
(2011) 06 GAU CK 0077
In the Gauhati High Court
Case No : Criminal Appeal No. 23 of 2003

Shri Anil Tanti

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 360, 361, 362, 366, 376

Citation : (2011) 3 GLT 197

Hon'ble Judges : A.C. Upadhyay, J

Bench : Single Bench

Advocate : P.K. Biswas and M.K. Biswas, for the Appellant; A. Ghosh, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

A.C. Upadhyay, J.—This appeal is directed against the judgment and order dated 07.08.2000, passed by the learned Assistant Sessions Judge, Court No. 2, West Tripura, Agartala, in case No. ST (WT/K) No. 108 of 1999, whereby the Appellant was convicted u/s 366 IPC and sentenced to suffer RI for 4 years and also to pay a fine of Rs. 5,000/- with default stipulation of six months imprisonment. The Appellant was also convicted u/s 376 IPC and sentenced to undergo RI for six years and to pay a fine of Rs. 5,000/-, with default stipulation of six months imprisonment.

2. Briefly stated, the prosecution story is as follows:

One Ranjit Sukladas, brother of the victim, lodged a written complaint on 01.07.1997 at around 4.45 p.m. in the evening stating therein that on 30.06.1997 at about 2 p.m. when his younger sister i.e. the victim while returning home from school had reached at Garupara, she was kidnapped by one Anil Tanti (Appellant), from the road near Garubari Senior Basic School. It was further stated in the complaint that the victim could not be traced out even in spite of vigorous search. The O/C, Kalyanpur police station, on receipt of the

complaint aforesaid, registered a case and launched investigation.

3. During the course of investigation, the victim was recovered inside the cottage of the accused Appellant and consequently the accused Appellant was arrested and the victim was recovered and handed over to her parents. During investigation, statement of the victim u/s 164 Code of Criminal Procedure was recorded and she was medically examined by the doctor.

4. On completion of the investigation, the police submitted charge sheet against the accused Appellant alleging commission of offence under Sections 366/376 IPC.

5. The case was committed to the Court of learned Sessions Judge, West Tripura for trial. The learned Sessions Court, West Tripura transferred the case to the Court of Assistant Sessions Judge, Court No. 2, West Tripura, Agartala, for disposal. During the course of trial, learned trial Court framed formal charges under Sections 366 and 376 IPC against the accused Appellant and on reading over the charges aforesaid, the accused Appellant pleaded not guilty to the charge and claimed to be tried.

6. During the trial the prosecution side examined as many as 8 witnesses in support of the case. On closing of the prosecution evidence, the defence statement of the accused Appellant was recorded by the trial Court as per provision of Section 313 Code of Criminal Procedure. The accused Appellant in his statement u/s 313 Code of Criminal Procedure pleaded not guilty and took the stand of total denial of the charge. Upon evaluation of the evidence on record and after hearing the learned Counsel for the parties, the learned trial Court convicted and sentenced the accused Appellant as aforesaid giving rise to this appeal.

7. I have heard Mr. P. K. Biswas, learned Counsel for the Appellant as well as Mr. A. Ghosh, learned Addl. P.P. representing the Respondent State.

8. In order to appreciate the rival submissions advanced on behalf of the accused Appellant as well as the State Respondent, it would be pertinent to extract hereinbelow all relevant and essential part of the evidence on record.

9. The informant, Ranjit Sukla Das, PW-1, came to know about the occurrence just after the kidnapping. In his deposition PW-1 stated that Anjana (PW-4) and his niece Priyanka and other school girls informed him that accused Anil Tanti kidnapped his sister, i.e., "the victim", on her way back home from the school. On getting the information of the kidnapping, PW-1 searched for his sister with the help of the villagers and also informed the TSR Police, but could not trace her out in the locality. So, on the next day, he lodged a formal complaint in the police station stating the facts. On the next day evening, together with the police, PW-1 visited the house of accused Appellant Anil Tanti. The Southern cottage of the Appellant Anil Tanti was locked from outside. The lock was broken by the father of the Appellant (PW-6) and the victim and Anil Tanti were found inside the

cottage. Thus the victim was recovered and accused was arrested.

