
(2006) 02 GAU CK 0017
In the Gauhati High Court
Case No : Criminal A. No. 2 of 2004

Shri Vanalalbela

APPELLANT

Vs

The State of Mizoram

RESPONDENT

Date of Decision : 03-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 376

Citation : (2006) CriLJ 1733 : (2009) 3 GLR 877 : (2006) GLT 611 Supp

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : George Raju and Ricky Gurung, for the Appellant; Dinari T. Azyu, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—This appeal is directed against the judgment and order of conviction passed by the learned Judge, Fast Track Court, Aizawl in GR Case No. 283/98 holding the petitioner guilty of the offence u/s 376(f), IPC and convicting him under that section with the sentence to undergo RI for six years with fine of Rs. 3000/- in default RI for another period of three months. The prosecution story in brief is that on 7-7-97 the father of the victim girl (P.W. 1) lodged an FIR with the Kawnpui police out post alleging that his daughter, i.e. the victim girl aged 11 years and 6 months was raped by the accused/appellant on 10-6-1995 when she visited his house. She being afraid to disclose the incident under threat of the appellant, the matter was not reported and the informant could come to know about the same when the appellant himself disclosed the offence in a drunken condition. The FIR further disclosed that the informant, i.e. the father of the victim girl upon hearing about the incident became furious and sent a messenger to the appellant for arriving out a compromise on payment of Rs. 5000/- as compensation. Since the appellant did not agree to the proposal so made, the informant lodged the FIR.

2. On the basis of the aforesaid FIR the police registered KLB P.S. case No. 192/97 dated 21-7-1997 u/s 376(f) IPC. The Investigating Officer (LO) engaged in the case upon investigation submitted charge-sheet against the accused/appellant stating the date of the occurrence was 10-5-1997 as against the date disclosed by the first informant as 10-6-1995. The charge-sheet was submitted u/s 376(f) IPC GR Case No. 283/ 99 was registered and the trial Court proceeded with the matter. Altogether six witnesses were examined by the prosecution and the accused/appellant was examined u/s 313, Cr. P.C. Exhpts. P1 and P2 are the FIR and the medical examination report respectively. It will be pertinent to mention here that although a birth certificate certifying the date of birth of the victim girl as 3-1-1984 is available on record, but the same was not an exhibited document in the trial. On perusal of the records including the depositions made by the prosecution witnesses, it appears that there is no eye-witness to the alleged incident. However, the victim girl in her deposition stated about the incident as narrated in the FIR. The trial Court on the basis of the deposition made by the prosecution witnesses, more particularly the deposition made by the victim girl, convicted the appellant u/s 376(f) IPC and passed the aforesaid sentence. Hence this appeal.

3. I have heard Mr. George Raju, learned Counsel for the appellant and Ms. Dinari. T. Azyu, learned P.P. Mizoram. Referring to the circumstances involved in the case, more particularly the delay in lodging the FIR which is more than two years, Mr. Raju, learned" counsel for the appellant submitted that such delay itself is fatal to the prosecution case. As regards the date of the incident, learned Counsel also referred to the discrepancy in the FIR and the charge-sheet. While in the FIR the date of the incident was stated to be on 10-6-95, in the charge-sheet the same was stated to be on 10-5-1997.

4. Before proceeding to discuss the impugned judgment and the order of conviction, I propose to deal with the evidence on record. In the medical report dated 14-7-1997 (Exht. P.2) the hymen was stated to be torn at 8'o clock position. Since the medical examination was after more than two years of the incident, naturally there could not be any laboratory examination. The age of the girl was also not determined, but her age was recorded as 14 years 11 months on the date of the medical examination.

5. The appellant in his statement u/s 313, Cr. P.C. denied his involvement in the incident and stated that he was falsely implicated.

6. The P.W. 6, i.e. the victim girl in her deposition narrated the incident allegedly occurred on 10-6-95 and as was narrated in the FIR. She also stated about the demand of Rs. 5000/- from the accused. As regards the delay in lodging the FIR she stated that since the appellant had threatened her, she could not disclose the same to anybody. The defence cross-examined her and put suggestion to her that the appellant did not commit the crime on her and that at the time of the alleged incident she was more than 16 years of age. She also denied that she made the deposition as instructed by her parents and the police, she in her cross-

examination further denied that she was afraid of the accused/appellant at any time and that on refusal by the appellant to pay the amount of Rs. 5000/-, false allegation was made since their plan to blackmail the appellant had failed.

