
(2016) 12 GAU CK 0029
In the Gauhati High Court
Case No : Crl. A. No. 22 of 2016 (J)

Sh. Saimawnga

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 13-12-2016

Acts Referred:

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

Citation : (2017) 1 GauLT 439

Hon'ble Judges : S. Serto, J.

Bench : Single Bench

Advocate : Mr. C. Lalfakzuala, Amicus Curiae, for the Appellant; Mrs. Linda L. Fambawl, Addl. PP, for the Respondents

Final Decision : Dismissed

Judgement

S. Serto, J. (CAV) - This is a jail appeal of the appellant/accused against the judgment and order dated 2.12.2014 of the Sessions Judge, Lunglei district passed in Crl. RNo.630/2013 wherein he was convicted for the offence under Section 376(2)(i) of the IPC and sentenced to R.I. for a period of 10 years and a fine of Rs. 2000/-(rupees two thousand) and in default of paying the same to a further imprisonment for a period of 1 month.

The brief facts and circumstances that led to the prosecution of the appellant/accused, his conviction and sentence under the Section of IPC mentioned above are as follows.

On 17.12.2013 one Mrs. Lalnunpari submitted a report to the Officer In-charge of Hnahthial P.S. stating as follows; That her daughters, one 13 years old and the other 10 years old having been sexually abused by their father Saimawngaon several occasions. That, she and her husband have been divorced 6 years ago and have been staying separately. That, in the month of June that year, her elder daughter came to live with her and while staying with her, she revealed to her in the night of 14.12.2013 that her father have had sexual intercourse with her

many times. Following the disclosure of her daughter, on 17.12.2013, they proceeded to the residence of her husband where they met the younger daughter who also disclosed that her father had molested her.

2. On receipt of the said complaint, an FIR was registered being Hnahthial PS Case No. 25/2013, dated 17.12.2013 (under Section 376(2)(i)). During the investigation, the 2 girls were sent for medical examination and their statements were also recorded before the Judicial Magistrate 1st Class. After the investigation was over, charge sheet was submitted and the learned Sessions Judge on being satisfied, framed the charge under Section 376(2)(i) of the IPC against the appellant/ accused on 12.5.2014. The appellant/accused faced the trial, but since he could not afford to hire the service of a lawyer he was provided a lawyer on the state's expense. During the trial, in support of the prosecution case, 6 PWs including the Investigating Officer of the case and the doctor who examined the 2 prosecutrix were examined.

3. After hearing the parties and examining the evidence both oral and documentary, the learned Sessions Judge was satisfied that the appellant/ accused was guilty of having committed the offence under Section 376(2)(i) of the IPC, accordingly she convicted him and sentenced him as stated above.

4. Being not satisfied with the judgment and sentence the appellant/accused has submitted a jail appeal. The grounds of appeal as given in the petition are as follows:

i. That the absence of hymen in the private part of the prosecutrix does not necessarily prove that he had committed rape on his daughter i.e. the prosecutrix.

ii. That as per the statement of the prosecutrix, bleeding on her private part was due to her monthly menses, therefore it is clear that it was not due to sexual abuse allegedly committed by him.

iii. That birth certificates produced before the police were a duplicate and the original was never produced before the Court.

iv. That since his wife was a drunkard and could not look after his children, he divorced her and was planning to get married again, therefore his wife i.e. the mother of the prosecutrix fabricated and concocted the charge against him in order to take revenge.

v. That there is no credible evidence to convict him on the offence charged against him.

5. In support of the appeal, the learned amicus-curiae Mr. C Lalfakzuala submitted that the appellant was not given a chance to give evidence after the prosecution had produced their witnesses. This is in violation of the right to defence. The learned counsel also submitted that the accused was convicted on the sole evidence of the prosecutrix which is not reliable. The learned amicus-

curiae further submitted that the appellant/accused was not examined medically to see if he was able to perform sexual act at that time. It is also submitted by the learned amicus-curiae that the sentence hearing was done immediately after the judgment was announced therefore, the appellant did not have proper time to prepare for the same. Lastly, the learned counsel submitted that by the time the sentence period of appellant/accused is over he would be about 72 years old, and he being a wage earner will not be in a position to pay the fine, as such, the same may be either removed or at least be reduced.

