

(2007) 01 GAU CK 0053
In the Gauhati High Court

The State of Tripura

APPELLANT

Vs

Shri Chayan alias Santosh Saha

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 366, 366A, 375, 376

Citation : (2007) CriLJ 2903 : (2007) 1 GLT 754

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—Heard Mr. R.C. Debnath, learned P. P. for the appellant-State of Tripura and Mr. P.K. Biswas, learned Counsel appearing for the respondent.

2. This criminal appeal has been preferred by the Appellant-State of Tripura against the judgment and order dated 22-12-1998 passed by the learned Sessions Judge, West Tripura, Agartala in Sessions Trial No. 171 (WT/A)/1996 whereby the respondent herein was acquitted from the charge under Sections 366/376 of the Indian Penal Code (for short "IPC").

3. The prosecution case as emerged from the deposition of the P.W. 2, the victim girl, Smt. Sampa Das, necessary for disposal of this appeal, may be noticed as under:

On 3-11-1995 at about 6-30 a.m. in the morning while Smt. Sampa Das, aged about 20 years, as reflected in the FIR so lodged by the father, Sri Sitangshu Sekhar Das, P.W. 1, was proceeding to the house of her student for attending tuition, she was kidnapped by the respondent who came in a white Maruti van, by gagging her mouth and lifting her inside the said vehicle. Though she put resistance against such kidnapping, the respondent along with other two/three miscreants, who were already occupying the said vehicle, carried her forcibly from the area known as Jogendranagar Vidyasagar Road, to the house of his

aunt at Aralia where she was raped on two times against her will by the respondent. On the same day, in the evening, she was carried by the respondent to Bairagibazar in the same vehicle. Prior to leaving for Bairagibazar, she was forced to wear saree by the respondent as she was wearing Churidar Paijama. At Bairagibazar she was put in a house and against her will, the respondent committed rape on her on several times everyday and in that place, she was put in confinement for three days. On the 4th day, the respondent took her to Udaipur and kept her in a house of his friend where he put vermilion on her forehead and also put bangle made of conch in her hand by force. Thereafter, the respondent took her to the temple of Mother Kali threatening her that if she would raise any alarm or disclose anything to anybody, he would kill her. In the Kali temple, the respondent also took some joint photographs by force. Then the respondent brought her again to the house of his friend where he compelled her to stay at night and on that night, again, he committed rape on her by force. She was again shifted to another house on 7-11-1995 and was kept in confinement in that house for two days. In the said house also, the respondent continuously committed rape upon her. The respondent also kept some guards so that she might not flee from his clutch. On 8-11-1995, the respondent forced her to come to the Court and threatened her saying that if she would disclose anything to the Magistrate or the lawyers there against him, he would kill her and destroy her family. Accordingly, she accompanied him with some other miscreants out of fear and she signed in a piece of paper in the Court, which was an affidavit. On the following day, i.e. on 9-11-1995, the brothers of the respondent took her to their house and put her under threat. At about 9.30 a.m. one brother of the respondent brought her to the East Agartala P.S. and out of fear, she stated to Darogababu (Police officer) that she went with the respondent voluntarily. On the same day, she was produced before the Magistrate, and in the Court itself, she was handed over to her parents who brought her back home.

4. In connection with such incident occurred on 3-11-1995, FIR was lodged on 6-11-1995 by the P.W. 1, the father of Smt. Sampa Das, (P.W. 2), alleging that on 3-11-1995, in the morning, while her daughter, Smt. Sampa Das, was going to attend her tuition, she was kidnapped by one Chayan Saha, the respondent. He made a lot of search and queries and came to know that the respondent took her away in a white maruti car forcibly and against her daughter's will with a view to marrying her and with some evil intention.

5. On the basis of the allegations made in the FIR, the police registered East Agartala P.S. Case No. 193 of 1995 u/s 366, IPC. After completion of the investigation, the respondent, who surrendered earlier on 10-11-1995, was sent for trial u/s 366 read with 376, IPC, and in that trial, the prosecution examined as many as ten witnesses including P.W. 2, Smt. Sampa Das, the prosecutrix, P.W. 9, Dr. Debabrata Dutta and P.W. 10, the Investigating Officer, Sri Sanati Kr. Pal. The defence adduced none. The prosecution also examined the relevant documents, particularly, Medical Examination Report as Exb. P-5 as well as statement of Smt. Sampa Das recorded u/s 164, Cr.P.C. as Exbt. P-2.

6. The trial Court, on proper consideration and adequate appreciation of the materials on record including the testimony of those witnesses, especially P.W. 2 as well as on close analysis of the relevant documents exhibited, came to the findings recorded in the impugned judgment that the evidence of the victim girl did not inspire the Court to place reliance considering her conduct of not disclosing such act committed by the respondent to any person to whom she came across either at the time of kidnapping or during her confinement in different houses at different places and also her failure to disclose the offences to the Magistrate at Udaipur before whom she was taken to swear an affidavit or to the police officials found in the Court premises as well as at the police station, where she was produced by the brother of the respondent. Eventually, the respondent was acquitted from both the charges u/s 366 read with Section 376, IPC holding that the prosecution failed to prove those charges against the respondent beyond shadow of reasonable doubt.