7. The P.W. 1, i.e. the father of the victim girl stated that the appellant in a drunken condition narrated the incident and upon hearing, the same, he sent a messenger to the appellant for a compromise on payment of Rs. 5000/-. He also stated that since the appellant did not give Rs. 5000/- for medical treatment of his daughter and told the messenger that he would not pay the amount and asked the messenger to approach the Court to settle the matter, he lodged the FIR. In his cross-examination the P.W. 1 stated that he did not notice any physical ailment of his daughter and no medical treatment was given to her. He also stated that he did not have any intention to report the matter to the police, but he was forced to do so since the appellant refused to pay the amount of Rs. 5000/-.

8. The purported messenger (P.W. 2) in his deposition stated as to how he was sent by the father of the victim girl to have compromise with the appellant. He clearly stated that on reaching home of the appellant he could not find the appellant to inform the matter. However, he could find out the appellant in his relative's house and informed the same. Contrary to the statement made that he could meet the appellant, in his cross-examination he clearly stated that he did not meet the accused/appellant, but could meet someone else. He also stated that the appellant did not say anything to him. In the cross-examination he further stated that the bone of contention was the payment of Rs. 5000/- and not the alleged rape committed on the victim girl and that had there been payment of Rs. 5000/- there would not have been any occasion to lodge the FIR by the father of the victim girl.

9. Above statement of the P.W. 2 runs counter to the statement made by the father of the victim girl, i.e. P.W. 1, who stated that the messenger, i.e. P.W. 2, was informed by the appellant that he would not pay the compensation for the rape committed by him. The statement of the P.W. 2 that he did not meet the appellant also runs counter to the statement of the P.W. 1 that the messenger sent by him met the appellant and he refused to pay the amount of Rs. 5000/-.

10. The P.Ws. 4 and 5 are not material witnesses and they simply stated that they did not know anything about the incident, but only heard the rumour. The doctor who examined the victim girl (P.W. 8) confirmed the medical examination report, which has been discussed above. In his cross-examination he admitted that the medical examination was done after a lapse of more than two years. As regards non-furnishing of any finding, he stated that no finding could be given due to inordinate delay between the alleged incident, and the actual examination of the victim girl. As regards the position of the hymen he stated that the same could happen due to number of reasons and the same did not lead to the conclusion that the same was because of the incident of rape. Significantly, in his cross-examination he stated that the victim girl never reported him about any

bodily pain or damage to her private parts. He also stated that there was no mark of violence or stresses in the body of the victim girl and she appears to be quite normal. However, he stated that the case being old one, it was difficult to give any specific finding.

11. It appears that the I.O. who submitted the charge-sheet was not examined and no explanation has been furnished as to why he was not examined.

12. From the above, it will be seen that the story narrated by the P.W. 1, the first informant, is not at all believable same being quite contradictory to the story of the P.W. 2 who was sent as a messenger to the appellant. As against the plea of the P.W. 1 that the messenger sent by him could meet the appellant and the appellant informed the messenger that he would not pay the amount of Rs. 5000/- in lieu of the rape committed by him, the P.W. 2 i.e. the messenger, in his Cross-examination clearly denied the meeting with the appellant. Thus, there was no question of informing the messenger by the appellant that he would not pay the amount. The statement of this witness that the bone of contention was only the amount of Rs. 5000/- and not the alleged rape is significant to be noted.

13. As noticed above, the other witnesses are of no help to establish the prosecution case, rather the deposition made by the Medical Officer goes against the prosecution case.

14. This now leads us to the deposition of the victim girl (P.W. 6). Although she stated in her deposition that the accused/appellant committed rape on her, but there is absolutely no whisper about the injuries sustained by her. Inordinate delay in reporting the matter and for that matter in lodging the FIR, has not been explained by her. Although she stated in her deposition that she did not inform the police about the incident due to fear, but nothing could be stated as to whether such threat was persisting all throughout. It is hard to believe that such threat would persist for more than two years and the alleged victim girl would not have reported the matter to her parents. The real reason of lodging the FIR as stated by the victim girl is the refusal of the accused/appellant to pay the amount of Rs. 5000/- as compensation. Had the appellant complied with the demand of the P.W. 1, there would not have any occasion to lodge the FIR.

