
(2014) 03 TP CK 0020

In the Tripura High Court

Case No : Criminal A. (J) No. 03 of 2012

Sri Maran Paul alias Mithu VsThe State of Tripura

Date of Decision : 14-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 164(5), 313, 374
Penal Code, 1860 (IPC) — Section 376(1), 376(2)(f), 376(f)

Citation : (2014) 03 TP CK 0020

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : H. Debnath and Ms. U.C. Chanda, for the Appellant; A. Ghosh, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—This criminal appeal, u/s 374 of Cr.P.C., is directed against the judgment and order of conviction and sentence, dated 16.07.2011, passed by learned Assistant Sessions Judge, South Tripura, Udaipur, in Sessions Trial No. 15(ST/S) of 2010. Learned Asstt. Sessions Judge found the accused-appellant guilty of the charge framed against him u/s 376(2)(f) of IPC and sentenced him to suffer R.I. for 9(nine) years and to pay a fine of Rs. 10,000/- (ten thousand) in default of payment of fine, to suffer further R.I. for 2(one) months. Heard learned counsel Mr. H. Debnath for the appellant and learned Public Prosecutor, Mr. A. Ghosh for the State-respondent.

2. Prosecution case, in short, is that the house of the accused-appellant Maran Paul alias Maran Rudra Paul alias Mithu and the house of the parents of victim prosecutrix (name of the victim kept withheld and herein-after mentioned as victim prosecutrix) are situated in the same locality at village Karima tilla (South Sreenagar) under Manubazar Police Station. On 12.05.2009 mother of the accused was hospitalized at Sreenagar Hospital and before she left for hospital for treatment, she requested mother of the victim prosecutrix to let her daughters, the victim prosecutrix (P.W. 5) and the youngest daughter Rinku Rudra Paul (P.W. 6) to sleep at night in the house of the accused with the

younger sister of the accused. Accordingly, on 12.05.2009 in the evening the victim prosecutrix with her sister Rinku (P.W. 6) went to the house of the accused and they along with sister of the accused namely Laxmi were sleeping on one cot and the accused with his younger brother sleeping on another cot in the same room having a partition. At night at about 2.00 a.m. (intervening night of 12.05.2009 and 13.05.2009), the accused forcefully committed rape on the victim prosecutrix on her bed gagging her mouth and as a result she sustained bleeding injury and there was profuse bleeding per her vagina. She called her younger sister and the sister of the accused who were sleeping with her and told them the occurrence and at that time, the accused went away from the house. The victim with her sister and with the sister of the accused went to her house, called her parents and reported them the incident. They found profuse bleeding of the victim per her vagina and her clothes were soaked with blood. The parents of the victim (P.W. 4 and 9 respectively) went to the house of their neighbours (P.Ws. 7 and 8) and called them to their house and reported them about the incident. They also found the victim prosecutrix soaked with blood in her wearing. Parents of the victim along with neighbourers went to the house of the accused but found the accused absent. They brought the blood stained mat and quilt (locally called as "katha") on which the victim prosecutrix were sleeping to their house which was later on handed over to I.O. On the following morning the victim prosecutrix was taken to Sreenagar hospital and doctor examined her and rendered treatment for the injury sustained by the victim prosecutrix in her vagina. Sreenagar Police Out Post was informed about the occurrence and the O.C. of Sreenagar Out Post (P.W. 16) over telephone informed O.C. of Manubazar P.S. and accordingly S.I. Dipak Das (P.W. 18) came to the house of the victim prosecutrix at about 12-00 hours and recorded the statement of P.W. 4, the father of the prosecutrix as FIR. Manubazar P.S. Case No. 18 of 2009 u/s 376(f) of IPC was registered and investigation was taken up.

2.2. In course of investigation, the victim prosecutrix was again examined medically at Sreenagar hospital and thereafter her statement was also recorded u/s 164(5) of Cr.P.C. by the SDJM, Sabroom on requisition of I.O. Accused was arrested on 13.05.2009 and he was medically examined. Blood stained wearing apparels of the victim prosecutrix as well as the accused were seized and the mat and quilt which were stained with blood were also seized. Vaginal swab and penis swab were also collected in course of investigation and those were sent to Forensic Science Laboratory for examination. Material witnesses were examined and statements were recorded by the I.O.

2.3. On completion of investigation charge sheet was submitted u/s 376(2)(f) of IPC on the basis of which cognizance was taken and thereafter in due course the case was committed to the Court of Sessions at Udaipur.

2.4. Learned Assistant Sessions Judge in course of trial framed charge against the accused appellant u/s 376(f) of IPC to which the accused pleaded not guilty and claimed to be tried.

