
(2000) 01 GAU CK 0034
In the Gauhati High Court
Case No : Criminal Appeal No. 41 of 1998

Thainga Mog and Another	Vs	APPELLANT
State of Tripura		RESPONDENT

Date of Decision : 10-01-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 376(2)

Citation : (2000) CriLJ 1847 : (2000) 1 GLT 495

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : M. Kar Bhowmik and R.R. Dutta, for the Appellant; H. Sarkar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Three accused persons, namely, Thainga Mog. Mou Mog alias Akrai and Lebrasai Mog have been convicted u/s 376 (2)(g) of the Indian Penal Code and each of them has been sentenced to 10 years R.I. and fine of Rs. 5000/- and further to suffer rigorous imprisonment for (2) two months in default of payment of fine. All the three accused persons are appellants before this Court.

2. The prosecution story is that in the night of 19th January, 1994/20th January, 1994 at about 1.20 a.m. the three (3) accused persons, namely, Thainga Mog. Mou Mog and Lebrasai Mog first went to the house of Apangshi Mog, P.W. 2 who was sleeping with her husband and committed rape on her. Thereafter, all the three accused persons at about 2.30 a.m. went to the house of Khalow Mogini, P.W. 1 and out of the three accused only one accused Thainga Mog committed rape on her. A written F.I.R. about the occurrence was lodged by Khalow Mog PW 1 in the next day evening at 18-15 hours at Baikhora P.S. after covering a distance about 7 kms.

3. All the three accused persons pleaded not guilty and claimed to be tried. The prosecution examined the Prosecutrix Khalow Mogini P.W. 1, Apangshi Mog P.W.

2, Smt. Machinda Mogini, P.W. 3 Challow Mog, P.W. 4, Santosh Deb, P.W. 5, Kejari Mog Choudhury, P.W. 6, Mangshi Mog, P.W. 7, Dr. Subrata Paul, P.W. 8, Bhaba Sankar Pal, P.W. 9, I.O. Shri Ratan Bhowmik, P.W. 10, and I.O. Shri Swapan Dey, P.W. 11. The two prosecutrix namely, Khalow Mogini, P.W. 1 and Apangshi Mog P.W. 2 though have deposed about the rape alleged to be committed by the accused persons but none of the witnesses nor the medical evidence adduced in the case has corroborated the prosecution story. In the medical examination of Khalow Mogini P.W. 1 held on 21st January 1994, the Medical Officer Shri Subrata Pal P.W. 8 though found two abrasions one abrasion on the lower part of the elbow and another abrasion on right thigh and left ankle but has not found any injury on the private parts of the prosecutrix. In his medical examination report Dr. Subrata Pal P.W. 8 has stated that the injuries found by him might be due to struggle of the victim with the assailant conversely, these cannot substantiate that she had violent sexual intercourse/gang rape within 24 hours of the occurrence. In medical examination of Apangshi Mog P.W. 2 the Medical Officer Dr. Subrata Pal found one bruise on the lateral aspect of middle part of right thigh of the prosecutrix but no injury was found on the private parts of the prosecutrix. The Medical Officer has given opinion that there was no positive sign of violent sexual intercourse/gang rape. As stated above Apangshi Mog P.W. 2 was having pregnancy of about six months. Had she been gang raped by three persons there must have been abortion or earlier termination of the pregnancy. Medical examination report does not support the theory of rape/gang rape taken by the prosecution. Kejari Mog Choudhury, PW 6 is the Pradhan of the village. It is alleged that in the next morning all the three accused persons were brought at the house of the Pradhan, Kejari Mog Choudhury. P.W. 6 and there the accused persons confessed their guilt before the Pradhan of the village and the villagers. The alleged confession is Exbt. P-4/1. The alleged confession Exbt. P-4/1 simply speaks of misdeeds of the accused persons and do not speak about the theory of rape.

4. Kejari Mog Choudhury P.W. 6-Pradhan of the village has admitted in his cross-examination that some rivalry exists between the husband of the informant and the accused persons relating to the dispute over some landed property though P.W. Khalow Mogini refuted the same. Smt. Machinda Mogini P.W. 3 has deposed in her examination-in-chief that a dacoity was committed in the house of Khalow Mog P.W. 1 and on the following morning Khalow Mog told her that the three accused persons committed dacoity in her house. Challow Mog P.W. 4 has deposed that Khalow Mog P.W. 1 told her that the three persons dragged her from her house and took her on Paticheri Kalashi road and pushed her flat on the road and thereafter the accused Thainga Mog committed rape upon her. On the contrary in his cross-examination he stated that the prosecutrix P.W. 1 did not state to him that she was raped by Thainga Mog. Santosh Deb P.W. 5 has also deposed that on the date of the occurrence Khalow Mog P.W. 1 came to her house and told her that the three accused persons assaulted her and committed dacoity. She also did not state about the theory of rape. Though the witnesses

have been declared hostile by the prosecution but the law is well settled that the mere fact that a witness is declared hostile by the party calling him and is allowed to be cross-examined does not make him as unreliable witness so as to exclude his evidence from consideration altogether. So, even if the witnesses have been declared hostile, their evidence cannot be excluded from consideration.

5. In view of the discussion made above, it is clear that the theory of rape/gang rape deposed by the two prosecutrix is not supported by the medical evidence or by the evidence of any of the witnesses. It is true that the statement of the prosecutrix requires no corroboration, if her statement is corroborated by medical and other evidence and circumstances of the case. But in the present case the statement of the two prosecutrix is not corroborated by the medical evidence or other circumstances of the case. The learned Sessions Judge was therefore not justified in recording the conviction of the three accused persons u/s 376(2)(g) of the I.P.C.

6. The judgment dated 11-1-1996 under appeal is hereby set aside. The three accused persons, namely, Thainga Mog, Mou Mog alias Akrai and Lebrasai Mog are acquitted of the charge u/s 376(2)(g) I.P.C. All the accused persons are in jail, they shall be set at liberty from jail forthwith.

Both the appeals succeed.