
(2013) 11 GAU CK 0052
In the Gauhati High Court
Case No : Criminal Appeal No. 03 (J) of 2013

Sri Kristopher Purti

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 16-11-2013

Acts Referred:

Citation : (2013) 11 GAU CK 0052

Hon'ble Judges : Anima Hazarika, J

Bench : Single Bench

Advocate : B.N. Gogoi, Amicus Curiae, for the Appellant; B. Bhuyan, Additional Public Prosecutor, Assam, for the Respondent

Judgement

Anima Hazarika, J.—This appeal is directed from jail against the judgment and order dated 23.11.2012 passed by the learned Additional Sessions Judge, Dibrugarh, in Sessions Case No. 88/2012, convicting the accused appellant u/s 376 IPC and sentencing him to undergo imprisonment for 8 years, also to pay fine of Rs. 1000/- in default to undergo imprisonment for three months. I have heard Mr. B.N. Gogoi, learned Amicus Curiae appearing for the appellant. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam for the State respondent.

2. The prosecution case in brief is that an FIR was lodged by an unfortunate girl, aged about fourteen (14) years only (hereinafter to be referred to as the victim) before the Officer-in-charge, Tengakhat Police Station on 10.04.2012, alleging that her father Sri Kristopher Purti (the accused) forcibly raped her by gagging her mouth on 05.02.2012 when she was asleep at night. He also told her that if she divulged about the same to anybody, he will kill her. It has been further alleged that her father wanted to do such type of things now and then.

3. On receipt of the FIR so lodged, a case was registered being Tengakhat P.S. No. 32/2012 u/s 376(2)(f) IPC. Police started investigation. The victim was medically examined and her statement was also recorded u/s 164 Cr.P.C. During

the course of investigation, the Investigating Officer (IO, for short) recorded the statement of other witnesses and on completion of the investigation submitted charge sheet u/s 274(2)(f) IPC.

4. The learned trial court on perusal of the materials on record framed charge against the accused u/s 376 IPC. The charge so framed being read over and explained to the accused, he pleaded not guilty and claimed to be tried.

5. During the course of trial, prosecution examined as many as 8 witnesses including the IO and the Doctor. Defence adduced none. Defence case is of complete denial.

6. On the basis of the evidence on record, oral as well as documentary, the learned trial court convicted and sentenced the accused appellant as aforesaid. Hence the present appeal from jail challenging the legality of the impugned judgment.

7. Now the point to be decided is as to whether the prosecution has been able to bring home the charge u/s 376 IPC against the accused appellant beyond reasonable doubt by adducing cogent, reliable evidence.

8. PW-1 is the victim herself who has stated that the accused is her father. Her family consists of her father, mother, elder brother, younger brother and grandfather. They lived together in their house, which had one bedroom and one kitchen. She used to sleep in the kitchen with her elder brother and younger brother, whereas her father, mother and grandfather slept in the bedroom. One night, her father (the accused) went near her and raped her gagging her mouth. At that time she was sleeping in the kitchen with her younger brother. The other family members were in the other room and her elder brother was outside home on that night. The incident occurred at about 4.30/5 A.M., before sunrise. Her father, the accused had sexual intercourse with her and asked her not to raise hue and cry. However, she told her aunt, Monica Purti regarding the incident. Thereafter the FIR was lodged. Ext.1 is the FIR and Ext.1(1) is her right thumb impression therein. The FIR was written by one Sri Prem Masi Kashyap, a member of the Village Defence Party (VDP). The FIR was reduced to writing as per her statement. Police examined her and recorded her statement. Police also had her medically examined and got her statement recorded by the Magistrate u/s 164 Cr.P.C. She narrated the facts before the Magistrate who wrote as per her version. Thereafter, the same was read over to her and she put her right thumb impression on the statement. Ext.2 is the statement recorded u/s 164 Cr.P.C. and Ext.2(1) is her right thumb impression.

In the cross examination, she has stated that sometime before the incident her parents got her married to one Birju without her consent. She stayed with Birju for about 6 days. As she did not like him, she fled away from the residence of Birju. Thereafter, she stayed with her aunt Monica Purti instead of staying with her parents. Her aunt took her to Tengakhat Police Station and there she lodged the FIR. Ext.1 is the FIR against her father. When asked by the Court she replied

that the incident occurred before she was married to Birju. The suggestions put to her that she has made false allegation against her father in view of the fact that he scolded her for fleeing away from the house of Birju has been denied.