2.5. To prove the case, prosecution examined 18 witnesses. Out of them P.W. 5 is the victim prosecutrix and P.W. 6 is the younger sister of the victim prosecutrix who was sleeping with her on the same cot at the relevant time of occurrence. P.Ws. 4 and 9 are the parents of the victim prosecutrix and out of them P.W. 4 is the maker of FIR. P.Ws. 1 and 2 are the seizure witnesses. P.W. 3 is the police officer who registered the case formally. P.Ws. 7 and 8 are the neighbours of the victim prosecutrix who were called by her parents on the night of occurrence itself and were reported about the incident. P.Ws. 10 and 11 are also the neighbours and they were also reported about the incident. P.W. 12 is the Scientific Officer of State Forensic Science Laboratory and he examined the material objects as well as the vaginal swab and penis swab collected during medical examination. P.W. 13 is the Radiologist who has done ossification test of the victim prosecutrix and observed that she was below 16 years. P.Ws. 14 is the medical officer who examined the victim prosecutrix and P.W. 15 also a medical officer who examined the accused and submitted reports. P.W. 16 is the O.C. of Sreenagar Police Out Post who reported about the incident to O.C. of Manubazar P.S. P.Ws. 17 & 18 are the I.O. of the case.

2.6. Prosecution also proved the FIR, seizure list, seized alamats and the medical reports as well as the scientific examination reports.

3. After closure of the prosecution evidence accused was examined u/s 313, Cr.P.C. and thereafter in his turn accused examined himself as D.W. 1 and also examined another witness namely D.W. 2 Bimal Nath. In course of his examination u/s 313, Cr.P.C. as well as in the defence evidence, the accused taken a plea of alibi that on the night of occurrence he was in hospital with his mother and the allegation made against him is false.

4. Learned Asstt. Sessions Judge found the accused-appellant guilty of the charge framed against him and sentenced him as stated hereinbefore.

5. Having felt aggrieved, the present appeal is filed.

6. Learned counsel Mr. Debnath with all his fairness has submitted that the mother of the accused, according to the prosecution was in the hospital and so it was natural for the accused to be there in the hospital by the side of the bed of his mother. The accused examined himself and another witness in his defence and the trial Court would believe the defence story in the facts and circumstances of the case and would give the accused benefit of doubt. The next argument advanced by learned counsel, Mr. Debnath is that the victim was sleeping when her undergarment was stripped off by the accused as alleged but she raised no alarm. Further, in the darkness of night inside the room how she could recognize the accused there is no evidence in support thereof. So the identification of the accused is doubtful. It is also submitted by learned counsel, Mr. Debnath that the accused was arrested on the very following day of the night of occurrence. Victim was also examined on that day itself and her vaginal swab was collected but on examination no spermatozoa was found in the vaginal swab

or in the penis swab of the accused which suggests that the allegation might be false and the victim prosecutrix might have sustained the bleeding injury otherwise.

It is further submitted by learned counsel Mr. Debnath that doctors found the hymen was intact and so allegation of rape may not be correct and the benefit of doubt is to be given to the accused. He has also submitted that the charge u/s 376(2)(f) of IPC cannot stand since the victim was aged more than 12 years which is evident in the evidence on record.

7. Learned Public Prosecutor on the contrary has submitted that relation between two families were cordial and therefore, the mother of the victim prosecutrix told the mother of the accused to let her daughters to sleep with the sister of the accused at night since the sister of the accused will be alone who was of tender age. It is proved with overwhelming evidence that the victim prosecutrix and her sister (P.W. 6) took bed with Laxmi (younger sister of the accused) in their house and were sleeping on one cot. The accused with his younger brother was sleeping in another cot in the same house having a partition. The accused at night committed rape on the victim forcefully. The victim could not raise any alarm but immediately after the occurrence when she was released by the accused she called her sister and sister of the accused and reported them about the occurrence and at that time there was profuse bleeding per her vagina and her wearing apparels as well as the cot and mat were soaked with blood. Medical evidence clearly shows, submits learned P.P., that rape was committed on the victim prosecutrix. He has also submitted that penetration of penis within the labia majora is possible even without rupture of hymen. He has referred the text of Medical Jurisprudence & Toxicology authored by "Cox". It is also submitted by learned P.P. that there is nothing to disbelieve the prosecutrix while her evidence inspires confidence and it is corroborated by medical evidence. No other evidence is required to prove the case and the Court below rightly found the accused guilty and sentenced him. He has, however, agreed that the sentence u/s 376(2) (f) of IPC is not justified since it is not proved that the victim was aged below 12 years at that relevant point of time. He, however, contended that the punishment imposed on the accused may be maintained for fair ends of justice.

