprava Debnath, PW-7 Shibshankar Adhikari who are the neighbours and PW-9 Sumanta Dey, Pradhan of the Gram Panchayat that they all knew that the victim and the accused were mixing freely for the last 2/3 years. Therefore, the statement of the mother, PW-1 Anjali Das that she was not aware about the relationship between her daughter and accused No. 1 does not appear to be correct. When all the persons in the village including the neighbours and the Gram Pradhan of the village were aware of the free interaction and mixing between the victim and the accused, the mother cannot claim that she was unaware of the same.

5. To us it appears that the problem has arisen because the accused No. 1 refused to marry the victim. That brings us to the question as to whether he had ever promised the victim that he would marry her. Other than the bald statement of the victim there is no other evidence in this regard. Here we may also point out that when the statement of the victim was recorded before the Magistrate under Section 164 Cr.P.C. she made no statement at that stage that the accused had ever promised to marry her. There is no other evidence to support her version that the accused had promised to marry her. She has admitted that the accused used to write letters to her. She has also admitted that she used to write letters to the accused which he had returned to her. According to her these letters which she had written to the accused were also in her possession. If there was any promise of marriage, that would have also been reflected in these letters. These letters have been withheld and, therefore, adverse inference will have to be drawn against the prosecution that these letters have been withheld because they did not support the version of the prosecution.

6. Therefore, we have no hesitation in holding that the case against the accused No. 1 was not at all proved and we are constrained to observe that the judgment delivered by the learned trial Court of conviction is virtually a judgment based on no evidence whatsoever. It is a judgment based on conjectures and surmises and not on legally admissible evidence.

7. That brings us to the conviction of accused No. 2 brother of accused No. 1. The mother has not witnessed the occurrence and her statement is only hearsay. According to her she had already left for Kailashahar when this occurrence took place. The main evidence is of the victim herself and she states that on 26th

October, 2012 accused No. 2 entered into her house and started scolding her. All on a sudden he forcibly "swalled me poison" (sic). Probably what was meant was that accused No. 2 forcibly forced her to swallow some poison. Thereafter she raised an alarm. She has not stated a word that the accused tried to beat her. Her only case is that the accused forcibly tried to administer poison to her.

8. We have perused the medical evidence, especially the statements of PWs. 16 and 22, the two doctors and there is not one mark of injury found on the person of the victim. Next comes the question as to whether any poison was consumed or administered to the victim. The only evidence is of PW-22 and he says that he smelt garlic in the breath of the victim and when the victim vomited even the vomit smelt of garlic and, therefore, he has come to a prima facie view that she had consumed some organo phosphorous substance. This view cannot be said to be a final view. In case, the case against the accused had to be proved, then it was the duty of the prosecution to have seized the bottle and send it to the Chemical Examiner. It was the duty of the doctor to have seized the vomit and send it to the Chemical Examiner. It was also the duty of the doctor to have administered stomach wash to the victim and send the contents of the stomach wash to the Chemical Examiner to establish that poison had been administered. There can be no oral evidence with regard to administering of poison. There has to be some scientific evidence to show that the substance administered is poison and nothing else. Unfortunately the prosecution has not performed this part of its duty.

9. It is difficult to believe that one person can forcibly administer poison to another. The case of the defence is that the victim may herself has consumed poison but we are not going to this aspect of the matter. But the prosecution has failed to prove that any poison has been administered at all.

10. Lastly, there is virtually no evidence to show that the accused No. 2 had committed an offence punishable under Section 447 of the IPC, which is criminal trespass. There is no evidence that the accused entered within the house of the victim. What has occurred in the compound we cannot lose sight of the fact that on that very day a meeting was to be held between the two sides and it could be natural for the brother of the accused to have come to the house of the victim to even patch out the differences or even to convince her not to make a statement against his brother since they had had a long love affair. Whatever may be the reason this cannot be said to be a case of criminal trespass. There is no evidence of attempt to murder because even the administering of poison has not been proved in this case. No offence under Section 323 is made out because no injuries have been proved on the person of the victim.

11. In view of above discussions we have no hesitation in allowing the appeal filed by the accused-appellants.

12. The judgment of the learned trial Court is set aside and the accused are acquitted and they be released forthwith.