10. On scrutiny of the evidence of the victim PW-2, it appears that on the date of occurrence, on her way to school with her friends, the accused/Appellant asked the victim to go with him. On her refusal to do so, accused/Appellant slapped the victim. Subsequently, at about 2 p.m., when the victim was returning home with Anjanta, Priyanka, Roma and Shibani from school, on her way back accused Appellant restrained her, caught hold of her forcibly, and put vermilion on her forehead and thereafter dragged the victim away towards the jungle. Then inside the jungle, as stated by the PW-2, the Appellant removed her clothes and pant on the point of a dagger. The accused Appellant also threatened to kill her, if she raised any alarm. In the evening he took her to his house and she was compelled to sleep with him. As stated by the victim she was also raped two times in the cottage of the accused Appellant. Victim stated in her deposition that though she cried, but no neighbours came out to help her. After the victim was rescued, she was medically examined by the doctor and her statement was also recorded u/s 164 Code of Criminal Procedure in the Court. Cross-examination of the victim by the defence did not yield anything substantial to support the defence stand. PW-2, the victim also stated that she was locked from outside and inside the house when she tried to open the door on seeing police, accused threatened to kill her by dagger.

11. Sudhangshu Sukladas, PW-3, is the father of the victim girl. According to the PW-3, he came to know about the fact from his daughter Anjana and son Ranjit. On the next day his victim daughter was recovered from the house of accused Appellant.

12. Anjana Sukladas, (PW-4) is the sister of the victim and one of the witnesses, who accompanied the victim, when she was abducted by the accused Appellant. PW-4 in her deposition clearly stated that the accused slapped the victim, when she refused to accompany him in the morning hours at about 10 a.m. In the afternoon, at 2 p.m., when the victim was coming home from school, the accused suddenly appeared, put vermilion on her forehead and dragged her towards the jungle. Having no alternative PW-4 came home together with other friends with tears in eyes, and on reaching home she informed the matter to her brother Arun Sukladas, PW.1. In her cross-examination PW.4 categorically denied the suggestion that the victim had gone with the accused Appellant voluntarily and also denied any kind of love relationship of the victim with the accused/Appellant.

13. Maharathi Debnath (PW.5) wrote the written complaint on behalf of the first informant and he was also present when the victim was recovered from the house of the accused Appellant Anil Tanti.

14. PW-5 stated in his deposition that immediately after her recovery the victim had told her that she was raped by the accused Appellant. PW.5 also confirmed the seizure of the wearing apparels belonging to the victim during investigation.

15. PW-6, is the father of the accused Appellant, who confirmed the fact of recovery of the victim from the cottage belonging to Anil Tanti. PW-6 stated that he opened the lock of the cottage and police recovered the victim from inside the cottage where the Appellant was also found.

16. Dr. Pranati Das, PW-7, who examined the victim after the occurrence, proved her report, Exbt.5. According to PW-7 she did not find any mark of injury or foreign particles in the private parts of the victim, however, found that the hymen was ruptured. PW-7 opined that the victim had sexual intercourse. (Exbt.4). On examination of the accused Appellant she found that Anil Tanti was capable of performing sexual intercourse. In her cross examination, PW-7 stated that the victim had prior sexual intercourse and it can be presumed that no force was applied for sexual intercourse, as she did not notice any internal injury on the person of the victim. As a matter of fact, every rape may not leave mark of violence or struggle. When a rape is committed by putting the victim on fear of death, there may not be even mark of struggle. The opinion given by the doctor is subjective opinion, which only reveals that force was not applied for committing rape since the hymen of the victim was torn. The statement of the doctor is sufficient to conclude that there was no rape. More than that is even if it is established that the victim is habituated to sexual intercourse, that itself would not give a licence to the accused/Appellant to commit rape.

17. The investigating office of the case, PW-8, Ratan Lal Bhadra deposed to confirm the recovery of the victim girl from the cottage of the accused Appellant.