8. P.W. 5 the victim prosecutrix and P.W. 6 the younger sister of the victim prosecutrix are the most important witnesses of the occurrence. In her deposition P.W. 5 stated that on 12.05.2009 she accompanied with her younger sister Rinku Pal went to take sleep in the house of accused Maran Pal with the younger sister of accused Maran. She and her sister went to sleep there on the request of mother of accused as the mother of accused requested her parents to take sleep with the sister of accused since mother of accused will be hospitalized on that day. Accordingly, she with her sister took sleep at night in the house of accused with his younger sister in one bed and in that room accused Maran Pal with his younger brother took sleep on another bed. At mid night she woke up having realized that Maran Pal stripping off her underwear. The accused gagged

her mouth and asked to remain silent and thereafter forcefully penetrated his penis in her vagina. She received bleeding injuries in her private parts. Her sister and the younger sister of accused were awakened and asked her as to what happened. At that time accused Maran Pal went out of the hut telling nothing had happened. She further stated that her wearing apparels were stained with blood and thereafter she accompanying with her sister and younger sister of accused went to her house and reported the matter to her parents in the mid night. Her parents called 2/3 neighbourers and reported them the incident. Her mother went to the house of the accused and brought the mat and quilt on which they were sleeping. On the following morning she got treatment in the hospital and her father filed the case. She was taken to the Magistrate where she narrated the incident and she proved her signature in the statement recorded u/s 164 of Cr.P.C. Except suggestion, there is nothing material in her cross examination.

9. P.W. 6 stated that she accompanied with her sister (victim prosecutrix) and the younger sister of the accused took sleep in the house of the accused since mother of the accused was in the hospital for treatment. In the same room in another part accused with his younger brother were also sleeping on another cot. At dead hours of night her sister awakened her from sleep and she found her sister weeping. After she woke up she found accused Maran was leaving the room opening the door taking a shirt in his hand saying that nothing had happened and asked her to sleep. Thereafter younger sister of Maran also woke up. After that they along with younger sister of Maran namely Laxmi went to their house and called their parents. She noticed blood in the wearing apparels of her sister and her bed. Her sister told her and her mother that accused Maran committed bad act with her. She has also stated that she found the accused Maran going out of the room in the electric light. Except suggestion, there is nothing in the cross examination of this witness also.

10. P.Ws. 4 and 9, the parents of the victim prosecutrix fully corroborated the victim prosecutrix what the victim prosecutrix has stated in her deposition. P.Ws. 7 and 8 also corroborated the parents of the victim prosecutrix that on that night they were called by the parents of the victim prosecutrix and they went to the house of the victim prosecutrix and found her with blood stains. P.W. 8 further stated that she found the victim prosecutrix weeping. P.Ws. 10 and 11 being the neighbourers were reported about the incident and they corroborated the parents of the victim prosecutrix.

11. Now let us see the evidence of P.Ws. 14 and 15, the Medical Officers. P.W. 14 stated that he along with doctor Sanjay Kr. Saha examined victim prosecutrix in presence of sister nurse, after taking consent of the mother of the victim prosecutrix. The examination report submitted by the medical officers proved as Exbt. 6. The witness stated that on local examination they found vaginal watery discharge present. Redness and swelling were present over labia majora. On digital examination they found tear over posterior fornices at left posterior and midline posterior. They also found redness over minor fornices. Hymen was

unruptured. They opined that after thorough examination they were of the view that there were signs of recent vaginal injury. The witness further stated that in the event of intercourse hymen of a woman may remain unruptured.

12. P.W. 15 stated that he has also examined the victim prosecutrix on 13.05.2009. The examination report is proved as Exhibit-7. In Exhibit-7, the medical officer mentioned that there were signs of violent marks present over the posterior genitalia. No mark or scratch were found over her abdomen and both thighs. In vaginal examination he found the vagina was very tender, vaginal wall mild swelling. He has also examined the accused and submitted report which is marked as Exhibit-8. What is mentioned in the report has not been recorded from the mouth of the witness.

On perusal of Exhibit-8 (examination report of accused) it is found that the Medical Officer found several blood spots present in his underwear. Abrasion found on his glans penis. Rupture of underlying skin attached with glans penis. Sign of violent and friction was on his penis which may be due to tight vagina. He himself stated that he was capable of doing intercourse.

The medical evidence as a whole is in support what the prosecutrix has stated.

