
(2010) 08 GAU CK 0023
In the Gauhati High Court

Renuram Mili, S/o Late Moniram Mili

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Citation : (2010) 08 GAU CK 0023

Hon'ble Judges : H.N.Sarma, J

Bench : Single Bench

Advocate : N.S.Thakuria, B.B.Gogoi, Advocates appearing for Parties

Judgement

1. Not being satisfied with the judgment and order of conviction of the accused/appellant under Section 376(2)(g) IPC passed in Sessions Case No.35(DH)/04 by the learned Sessions Judge, Dhemaji on 23.03.2005 sentencing him to undergo R.I. for 10 years and to pay a fine of Rs. 5,000/, in default, to undergo further R.I. for three months, the present appeal is preferred from jail.

2. Being a jail appeal, Ms. NS Thakuria, learned counsel is appointed as amicus curiae to assist the Court in the appeal. I have heard the learned amicus curiae for the appellant and Mr. BB Gogoi, learned Addl. P.P., Assam for the State.

3. On the basis of an FIR lodged by PW.1 (Minaram Lalung) on 18.03.2004 with the Gogamukh Police Station, the police registered Gogamukh P.S. Case No.27/2004 under Section 376/34 IPC against the appellant alongwith another accused person. It is alleged in the FIR that the appellant (Renuram Mili) alongwith other accused (Naren Pegu) on the night of 17.03.2004 at about 900 to 1000 PM when the inmates of the victim's house were sleeping, with a preconstrued mind came to the house of the victim and the appellant asked the victim (Rekha Lalung) to open the door addressing him with the voice of his elder brother. Believing that she opened the door and immediately accused persons gagged her mouth and took her into the nearby field and committed rape on her, one by one and destroy her chastity. After commission of the offence, the accused persons left the place and the victim, after recovery of her sense came

back to her house by the end of night. She reported the entire incident to the family members. Her parents informed the villagers and along with the victim came to Gogamukh Police Station and lodged the written FIR. After registration of the case, investigation ensued. The investigation was entrusted upon SubInspector Khalilur Rahman, PW8. The I.O. visited the place of occurrence, examined the witnesses, got the victim medically examined and arrested both the accused persons. After completion of the investigation having found a prima facie case submitted chargesheet under Section 376/34 IPC. The case being exclusively triable by the Sessions Court, the learned CJM, Dhemaji committed the case to the Court of Sessions Judge, Dhemaji wherein it was registered as Sessions Case No.s35(DH)/2004.

4. On the basis of the material documents examined under Section 173 CrPC and after hearing the prosecution witnesses including the defence, the learned Trial Judge framed charge against the accused persons under Section 376(2)(g) IPC. On being explained the charge, the accused persons denied the charge and claimed to be tried.

5. During the course of the trial, prosecution examined as many as 8 witnesses out of which, PW1 is the father of the victim, PW2 is the victim herself, PW3 is mother of the victim, PW7 is the Doctor and PW8 is the I.O. of the case.

6. During the course of trial, another accused, namely Naren Pegu absconded and inspite of issuance of P&A, he could not be apprehended. Accordingly, trial was proceeded against the present appellant, Renuram Mili.

7. The learned Trial Judge on proper appreciations of the evidence of the prosecution witnesses and also considering the defence plea, held the appellant guilty for commission of an offence under Section 376(2)(g) IPC and sentenced him in the manner as indicated above by the impugned judgment which is the subject matter of challenge in the present appeal.

8. It has rightly been pointed out by Ms. Thakuria, learned amicus curiae that the allegation levelled against the accused persons disclosed that the present case is a case of gangrape.

9. Out of the 8 witnesses, the informant (Minaram Lalung), PW.1, father of the victim stated that on the night of occurrence his daughter was sleeping in a room with his two minor daughters. In the morning, he found the door open and her daughter was missing from home. On enquiry her daughter was found weeping in the courtyard who narrated that the accused persons forcibly took her to the nearby field and committed rape on her. After hearing this PW1, took the victim to Gogamukh Police Station and lodged the FIR.

10. PW2, is the victim girl who deposed before the Court that on the night of occurrence when she was sleeping in her house alongwith two minor sisters at about 1100 PM she heard a voice similar to her brother Diganta calling her to open the door and she accordingly opened the door. But to her utter surprise she

found it was not her brother but it was the accused person Naren Pegu and Renuram Mili. She could recognize the accused persons as because the houses of the accused persons are nearer to them and only separated by a small stream. One of the accused gagged her mouth and other carried her to the field on the back side of their house. In the field she was laid down on the ground and the accused persons Naren Pegu first committed rape on her and then by the appellant, Renuram Mili. She specifically stated that both the accused persons committed rape on her by inserting their male organ into her genital organ although she tried to resist them but she failed. After committing the offence, both of the accused persons left the place at about 300 AM and she somehow managed to come to her house. She narrated the incident to her parents. Next morning her father took her to police station and FIR was lodged, she was medically examined and her statement was recorded by the Judicial Magistrate, Dhemaji. In cross, she reiterated that she could identify the accused persons after having a glance on their face. Her skin of hand got scratched when the accused person dragged her to the field.