15. There is also dispute as regard the age of the girl and it was suggested by the defence that her age was more than 16 years, Although a certificate depicting the date of birth of the victim girl as 3-1-1984 is available on record, but the same was not exhibited during the trial. Be that as it may, the alleged incident having been narrated through the FIR after more than two years, it is a case of inordinate delay in lodging the FIR. The delay has not been explained properly, but was sought to be explained in the FIR and in the deposition of the alleged victim girl that due to threat by the appellant, the FIR was not lodged. However, at the same time, it is on evidence that the first informant made a demand for Rs. 5000/- to the accused/appellant and the FIR was lodged on refusal to pay the same. It is also on evidence that the appellant stated about

the incident in a drunken condition. It could so happen that the appellant in a drunken condition stated falsely about the alleged rape committed by him. Since such statement of the appellant in a drunken condition defamed the victim girl and her family in all possibility the demand for compensation was made and on refusal to pay the same, the FIR was lodged without, however, explaining the delay in a proper manner.

16. The trial Court after recording the submissions made by the learned Counsel for the parties, abruptly came to the conclusion that the prosecution could bring home the charge u/s 376(f) IPC beyond the shadow of doubt. As regards the age of the girl, the trial Court placed reliance on the xerox copy of the birth certificate issued on 27-2-1997. As noticed, the birth certificate not to speak of being exhibited in original, even the xerox copy of the same was also not exhibited. In my considered opinion, the trial Court failed to consider the fact that the FIR was lodged after lapse of more than two years and there was no satisfactory explanation for such delay. Since it is the case of the first informant that, he could come to know about the incident from the accused/ appellant himself due to the utterances made by him in a drunken condition, no reliance could be placed on such statements made by the appellant in a drunken condition. Coupled with this position, it could also happen that if the amount of Rs. 5000/- was paid, he would not have come forward to lodge the FIR. This shows that the intention of the informant was to extract money from the accused/appellant and upon his failure to get the desired result, he lodged the FIR. The messengers when he had seat did not support the case of the prosecution. The trial Court although observed that there was great delay in lodging the FIR and that had the accused paid Rs. 5000/- to the parents, the FIR would not have filed, but nonetheless convicted the accused/appellant without recording the clear findings of guilt which could be said to be passed on the evidences on record.

17. It is true that the alleged victim girl in her deposition stated about the incident but going by the circumstances and her tender age, it could be a case of persuading her to depose in a manner desired by her parents. While it is true that the statement of a minor need not be brushed aside as a routine affair and reliance could be placed on the credibility of the deposition made by a minor, but in the instant case, in view of the facts and circumstances discussed above, it will be dangerous to accept the statement of the alleged victim girl, more particularly when her age is also doubtful. It appears that the trial Court dealt with the appellant leniently in the matter of imposition of sentence being guided by the inherent contradictions in the prosecution story. However, such contradictions instead of resulting in acquittal of the accused/appellant resulted in lesser penalty to him.

18. Ms. Dinari T. Azyu, learned P.P., Mizoram placed reliance on the decisions of the Apex Court as reported in (1) Ajay Kumar Poeia Vs. Shyam and Others, (2) 1996 Cri LJ 1728; (3) State of Punjab Vs. Gurmit Singh and Others, (4) Karnel Singh Vs. State of M.P., and (5) Vidyadharan Vs. State of Kerala, to bring home

her point of argument that delay in lodging the FIR is always not fatal and that conviction can be sustained on the sole testimony of the victim girl. There is no quarrel with the proposition of law made by the Apex Court in the said cases. However, at the same time, there cannot be any second opinion that each fact will have to be decided on its own merit. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in *Quinn v. Leathern* 1901 AC 496).

19. For the foregoing reasons, discussions and findings, I am of the considered opinion that the impugned judgment of conviction and sentence passed by the learned Judge, Fast Tract Court, Aizawl in CR No. 283/01 u/s 376(f) IPC is not sustainable and accordingly is interfered with by setting aside and quashing the same. It appears that the accused/appellant is on bail and in view of this judgment and order, the bail bond shall stand discharged.

20. The appeal stands allowed. Send down the LCR to the trial Court.