13. The prosecutrix is an unmarried young girl and it is evident that there were cordial relation between the family of the prosecutrix and the family of the accused. In his deposition accused clearly admitted that there were very cordial relations between the two families. The prosecutrix was a minor girl at the time of alleged occurrence. If her evidence inspires confidence, no other corroboration is required to record a conviction. Here in this case her evidence not only inspires confidence but also supported by the medical evidence. A victim of rape is not an accomplice. She should be treated at par as an injured witness. It is ordinarily presumed that no injured witness would tell a lie or implicate a person falsely. The accused took a plea of alibi that he was in the hospital with his mother along with D.W. 2. Even not a suggestion was given to the prosecution witnesses that the accused went to the hospital along with P.W. 2. The parents of the accused who were admittedly in the hospital have not been examined. None from the hospital also examined to prove the alibi that the accused was in the hospital on the night of occurrence. Rather medical examination of the accused clearly shows that there were blood spots present on his garments. The plea taken by the accused, therefore, seems to be false plea with a view to get rid of the charge. The accused and the victim prosecutrix were closely known to each other. She did not state in her deposition how she found the accused, but she made a clear statement that she woke up being realized that her under pant was stripping off and the accused gagged her mouth saying to remain silent. The voice of the accused is known to the victim. So she could recognize the accused even by voice in the room. If we presume that at the time of commission of rape there was no light, but after the rape was committed, the electric light was lighted in the room which has been clearly stated by P.W. 6. That statement of P.W. 6 that electric light was lighting the room when the accused was going out of the room,

has not been shaken in any manner. Therefore, there remains no doubt about the identity of the accused by the victim prosecutrix as the offender who committed the rape.

14. Exhibit-5 is the Chemical examination report submitted by P.W. 12. In the vaginal swab no spermatozoa was found. Presence of spermatozoa would definitely give a positive inference about the commission of rape but absence of spermatozoa also does not make the prosecution case as false. The report shows that blood stains were found in the wearing apparels and other materials seized. The victim made clear statement that she suffered bleeding injury because of the forceful penetration. The medical officer who examined the victim found positive sign of rape and bleeding and while that evidence is available which is supported by the report of the Forensic Science Expert that blood stains were found in the seized wearing apparels etc. is enough to hold that there was rape of the victim prosecutrix by the accused.

15. Hymen of the prosecutrix was found intact but P.W. 14 clearly opined that in the event of intercourse hymen of a woman may remain un-ruptured. This opinion of P.W. 14 has not been challenged by the defence in course of his cross examination. It is proved with overwhelming evidence that there was bleeding per vagina because of forceful penetration. The Author "Cox" in his medical jurisprudence, 6th Edition, has observed that there may be penetration within the labia majora of the vulva or pudendum without causing any injury to the hymen, with or without emission of semen, such penetration is sufficient to constitute the offence of rape. Nothing is placed by the defence to arrive at a contrary finding. This argument of learned counsel Mr. Debnath, therefore, has no force at all.

16. Let us now come to the question of punishment u/s 376(2)(f) of IPC. Before amendment Section 376(2)(f) reads as follows:-

(2) Whoever---

.....

(f) commits rape on a woman when she is under twelve years of age;shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.

17. In the FIR the informant stated the age of the victim as 11 and half years. In the L.C. record, I find that the birth certificate of the victim prosecutrix has been seized by I.O. by preparing a seizure list and the seizure list is marked as Exhibit-10 but that birth certificate has not been proved in course of trial. Exhibit-10 the seizure list shows that the date of birth of the victim girl, in the seized birth certificate, was recorded as 18.10.1995. The incident occurred on 13.05.2009 and if it was so, the victim was aged more than 12 years at that time. In course of her examination u/s 164 of Cr.P.C., she told her age as 11 and

half years but in course of her deposition before Court she stated her age as 14 years on 28.08.2010 i.e. after about a year of the date of occurrence. P.W. 4 father of the victim also on 28.08.2010 stated that victim was aged 14 years at that time. P.W. 13, the Radiologist after ossification test opined that the victim girl was aged less than 16 years. So it is apparent that at the relevant point of time, the victim was above 12 years. So the charge u/s 376(2)(f) was not justified. However it is clear that the victim prosecutrix was aged below 16 years at the time of alleged occurrence. The offence committed by the accused squarely come under the purview of punishment as prescribed u/s 376(1) of IPC.

18. Accordingly the convict-appellant Sri Maran Paul alias Mithu is punished u/s 376(1) of IPC to suffer R.I. for 7(seven) years and to pay a fine of Rs. 10,000/- (rupees ten thousand), in default of payment of fine to suffer S.I. for 1(one) year.

19. With this modification of sentence, the appeal stands dismissed. Send back the L.C. records along with the copy of this judgment.