18. Learned Counsel for the Appellant vehemently submitted that the victim was a consenting partner and they had love affairs since before. Therefore, the allegation of abduction and rape cannot be said to be established in the facts and circumstances of the case. Drawing the attention of the Court to the statement of the victim, learned Counsel for the Appellant submitted that if the victim had no desire to go with the accused Appellant she could have definitely put some resistance, when she was caught by the accused Appellant. More so, the victim continued to stay and move along with the accused Appellant without making any noise.

19. Learned Counsel for the Appellant submitted that the victim who accompanied the accused Appellant from 2 p.m. in the evening continued to move along with the accused and finally stayed with him in his cottage for whole night. There is no evidence on record from any corner, whatsoever that the victim had ever made any kind of noise or any kind of resistance to the advances or for the alleged rape committed by the accused Appellant. Learned Counsel for the Appellant submits that in such a situation when the victim was consenting partner, who subsequently turned hostile to give a statement against the accused Appellant, a finding cannot be returned by holding the accused guilty of the offence of kidnapping.

20. In support of his contention learned Counsel for the Appellant has relied on

the decision reported in *The State of Tripura Vs. Shri Chayan alias Santosh Saha*, wherein it was held that since the victim did not complain to anybody against her forcible confinement though she had several opportunity to do so, the finding of the acquittal of the trial Court was not interfered with. The relevant extract of the decision reads as follows:

(17) In a case of *Ram Murti V. State of Haryana*, reported in AIR 1970 SC 1020, the Supreme Court dealing with a case of similar nature, where the victim girl, prosecutrix, was kidnapped and taken by the Appellant, Ram Murti, being a medical practitioner and her teacher with two other accomplice and from place to place and in the process, she was confined by the accused/Appellant along with those two persons for six days i. e. from 24. 03. 1965 to 29. 03. 1965 and during these six days, she was repeatedly raped by the Appellant, Ram Murti and other two persons accompanying the Appellant. In deciding the aforesaid case, the Apex Court clearly held that the victim girl was aged 18 years at the time of commission of offence and she appeared to be a consenting party. It was further held that her statement to that effect that she was compelled or otherwise induced by the Appellant needed some corroboration with some materials from some individual sources and her bare statement could not consider sufficient to sustain the conviction of the Appellant. Accordingly, Appellant was acquitted from the charges of 366/376 IPC.

(18) In another case of similar nature in *State of Karnataka Vs. Sureshbabu Puk Raj Porral*, the Apex Court dismissed the appeal against acquittal preferred by the State. In the above cited case, the prosecutrix Madhubala, P. W. 7 was asked by the accused-Respondent to accompany him to Bangalore to see the city. She accordingly, conceding his request, went with him on 30. 12. 76 and they boarded a bus and went to Bijapur, and from there, they went to Hubli on the same day and they stayed in a double room in a lodge. According to P. W. 7, the victim girl, at night, the accused did something to her, which he ought not to have done by force. They continued to stay at Hubli for 2 or 3 days and the accused had sexual intercourse with her. Then they went to Bangalore where also they stayed in double room for 5 or 6 days. Considering such facts and circumstances of the case and also the age of the victim being a girl of 16 years, the Apex Court maintained acquittal holding that the evidence of P. W. 7 was not acceptable.

21. In yet another decision reported in *Shyam and another Vs. State of Maharashtra*, it was held that:

3. In her statement in Court, the prosecutrix has put blame on the Appellants. She has deposed that she was threatened right from the beginning when being kidnapped and she was kept under threat till the police ultimately recovered her. Normally, her statement in that regard would be difficult to dislodge, but having regard to her conduct, as also the manner of the so-called "taking", it does not seem that the prosecutrix was truthful in that regard. In the first place, it is too much of a coincidence that the prosecutrix on her visit to a common tap, catering

