
(2012) 01 GAU CK 0104
In the Gauhati High Court
Case No : Criminal A. (J) No. 74 of 2006

Sri Gurupada Deb

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374

Citation : (2012) 01 GAU CK 0104

Hon'ble Judges : Swapan Chandra Das, J

Bench : Single Bench

Advocate : R. Datta, Mr. S. Majumder and Ms. S. Chakraborty, for the Appellant;
R.C. Debnath, Spl. P.P., for the Respondent

Judgement

S.C. Das

1. This appeal, u/s 374 of Cr.P.C. is directed against the judgment and order of conviction and sentence dated 23.09.2004, passed by learned Asstt. Sessions Judge, Court No. 2, West Tripura, Agartala, in Session Trial No. ST(WT/A) 25 of 2004, whereby and whereunder, learned Asstt. Sessions Judge found the accused-appellant guilty of committing offence, punishable U/S 376(2)(f) of IPC and sentenced him to suffer RI for ten years.

2. Heard learned counsel, Mr. R. Datta, appearing for the appellant and learned Spl. P.P., Mr. R.C Debnath, appearing for the State respondent.

3. Here is a case of rape of a minor girl, aged seven years, namely, "X"(name kept withheld) by her next door neighbour, the young accused, Gurupada Deb. On 06.02.2003 at about 5/5.30 pm, the accused-appellant took her to his house, and thereafter, committed rape on her. There was bleeding through her private parts and she reported to it to her mother, and immediately after the occurrence, her parents took her to hospital and also lodged FIR with the O/C, Women P.S., Agartala on the very date of occurrence. She was admitted in the hospital and undergone treatment as an indoor patient on two occasions for the injury

sustained by her in her private parts.

4. Learned counsel, Mr. Datta has submitted that the offence is no doubt very serious and heinous in nature. He has only submitted that the appellant is already in custody for about eight years six months, while he was convicted for ten years by the trial court and taking into consideration that the accused was also a young man and might have committed the offence accidentally on a sudden passion, and since he has already suffered maximum period of sentence, a lenient view may be taken considering that the offence may, at best, come under the purview of a sexual assault, which means an outrage of modesty and/or attempt to commit rape, and the finding of the trial court that an offence of rape was committed, cannot be appreciated in the facts and circumstances and the evidence on record. He has further submitted that the accused, at the time of his examination u/s 313 of Cr.P.C., has stated that he was aged nineteen years at the time of examination, and if so, he was a minor at the time of the alleged occurrence, and that aspect has not been considered by the trial court. Learned counsel, therefore, considering all aspects, has prayed for release of the accused-appellant from custody with the sentence of imprisonment, already suffered by him.

5. Learned Spl. P.P., Mr. Debnath has submitted that the accused was no doubt a young man of about 19/20 years at the time of occurrence but the offence committed by him is very serious and heinous in nature and it may happen that he committed the offence out of sudden sexual passion and the punishment given by the trial court was appropriate and left the matter to the court for consideration regarding reduction of punishment to the extent already suffered by the convict-appellant in the meantime, as submitted by learned counsel of the appellant.

6. I have meticulously gone through the evidence and materials on record. It appears that the victim-prosecutrix narrated the occurrence vividly and her statement has been corroborated by the oral evidence of her parents and other witnesses and also supported by medical evidence. There was bleeding from the vagina as a result of forceful penetration. The victim was aged only seven years at the time of occurrence, having no sexual character or understanding and the bestiality done by the accused, might be out of sexual passion. There is nothing to disbelieve the prosecutrix or to take a contrary view as submitted by learned counsel, Mr. Datta. Prosecution case has been established with certainty that the accused committed the offence of rape. No plea of juvenility was taken at the time of trial or at the time of investigation. The accused was 19/20 years of age when the offence was committed so far reflected in the prosecution records. While no such plea was taken before the court below and while no such document of age proof placed before this court, I find no reason to interfere in the judgment and order of conviction, passed by the learned Asstt. Sessions Judge.

7. Regarding punishment, as I find, learned Asstt. Sessions Judge, considering

the facts and circumstances of the age of the victim-prosecutrix as well as the convict-appellant, awarded punishment of rigorous imprisonment for ten years and the accused is in custody from the date of judgment i.e. from CRL.A.(J) No. 74 of 2006 Page 5 of 5 23.09.2004. The judgment further shows that in course of investigation and trial, the accused was in custody from 07.02.2003 to 29.11.2003 and again from 16.06.2004 to 23.09.2004. So it appears that the accused-appellant has already suffered about eight and half years in custody in the meantime. Learned Spl. P.P. left the matter regarding reduction of sentence to the consideration of this court.

8. Considering all aspects that the convict-appellant was a young man at the time of occurrence and that it might happen that the offence was committed out of sudden sexual passion, the prayer for reduction of sentence to the extent already suffered by the convict-appellant is considered and allowed.

Accordingly, the judgment and order of conviction is upheld. The convict-appellant is sentenced to suffer imprisonment to the extent already suffered by him in the meantime and he be set at liberty immediately.

9. Send back the L.C. records along with a copy of the judgment.