11. PW3, Smt. Santi Lalung is the mother of the victim who stated that on the night of occurrence her daughter was found weeping in the courtyard and on being asked she narrated that the two accused persons committed rape on her and the names of the accused persons were stated by the victim before her and PW1.

12. Similarly PW4, Kalpana Konwar who is the relative of the victim stated that on the following morning of the date of occurrence she went to the house of the victim and found the victim weeping and the victim reported her the incident occurred in the previous night that the accused persons dragged her to the field and committed rape on her. PW4 accompanying the victim to the police station in lodging the FIR and for medical examination and also to the Court.

13. PW5, Nabin Bora was called upon by the PW1, father of the victim, on the following morning of the night of occurrence and the victim told him that the accused persons misreading her with the voice of her elder brother asked to open the door and when she opened the door she was carried into the field forcibly and the accused persons committed rape on her. PW5 further stated that he went to the house of the accused persons to enquire and both of the accused persons admitted their guilt before him saying that they had dragged the victim to the field.

14. PW.6, Dilip Bora, another relative of the victim, stated that he came to know about the incident as reported by the victim and he corroborated the statement of PW.5 .

15. PW.7, the Doctor serving in the Gogamukh Civil Hospital in the relevant time examined the victim and found the following:

The girl is of average built.

Gait Normal

Breast Well developed (no tenderness).

Age of menarche 4 years back

Teeth 16/16

External Genitalia:

Labia Majora and Minora are well developed. Pubic Hair Present, Introitus admits two fingers, but very tender. Hymen Absent. Last Menstrual period 14 days back

Investigation done

Vaginal swab for spermatazoa No spermatozoa seen.

Xray for confirmation of age above 18 years, xray enclosed.

Urine of pregnancy test should be done, if the menstruation overdue by 7 days

The Doctor is of the confirm opinion that there was proof of sexual intercourse with the victim girl.

16. The I.O.(Khalilur Rahman) who investigate the case as PW.8 stated in his deposition that on 18/3/04 having received the FIR from the informant, he registered the case and took up the investigation. The victim was found in the police station itself and she was sent to the Gargaon Civil Hospital for medical examination and further she was sent to the Court for recording her statement under Section 164 Cr. P.C. He recorded the statement of witnesses and arrested both the accused and forwarded them to the custody. After completion of the investigation, he submitted charge sheet against the accused persons. In crossexamination of PW8, no contradiction of his statement and in recording statements of PWs could be established nor any defective in his investigation would be found by the defence.

17. After conclusion and the appreciation of witnesses, the circumstances that appeared against the accused/appellant was put before him in his examination under Section 313 CrPC, but the accused denied the same.

18. The evidence of prosecution witnesses, as disclosed above, more particularly, the evidence of PW2, the victim girl clearly describes the manner and method in which the offence was committed by the appellant alongwith the other accused person. Her statement is clear, cogent, convincing and inspires confidence of the Court. The evidence of victim girl is corroborated by the evidence of Doctor (PW7). Immediately after the occurrence, she reported the incident to her parents and other villagers who assembled therein. PWs4 and 5 who enquired the matter to the accused persons to which they admitted their guilt before them. Thus, there is an 'extra judicial confession' on the part of the appellant and these circumstances were specifically put to him when he was examined under Section 313 CrPC. The evidence of the victim girl or any of the witnesses

could not be disturbed although they were duly crossexamined. The evidence of witnesses, more particularly, of PW2 is found to be uncontradictory who maintained the same version as adduced in herchief.

19. The learned Trial Judge considering all the aspects of the matter including the law relating to the subject and from the evidence produced by the prosecution held that it clearly established a case of gangrape attracting Section 376(2)(g) IPC. The prosecution in the instant case, discharged well in proving the offence under the aforesaid Section and consequently, I do not find any infirmity in the impugned judgment of conviction of the accused/appellant under Section 376(2)(g) IPC.

20. At this stage, learned Amicus Curiae submits that the accused/appellant is spent in custody for about 6 years and + months and accordingly some leniency, if considered, may be shown in sentencing the appellant. Learned Public Prosecutor is also heard on this point. The case against the appellant under Section 376(2)(g) IPC is found to be well proved by the prosecution. The minimum sentence prescribed for such an offence is rigorous imprisonment for a term which shall not be less than 10 years and that may be extended for life. Thus, it is found that the learned Trial Judge inflicted a minimum sentence of 10 years upon the appellant. There is no other circumstance whatsoever found on record, justifying reduction of the sentence of the accused/appellant, more particularly, taking into account the nature of the crime committed by the appellant with his active cooperation with the other accused person.

21. In view of the above discussions and observations, I do not find any merit in this appeal and resultantly the appeal stands dismissed.

22. Send down the LCR forthwith.