to many, would be found alone, or that her whereabouts would be under check by both the Appellants/ accused and that they would emerge at the scene abruptly to commit the offence of kidnapping by "taking" her out of the lawful guardianship of her mother. Secondly, it is difficult to believe that to the strata of society to which the parties belong, they would have gone unnoticed while proceeding to the house of that other. The prosecutrix cannot be said to have been tied to the bicycle as if a load while sitting on the carrier thereof. She could have easily jumped off. She was a fully grown up girl may be one who had yet not touched 18 years of age, but, still she was in the age of discretion, sensible and aware of the intention of the accused Shyam, That he was taking her away for a purpose. It was not unknown to her with whom she was going in view of his earlier proposal. It was expected of her then to jump down from the bicycle, or put up a struggle and, in any case, raise an alarm to protect herself. No such steps were taken by her. It seems she was a willing party to go with Shyam the Appellant on her own and in that sense there was no "taking" out of the guardianship of her mother. The culpability of neither Shyam, A-1 nor that of Suresh, A-2, in these circumstances, appears to us established. The charge against the Appellants/ accused u/s 366, I.P.C. would thus fail. Accordingly, the Appellants deserve acquittal. The appeal is, therefore, allowed acquitting the Appellants.

22. Learned Counsel for the State Respondent in reply to the above submission relied on a decision reported in State of Himachal Pradesh Vs. Shree Kant Shekari, wherein it was observed that:

15. Even otherwise the High Court seems to have fallen in grave error in coming to the conclusion that the victim has not shown that the act was not done with her consent. It was not for the victim to show that there was no consent. Factually also the conclusion is erroneous right from the beginning that is from the stage when the FIR was lodged and in her evidence there was a categorical statement that the rape was forcibly done notwithstanding protest by the victim. The High Court was therefore wrong in putting burden on the victim to show that there was no consent. The question of consent is really a matter of defence by the accused and it was for him to place materials to show that there was consent. It is significant to note that during cross examination and the statement recorded u/s 313 of the Code of Criminal Procedure, 1973 (in short the "Code") plea of consent was not taken or pleaded. In fact in the statement u/s 313 of the Code the plea was complete denial and false implication.

23. In order to examine whether the ingredients of the offence u/s 366 has been made out or not in the present case, it would be pertinent to look into the evidence on record vis a vis the ingredients of offence u/s 366 IPC, which are as follows:

- i. Kidnapping or abducting of any woman;
- ii. Such kidnapping or abducting must be

- i. with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will; or
- ii. in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse; or
- iii. by means of criminal intimidation or otherwise by inducing any woman to go from any place with intent that she may be, or knowing that she will be, forced or seduced to illicit intercourse.

It is immaterial whether the woman kidnapped is a married woman or not.

24. From the above, it is clear that in order to bring home an offence u/s 366 the prosecution is required to establish that the accused kidnapped as understood in Section 360, 361 or 362 IPC or abducted the victim as understood in 362 IPC. The prosecution is further required to establish that the victim was a female and that the accused during the kidnapping or abduction had the intention or knew it likely that such woman might or would be forced to marry a person against her will or that she might or would be forced or seduced to illicit intercourse or by means of criminal intimidation or otherwise, by inducing the woman to go from any place with intent that she may be or knowing that she will be forced or seduced to illicit intercourse.

25. Now, if we closely examine the evidence of the victim and other prosecution witnesses to the occurrence vis-a-vis the defence stand, we find that the abduction occurred when the victim, a school going student was returning home together with other school girls including her sister and niece. The evidence on record also reflects that accused attempted to take the victim in the morning hours in presence of all school going girl, when the victim was also going to school. This fact is confirmed by the eye witnesses to the occurrence. Subsequently, in the evening when the victim together with her friends was returning home after the school hours, the victim was in a helpless situation unable to put up any kind of resistance. The other witnesses who accompanied the victim could not have fought a fight like any other street smart young person, to resist and thwart the decision of the dagger wielding accused/Appellant, who was behaving like a hoodlum. The victim, who was helpless, was accompanied by her friends of similar age, who were classmates and schoolmates. Therefore, other girls and witnesses, who were with the victim expectedly, did not put up any resistance; rather they came straight home with tears in their eyes and informed PW-1, about the incident. Apparently, the brother of the victim PW1, immediately swung into action, informed the local TSR Police and tried to trace out the victim. On the next day he informed the police and the victim was recovered from the locked cottage of the Appellant.