6. The learned PP on the other hand, submitted that when the appellant was examined under Section 313 of the Cr.P.C he was asked "do you have anything to say in defence?" if he had any evidence to give he would have said so at that time but he said no. Therefore, to say that he was not given a chance of producing evidence, is totally baseless. The learned PP also submitted that though there were no eyewitness to the sexual assault or rape when it was committed on the prosecutrix (elder daughter) by the appellant/accused there is no infirmity in the evidence given by the prosecutrix, therefore, there is nothing wrong or illegal in the judgment and order of conviction of the appellant/accused based on the evidence of the prosecutrix alone. In fact, there are corroborating evidences which supported the evidence given by the prosecutrix, therefore it would be wrong to say that the conviction of the appellant was based solely on the evidence of the prosecutrix submitted the learned PP.

7. I have gone through the evidence of the prosecution, the record of the trial Court and also considered the grounds of appeal and submissions of both the learned amicus-curiae and learned PP. The appellant was assisted by a competent lawyer provided by the state at the trial Court and there is nothing in the record which would show that the appellant/accused was denied a chance of being heard or of the opportunity of producing defence witness. Therefore, the submission of the learned amicus-curiae, I find, is baseless.

8. It has been a settled principle of law that on the sole evidence of a rape victim, a person charged of committing rape can be convicted if the evidence of the rape victim/ prosecutrix is found reliable. Though there are many cases wherein this principle of law has been repeatedly quoted or stated mentioning of one such case will do for the purpose of this case. In the case of Narendra Kumar v. State (ICT of Delhi) reported in (2012) 7 Supreme Court Cases 17, Hon'ble Supreme Court of India had stated as follows:

Para 2.0. "It is settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the Court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the Court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a

ground for throwing out an otherwise reliable prosecution case."

9. In this case, I find no infirmity in the evidence given by the prosecutrix (the elder daughter) before the learned Sessions Judge. In fact, her evidence was corroborated by her statement given before the Magistrate under 164 of the Cr.P.C. In both her statements given before the learned Sessions Judge and before the JMFC, it is clearly stated that her father had committed rape on her on several occasions. The evidence of the prosecutrix is supported by the evidence of the doctor who stated that there was no presence of hymen in the private part of the prosecutrix. The doctor also mentioned that the prosecutrix had disclosed to her that her father had raped her. This again is corroborated by the evidence of the mother who was examined as PW1. Therefore, I find no reason to disbelieve in the evidence given by the prosecutrix. The contention of the learned amicus-curiae that the appellant was not medically tested to ascertain whether he able perform sexual intercourse at that time appears to be a misplace one. If that is a plea intended it should have been taken at the time of trial and a prayer for medical examination should have also been submitted. Moreover, the appellant had 2 children and he was not that old when the sexual acts were said to have been committed by him. Therefore, assuming normal course of nature, he should have been able to perform sexual acts at that time.

10. As per the evidence of PW5 and PW6, who are the seizure witnesses, the birth certificate of the prosecutrix seized by the I/O of the case are original birth certificates. I have checked the record and it is found that the birth certificates exhibited though they are photostat, it was compared with the original certificates and were found correct at the time they were exhibited. Therefore, I find no substance in the submission of the appellant that birth certificate of the prosecutrix was a duplicate one. As such there is nothing to doubt on the age of the prosecutrix at the time rape was committed on her.

11. On the submission of the learned amicus-curiae, that the appellant was not given sufficient time to prepare himself for the sentence hearing, I am not convinced because there is not even a whisper in the record that the learned counsel who represented the appellant/accused asked for time or extension of time for the sentence hearing, therefore, it has to be assumed that he did not need time so he did not ask or it. In any case, the appellant was sentenced to the minimum punishment provided for the offence, therefore even if time was given, it would have made no difference. However, considering the submission of the learned amicus-curiae that for a man who is economically backward and in such circumstances it would be difficult for him to pay the fine, I am of the considered view that the sentence may be modified to some extent on that ground. Therefore, the sentence in regard to the fine of Rs.2,000/-(rupees two thousand) it is reduced to Rs. 500/- (rupees five hundred), in case of default in payment of the same, the appellant shall undergo imprisonment of 5 more days.

12. In view of the above stated reasons, I find no reason to interfere with the judgment of the learned Sessions Judge except to the extent stated above.

Therefore, the appeal is dismissed.

Before I part with this judgment, I record my appreciation on the assistance rendered by the learned amicus-curiae. The State Legal Service Authority shall pay his fees as per the prevailing rules or practise.

Return the LCR.s