
(2008) 09 CAL CK 0078
In the Calcutta High Court
Case No : C.R.A. No. 337 of 1991

Sujit alias Jhantu Pradhan and Another	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 323, 342, 354, 376

Citation : (2009) CriLJ 1201

Hon'ble Judges : Tapas Kumar Giri, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Y.J. Dastoor, Dipanjan Chatterjee and Prabir Kumar Mitra, for the Appellant; Asimesh Goswami and Ratna Ghosh, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—On January 18, 1986 Kaberi (not real name) and Kabita (not real name) resident of the District of Baleswar, Orissa came to watch a movie near Thikra More, Police Station-Mohanpur in the District of West Midnapore, West Bengal. After watching the movie they came to Thikramore and were trying to find out a conveyance to go back to their respective residence. They met two boys namely Mantu and Badal being P.W. 3 and P.W. 4. the girls requested the said two boys to arrange for a conveyance for them. They got a rickshaw who demanded Rs. 15.00. The girls could not agree due to paucity of fund. When they were walking through the road the accused got hold of them and brought them to the nearby sweetmeat shop belonging to the appellant No. 2, Shri Gouranga Jana. They promised that they would accompany them to their respective houses. Appellant No. 1 along with one Kesto Das (died before trial) took one of the girls Kaberi to a nearby school by rickshaw. They took her to a school room. Both of them outraged her modesty and raped her one by one. The other girl Kabita was also raped by Gouranga at his sweetmeat shop. Early in the morning on the next day both of them were released and they went back to their respective houses. Out of fear and shy they did not divulge the incident to anyone before police interrogated them. As per the boys, the accused detained

them for sometime and thereafter released them threatening them with dire consequence. They went to the house of one of their relatives at Katabani where they stayed at the night. Next day morning when they came out from the house of the relative they found both the girls loitering on the road. They arranged conveyance for them and left for their respective places.

Complaint:

2. After about eight days the local CIP(M) leader Bhabesh Chandra Gantait came back from Midnapore after party work. He came to know from one Kanai Naitha of Tikhramore and Hemanta Senapati of Kabra about the incident. After coming to know of the incident he lodged a complaint with the Police Station on January 24, 1986. In the complaint he disclosed the name of the accused being Shri Jhantu Pradhan, Gouranga Nana and Kesto Das. In his complaint he assured the Police Station that he would disclose the names of the boys and the girls involved the incident later on.

Police Action:

3. The Police arrested Gouranga and Sujit and charged them with the offence, inter alia, u/s 376 of the Indian Penal Code. As per the deposition of the Investigating Officer they came to know of the incident of January 24, 1986 after receipt of the complaint from Bhabesh, Kanai identified the place of occurrence. He examined Kanai and Hemanta. He arrested Gouranga on the said date. The other two accused were, however, not available. On February 7, 1986 he examined two boys involved in the incident being Bada Kumar Behera and Biswanath Das. He asked the boys to produce the victim girls before him and they assured to do so. On February 9, 1986 he went to Katabani and examined Traillakya Bera in whose house the boys took shelter on the fateful night. Sujit and Kesto surrendered on February 5, 1986. On February 14, 1986 he went to Suksanda and found Kaberi. He took her to safe custody, examined her and seized her wearing apparels. On February 15, 1986 he seized the rickshaw belonging to Keshto. On February 15, 1986 on his prayer the concerned Magistrate recorded the statement of Kaberi u/s 164 of the Code of Criminal Procedure. Kaberi was also sent for medical examination. The medical report was received on March 27, 1986. On April 10, 1986 he handed over the charge to his successor after being transferred to Ramnagar Police Station. On August 16, 1987 the next Investigating Officer examined Kabita and recorded her statement u/s 164 of the Code of Criminal Procedure. On February 16, 1987 Investigating Officer submitted charge-sheet under Sections 342, 323, 354 and 376 of the Indian Penal Code.

Trial:

4. Ultimately Sujit and Gouranga faced trial. The learned trial Judge held them guilty of the offences and sentenced them for rigorous imprisonment of eight years coupled with fine of Rs. 2,000.00, in default six months imprisonment.

Evidence:

5. Altogether ten witnesses deposed on behalf of the prosecution. P.W. 1 Bhabesh deposed that he came to know of the Incident from Kanai and Hemanta after he had come back from Midnapore. He deposed that as per version of Kanai and Hemanta on January 18, 1986 at about 11 p.m. two boys and two girls came to Thikramore on way back to their respective homes. At that time there had been an altercation between them on the one hand and the accused on the other hand. Kanai was present as he was drawing water from the tubewell. When he enquired from the accused the accused drove him away. Out of fear he went back. While returning home he saw that the accused tied the hands of the two boys with a pillar. Sujit and Kesto took one girl by a rickshaw whereas Gouranga took the other girl in his sweetmeat shop. Afterwards the accused untied the hands of the boys and drove them away by beating. The girls were weeping saying that the accused outraged their modesty. Bhabesh, however, denied of any incident with regard to the possession of the sweetmeat shop, belonging to Gouranga or the incident of January 23, 1986 to the effect that the villagers got the boys and girls in a compromise position. Hemanta being P.W. 2 corroborated almost in the same line. Kanai was, however, not examined by the prosecution.