26. Thus, the above discussion clearly depicts that the accused Appellant by force and putting the victim on fear of death compelled the victim, a school going girl to accompany him. There is no trace of any evidence on record to prima facie establish that the victim was a consenting party. The accused/Appellant designed

the abduction in a dare-devil style by wielding dagger in defiance of all human values and social sentiments, with a clear intention of satisfying his lust with the victim girl and/or knowing fully well that the victim girl would be subjected to illicit intercourse with him. The accused Appellant took the victim girl forcefully against her will by resorting to criminal intimidation by wielding dagger and committed rape.

27. Thus, the above situation as evidenced by the witnesses and the victim, clearly reflects that the accused Appellant cannot escape the offence u/s 366 IPC committed by him. The defence of consent in the facts and circumstances as stated above is not available to the accused Appellant.

28. The evidence of victim clearly reflects that the accused forcibly committed rape on her. Though a story of love relationship is advanced on behalf of the accused Appellant, to project consent of the victim, but the accused Appellant could not discharge his burden by either adducing evidence. It is not evident from the evidence on record that the victim freely consented and participated in the alleged rape. The evidence of the doctor and also of the victim clearly reflects that the victim was subjected to illicit intercourse by the accused Appellant. From the evidence of the witnesses it clearly transpires that the accused Appellant by force compelled the victim to go with him and as stated by the victim and she was subjected to illicit intercourse.

29. Now, it is required to be examined whether any element of consent is apparent on the face of the record either in the evidence of the witnesses or in the cross examination. From the evidence on record it is not discernable that the victim had ever given consent whatsoever in the entire episode. The victim apparently was moving with the accused helplessly. The threat perception evidenced by the witnesses rules out possibility of the victim coming forward to put up a stiff resistance. It is difficult to expect a school going girl to put up a strong resistance to a grown up man in such a situation when the accused is wielding a dagger. The consent, if it appears to have been given apparently was not voluntary. In order to establish consent of the victim the accused/Appellant has to come forward to prima facie establish voluntary participation of the victim freely without any resistance, which is not discernable.

30. Learned Counsel for the Appellant submitted that since the victim did not put up any resistance, whatsoever, therefore, it can be safely presumed that she was a consenting partner to the commission of sexual intercourse and the alleged abduction, but the attending facts and circumstances and "modus-operandi" adopted by the accused/Appellant to commit the crime, apparently reflects that the accused forcibly took away the victim. The sequences of events leading to abduction of the victim do not allow any explanation to view that the victim had consented the abduction and rape.

31. The victim, a school going girl, was picked up escorted to the jungle to satisfy his lust, no self respecting Indian woman would approve it. The accused

Appellant, a matured man being totally devoid of human senses in order to compel a school going girl to satisfy his sexual lust, taking advantage of the young age of the victim, took her forcibly to the nearby jungle and committed sexual intercourse without her consent.

32. The evidence on record do not spell out any love or sexual relationship of the accused with the victim in the past. Even if the victim girl had sexual relation in the past with the accused that would not be a blanket certificate to the accused to commit sexual intercourse without her consent at any time and at any place, he desired. Apparently, no consent was given by the victim, at the relevant time, either for the abduction or for commission of sexual intercourse. Therefore, the conduct of the victim of having stayed with the accused overnight on compulsion, in his cottage, which was locked and closed from all sides, cannot be interpreted in favour of the Appellant. The criminal conduct of the Appellant cannot be exonerated in the facts and circumstances of the present case.

33. There is no reason to disbelieve the evidence of the witnesses, who were present beside the victim, when the occurrence took place. The accused/Appellant in the morning hours had slapped a school going child, studying in Class-VIII, on her refusal to accompany him. Thereafter, in the evening, the accused Appellant once again came and intercepted the victim, who was returning home from school with her friends and sisters. The drama of putting vermilion on the roadside, on the forehead of a school going student, in presence of all, on the point of a dagger, cannot be accepted to be a reflection of love and affection of a matured man.

34. The manner in which the accused dragged the victim away towards the jungle on the point of a dagger clearly reveals his evil design. Though the Appellant took the defence of love relationship with the victim followed by voluntary elopement, but when the Appellant dragged the victim towards the jungle, he had wielded a dagger and used force. Thereafter, he had no time to wait in the jungle; the Appellant immediately got the victim undressed on the point of a dagger and raped her.