9. PW-2, Monica Purti is the aunt of the victim. She has stated that the victim was her niece. About 2 months back, the victim came to her and told her that her father had sexual intercourse with her. Thereafter she informed the matter to the members of Mahila Samiti as well as Village Defence Party. Then the victim lodged an FIR before Tengakhat Police Station. Police examined her. She has further stated that she had also accompanied the victim to the Police Station as well as when she was taken for medical examination and to the Court for recording her statement u/s 164 Cr.P.C.

In the cross examination, PW-2 has stated that after the victim fled away from her matrimonial house, she came to her house but she did not go to her parents house and instead stayed with Kuwari Purti. She knew that the victim did not agree with her marriage with Birju, so she fled away from his house. She was not aware about the incident before. She only came to know from the victim after she came and fled away from Birju's house. She has also stated that she is not aware as to whether the victim has lodged a false case against her father as she was married to Birju against her wish.

10. PW-3, Smti Birshi Purti is the elder sister of the victim. She has stated that the victim told her that her father wanted to sleep with her.

In the cross examination, she has stated that the victim told her that their father wanted to sleep with her, she (PW-3) did not disclose the said fact to anybody else.

11. PW-4, Sri Patras Purti is the Secretary of VDP of Dharia Gaon. He has stated that the victim initially told his wife Smti Kuwari Purti about the incident and later told him on being questioned that her father Kristopher had raped her.

In the cross examination, he has stated that he advised the victim to lodge an FIR. The suggestions put to him that there is enmity between him and the accused and because of that he persuaded the case and asked the victim to file a false case against her father has been denied. He has further stated that the victim lodged the FIR after two days after she fled away from the house of Birju. The victim was not desirous to get married to Birju and because she was forced to get married with Birju, she was angry towards her father. He has denied the fact that taking advantage of the above, she lodged the FIR against her father.

12. PW-5, Smti Kuwari Purti is the wife of PW-4. She has stated that the victim is her co-villager. The incident occurred in April 2012. The victim told her that her father used to sexually abuse her by raping her and that she became pregnant. Her mother managed to get her aborted by taking help of local herbs and medicines. After the abortion, the victim's parents had married her to one Birju of Basmatia Tea Garden. The victim was against the marriage as Birju was

already a married man, therefore, soon after the marriage with Birju, the victim fled away from Birju's house and came to her aunt Smti Monica Purti's house. Monica brought the victim to her house. She has further stated that as the accused repeatedly used to sexually abuse and rape the victim and when he could not keep his promise not to repeat such things again, the villagers decided to bring the matter to the notice of the police by lodging an FIR. Thereafter the FIR was lodged.

In the cross examination, she has stated that she along with other female villagers requested Sri Prem Masi Kashyap to write the FIR. Accordingly he wrote the FIR as narrated by the victim. Though the victim earlier informed her aunt Monica Purti and Sanjib Purti before her marriage with Birju about the said fact they did not inform the police. Other suggestions put to her have been denied.

13. PW-6 is the Doctor who had examined the victim girl. In her examination report, she has vividly described the case history of the victim, which is quoted hereinbelow:

Case history as per version of the victim girl was that since last November, 2011, her own father Sri Kristopher Purti have been allegedly having sexual intercourse with her occasionally while she was asleep. She also gives history of cessation of menstruation for 2-3 months and so her mother took her to Tengakhat Hospital where she was given some medicine after consuming which she had her menses on 01.04.2012, but it was unusually very heavy. Thereafter her father again allegedly gave the girl to a man named Birij of Basmatia to keep the girl as his wife. The girl stayed for few days and when she came to know about her father's motive, she ran away from there on 08.04.2012 and informed her other relatives and vi lagers. So, a case was registered and she was brought for medical examination to Assam Medical College and Hospital, Dibrugarh.