6. Both the concerned boys involved in the incident deposed as P.W. 3 and P.W. 4. They corroborated each other. They also denied the incident alleged to have occurred on January 23, 1986 when suggestion was put to them. Mr. Dastoor commented on their evidence to the effect that although they contended that they had sustained injuries after being "mercilessly" beaten no injury report had been tendered in evidence. They also deposed that they met the girls on the next day morning. Such evidence was corroborated by one of the girls. The other girl, however, did not corroborate the same. The doctor who examined Kaberi opined that she was subjected to sexual assault. However, on a combined reading of the evidence of both the victims it is clear that they were subjected to sexual assault. Both of them categorically stated that they were raped by the accused.

7. Our Analysis:

On a combined reading of the deposition we agree with Mr. Dastoor to the extent that there were anomalies. We also agree with Mr. Dastoor that there are deficiencies in evidence. If we give credence to his submission and believe his story we would find that the boys and girls were involved in indecent act on January 23 and they were caught by the villagers. However, no such complaint was ever lodged with the Police by any of the villagers. We are also unable to accept Mr. Dastoor's story of counter blast as on perusal of the record we find that the complaint was lodged by Bhabesh at 18.10 hours on January 24, 1986 whereas the complaint lodged by Gouranga was recorded at 19.00 hours. The probable factual scenario as revealed from a combined reading of the evidence read with the explanation offered by the accused in their examination made u/s 313 of the Code of Criminal Procedure we would find that both the girls as well as boys were of tender age. They were admittedly outsiders. After the incident

they left the place and out of shame they did not lodge any complaint. Bhabesh being a local leader lodged the complaint upon coming to know of the said incident. He might have instigated the villagers as against the accused resulting ransack of the sweetmeat shop. Bhabesh might have an oblique intention to do so as he was not successful in getting the control of the sweetmeat shop. However, such fact per se could not demolish the evidence of the prosecution.

8. Purview:

The problem can be viewed from another angle. Two minor girls were subjected to rape. They disclosed the incident when the Police was activated by Bhabesh. They corroborated the statements made contemporaneously u/s 164 of the Code of Criminal Procedure at the time of trial. It is significant to note that they got married in between and when they deposed at the time of trial both of them were married. We cannot overlook the fact that they were village girls belonging to poor families. We cannot overlook the fact that we belong to a society where victims of rape are viewed with hatred. They mustered courage to come to Court to depose as against the accused even after their marriage.

9. Let us now examine the contention of Mr. Dastoor on counter blast. Bhabesh might have an eye over the sweetmeat shop of Gouranga. He might have taken advantage of the situation and made the complaint as against Gouranga. However, there was no allegation with regard to the other two accused being Involved in the sweetmeat shop incident.

10. Let us now consider the motive of two boys and the victims. Admittedly they were outsiders. Nothing came out in evidence that they had some relation with Bhabesh or that Bhabesh had control over them. Bhabesh even did not know their names at the time when he lodged the complaint. The intention or motive of Bhabesh, in our view, was not at all material. It is immaterial who made the complaint with the Police. The Police is only concerned with the offence that was committed. Even if we ignore the evidence of Bhabesh we can safely hold that the charge was proved through the victim girls with the support of the boys coupled with the medical evidence in case of Kaberi. In this regard we may refer to the Apex Court decision in the case of State of Punjab Vs. Gurmit Singh and Others, cited by Mr. Goswami, the learned Public Prosecutor. In the said decision the Apex Court observed that in sexual offence delay in lodging FIR due to variety of reasons is natural with sufficient explanation given. As we have discussed herein before, neither the victim girls nor the boys informed anyone of the incident out of fear or shame. It is only when Police was activated by Bhabesh they disclosed everything to the Police. They also supported their statement made before the Police at the time of trial.

11. Comment was made with regard to the evidence of one of the girls to the extent of attending nature's call in the bamboo grove in the presence of the boys. Even if we give credence to such comment we feel that merely because the boys were alleged to have intimacy with the girls they could not be called as

women of easy virtue or they could not be subjected to sex without their consent. Such proposition is not only unheard of but also destroys our values, heritage and prudence. We cannot overlook the socio-economical situation prevalent in our country especially in the rural areas. It is hard to believe that two young girls would depose as against the accused to the effect that they had committed rape on them and thereafter sustained such case by coming to the witness box even after change of their marital status. When a victim girl musters courage and comes to the Court of law complaining that the accused had committed rape on her such evidence must be taken at its face value more so when it is backed up and corroborated by other witnesses including medical evidence.

The second girl Kaberi was examined by the Police after about nineteen months. Obviously the Police did not feel it relevant to have medical examination as it would be futile. In such view of the matter we like to give Gouranga a benefit of doubt in respect of charge brought against him u/s 376. However, he must be held guilty u/s 354 for outraging the modesty of the victim girl.

12. Result:

The appeal succeeds in part. The conviction and sentence given as against Sujit alias Jhantu Pradhan is confirmed. The conviction of Gouranga u/s 376 is set aside and is substituted by conviction u/s 354 of the Indian Penal Code. The sentence in the case of Gouranga is thus reduced to three years rigorous imprisonment coupled with a fine of Rs. 2,000.00 in default to suffer six months imprisonment.

13. The bail bonds are cancelled. Accused are directed to surrender before the Court below. In default sureties are directed to produce them before the Court below for sufferance of sentence. Send down lower Court Record along with a copy of this judgment to the trial Court for information and for taking appropriate action in the light of the direction contained in this judgment.

Urgent xerox certified copy will be given to the parties, if applied for.

Tapas Kumar Giri, J.

14. I agree.