35. The facts disclosed by the victim do not give any indication of her consent for the sexual intercourse committed by the Appellant. Even if, the victim would have been in love with the victim, a forcible intercourse without her consent would expose the Appellant for the charge of rape, when ingredients of offence of rape are available against him.

36. The victim narrated the fact of rape in her deposition. According to her deposition, she was raped in the jungle at first by the accused/Appellant and again at his home at night. In the morning also the victim was once again raped by the accused/Appellant. Though she had raised hue and cry, but no neighbours came to rescue her. Subsequently, in the evening she was rescued by the police party. After having been rescued, she disclosed the fact of being raped by the Appellant to PW-5, Maharathi Debnath. Out of shame, she did not reveal the fact

to her father, brother or other family members is but a normal behaviour of a rape victim in our society. Usually a raped girl may not disclose the fact to others out of shame. The question is whether the statement of the victim girl is corroborated by sufficient evidence. To establish an offence of rape it is not a necessary requirement of law that there has to be corroboration by other witnesses. The evidence on record clearly reveals that she was not a consenting partner. The victim was raped by the Appellant without her consent. She was rescued by the police in presence of other witnesses from the custody of the Appellant. She was kept confined by keeping the cottage locked from outside by the accused. It has been established that she had to stay with the Appellant in the cottage for the whole night and also on the next day, the Appellant kidnapped her and kept her in his custody. The circumstances clearly reveal that the Appellant raped the victim repeatedly while she was in his custody. The Appellant intended to have sexual intercourse with the victim and thus he fulfilled his intention when the victim was in his custody, both in the jungle and also in his cottage.

37. The medical evidence disclosed that the accused had the ability to perform sexual intercourse and the chain of events clearly established the fact that the sign of sexual intercourse in the medical examination of the victim is obvious due to the rape of the victim by the accused. The Medical Officer PW-7 also detected the ruptured hymen and sign of sexual intercourse. There is no evidence to discern any consent of the victim girl for sexual intercourse by the Appellant. The eyewitness saw the accused/Appellant kidnapping the victim girl forcibly, while she was returning home from the school. The fact of kidnapping has been clearly established from the evidence on record. It is very difficult to interpret that a kidnapped victim girl gave any consent to sexual intercourse committed by the Appellant as because she had to stay with the Appellant. The victim had no means to put up any resistance to the advances made by the dagger wielding Appellant. The victim resigned to the wild will of the Appellant. The evidence on record clearly established that the Appellant had committed sexual intercourse with the victim without her consent. Thus, the Appellant forcefully raped the victim in a helpless condition. Therefore, the act of the Appellant constitutes an offence punishable u/s 376 of IPC. Prosecution has thus been able to establish the case against the Appellant u/s 376 of the IPC beyond all reasonable doubts.

38. From the above discussion, it clearly transpires that unlike the fact situation reflected in the case of *Ram Murti v. State of Haryana* and *State of Tripura V. Chayan @ Santosh Saha* (supra), the victim in the instant case had no opportunity either to complain or to put up any kind of resistance. The dagger wielding Appellant kidnapped the victim, raped her and kept her confined. Therefore, the ratio of the decision in the above-noted case cannot be applied in the facts and circumstances of the present case.

39. Furthermore, in *Shyam and Anr. v. State of Maharashtra* (supra), the victim was taken in the carrier of bicycle by making her to sit on it, and furthermore,

the taking of the victim was without resistance, which are not similar with the fact situation of the instant case. Unlike *Shyam and Anr. v. State of Maharashtra* (supra), the victim in the instant case was forcibly kidnapped and confined until she was rescued. Therefore, the ratio of the above case cannot be applied in this case.

40. In view of the above discussion, I am of the considered opinion that there is no scope to interfere with the findings of the learned trial Court. Accordingly, the appeal filed on behalf of the Appellant stands dismissed. The conviction and sentence awarded by the learned trial Court, is hereby affirmed. If the Appellant is on bail, he shall surrender before the learned trial Court to undergo the sentence of imprisonment.

41. The bail bond furnished on behalf of the Appellant stands cancelled.

42. Send back the case record together with a copy of this judgment and order immediately.