On the basis of physical examination, Radiological and laboratory investigation done on the victim, Doctor is of the opinion that:

- (i) Evidence of recent sexual intercourse not detected on her person;
- (ii) Evidence of injury not detected on her private parts and;
- (iii) Her age is above 12 years (twelve) and below 14 years.

She has further opined that on clinical examination of the victim, as old tears were found which were healed at the time of her clinical examination. The time/ age when the victim had last sexual intercourse could not be ascertained. Ext.2 is the medical examination report and Ext.2(1) to Ext.2(3) are the signatures of PW-6.

Defence declined to cross examine the Doctor.

14. PW-7, Sri Prem Mashi Kashyap wrote the FIR. He has stated that on 10.04.2012 he wrote an FIR as per version of the victim girl. Ext. 1 is the FIR wherein the victim put her RTI vide Ext.1(1) in his presence. Ext.1(2) is the

signature of PW-7.

In the cross examination, PW-7 has stated that he wrote the FIR as told by the victim as well as told by the women accompanying her. He has further stated that he cannot say whether the victim was persuaded by the women accompanying her to lodge the FIR according to their version.

15. PW-8 Sri Ghana Kanta Baruah is the IO who has stated that on 10.04.12 the victim girl lodged an FIR and the OC Tengakhat P.S. after registering the same as Tengakhat P.S. Case No. 32/2010 entrusted the case to him for investigation. Accordingly he undertook the investigation of the case, proceeded to the place of occurrence, prepared the sketch map, recorded the statement of the witnesses including the victim, arrested the accused and brought him to Tengakhat Police Station. He also had the victim medically examined at AMCH, Dibrugarh and collected the medical examination report. After finding, prima facie, case u/s 376(2)(f) IPC against the accused, he submitted charge sheet against him in the aforesaid sections of law. Ext.5 is the charge sheet and Ext.5(1) is his signature.

In the cross examination, he has stated that the place of occurrence is the residence of the victim and the accused. However, he did not record the statement of the mother of the victim, the victim's grandfather and other residents of the house. The FIR was lodged after lapse of several months from the date of occurrence. He recorded the statement of the victim and other witnesses at the police station. He has further stated that he recorded the statements of all the witnesses except Smti Birshi Perti when they came accompanying the victim to the police station at the time of lodging the FIR.

16. On conclusion of the trial, the learned trial court recorded the statements of the accused u/s 313 Cr.P.C., wherein he has admitted that the victim is his daughter and she is aged about 14 years. He has denied his involvement in the case. When asked by the Court as to whether he had anything to say, he replied that he does not know as to why his daughter, other relatives and the witnesses had falsely implicated him as he is innocent.

17. On the basis of the evidence on record, the learned trial Court passed the judgment of conviction by holding that the prosecution has been able to prove the case against the accused beyond reasonable doubt, inasmuch as, the evidence of the witnesses are trustworthy and there is no contradiction. More so, disbelieving the victim does not arise as she has made the allegation against her own father. The evidence of the victim girl also has been corroborated by the depositions of PW-2 and PW-5. Though there was a gap in lodging the FIR, it is because of the fact that the victim did not immediately divulge the fact of alleged rape to others. She has divulged it to her mother and aunt but they did not lodge the FIR as the accused was related to them and that is the reason why there was delay in lodging the FIR.

18. On going through the evidence on record, I have found that the evidence adduced by the victim, PW-2 and PW-5 are cogent, reliable and trustworthy.

Discarding their evidence does not arise as they have corroborated each other. The prosecution case also finds support from the report of the doctor (PW 6). The doctor found old tears in the private part of the victim. As per opinion of the doctor, the age of the victim was above 12 years and below 14 years, which is also supported by her father, the accused, who has stated that the victim is about 14 years old. In view of the same, I am not inclined to interfere with the judgment of conviction passed by the learned trial court.

19. Prosecution has been able to prove the charge leveled against the accused beyond all reasonable doubt. There is no merit in the appeal and the same is dismissed.

20. Before parting with the case, I would like to put on record the valuable assistance rendered by Mr. B.N. Gogoi, learned Amicus Curiae in arriving at a decision as aforesaid. Accordingly, learned Amicus Curiae is entitled to a professional fee of Rs. 5000/-(Rupees Five Thousand) only. Send down the lower court record.