7. Challenging the impugned acquittal order passed by the trial Court, Mr. R.C. Debnath, learned P.P. has strongly contended that the trial Court committed grave error in law as well as on facts in brushing aside outrightly the deposition of P.W. 2 in totality upon which the entire case of the prosecution was structured, without offering any cogent or acceptable reason of disbelieving that piece of evidence as she categorically all along maintained in her deposition both in chief as well as on cross that the accused/respondent committed rape on various occasions against her consent and she was put under threat of dire consequences of elimination of her entire family including her. According to him, in such circumstances, the trial Court mis-interpreted and misconstrued the evidence of P.W. 2 and on this count alone, the impugned acquittal order is liable to be set aside.

8. Drawing attention of this Court to the deposition of the Doctor, P.W. 9, it has further been contended on behalf of the State that the medical evidence too fully corroborated with the statement made by P.W. 2, Smt. Sampa Das on oath before the Court regarding rape. In the medical evidence, it was clearly reflected that though no injury on the body of the victim was found, her hymen was found penetrated and her vagina was found capacious. Although the Doctor did not give his conclusive opinion as to whether the girl was raped, an organic reading of the evidence would go to indicate that the medical evidence corroborated the deposition of P.W. 2. In support of his submission, strong reliance has been placed by Mr. Debnath, learned P.P. on the judicial pronouncement in State of Himachal Pradesh Vs. Shree Kant Shekari, and State of Rajasthan Vs. N.K.-The Accused,

9. In Shree Kant Shekari 2004 Cri LJ 4232 (supra), the Supreme Court dealing with the discrepancy in the evidence of the witnesses and delay relating to a case u/s 375/376, IPC, in an elaborate discussion, particularly in paras 16 and 18 held that in a case of rape, microscopic approach in the examination of the evidence of the witnesses would be an insult to justice-oriented judicial system and delay

in lodging FIR per se explained by giving satisfactory explanation was not a mitigating circumstances for the accused when accusations of rape were involved: meaning thereby, the delay in lodging the FIR could not be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity.

10. The Apex Court in N.K.'s case 2000 Cri LJ 2205 (supra) had the occasion to discuss the scope of the testimony of prosecutrix solely for conviction in a case of rape and in paragraph 11, it was opined as follows:

11. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject-matter being a criminal charge. However, if the Court of facts may find it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony.

In the said paragraph itself, the Supreme Court referring to a long chain of decision, lastly relied on a case of State of Punjab Vs. Gurmit Singh and Others, wherein in para 21 observed as under:

If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence, which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

11. The ratio of these cited cases, in my humble opinion, is not totally applicable in the instant case. The prosecution has not structured its case on the plea of either delay or on minor discrepancy. It appears from the argument so placed on behalf of the State that thrust herein basically was against disbelieving and rejection of the deposition of P.W. 2 by the trial Court.

12. On the other hand, Mr. P.K. Biswas, learned Counsel for the respondent has emphatically contended that even without going through the appreciation of evidence of the other witnesses, straightway on close analysis of deposition of P.W. 2 alone, the respondent is entitled to acquittal. According to him, the victim girl, P.W. 2, though claimed that she was kidnapped by the respondent and put under confinement for as many as six days and during that period the respondent had committed rape on her against her will on several occasions, minimum three times in a day, she never whispered to any person within her proximity she came across during her shifting and staying in different places or

in the Kali temple, where some pilgrims were available or in the public office like the Court of the Magistrate or the lawyers or the police officials present in the concerned Court in spite of having sufficient time and means to, at least, communicate her story of kidnapping. Accordingly, she did not avail of such chances and opportunity; rather she kept herself to be continued in the confinement of the respondent. In view of such facts situation, according to the learned Counsel, the trial Court was absolutely justified and correct in passing the impugned judgment re suiting in the acquittal of the respondent. Mr. Biswas has relied upon a decision of this Court in a case of Sushanta @ Tutan Chakraborty Vs. State of Tripura,

: (2002) 1 GLR 400 13. In Sushanta alias Tutan Chakraborty's case 2002 Cri LJ 195 (supra), this Court dealing with an appeal against conviction under Sections 375/376 read with Section 366A, IPC, under similar factual situation of taking the victim girl to various places, at least for 15/16 days, held that the absence of any injury or violence on the person of the prosecutrix would go to show that she did not put up any resistance on the alleged rape committed by the appellant on her and thus no irresistible inference would be drawn that she was not a consenting party. In the aforecited case, the case of the prosecution was that the prosecutrix was with the appellant, Sushanta for 15/16 days of being taken from one place to another place on being alleged kidnapped and during the period, she was repeatedly raped by the appellant along with one of his friend. Although, she had enough scope and chances to disclose about her plight to any person, the same having not been done by her, as it transpires from her evidence, she did never resist during the intercourse by the appellant, which would obviously amount to consent on her part. The facts of the cited case, according to me, appear to be almost similar and identical with the case in hand.

14. Having given my thoughtful consideration to the exclusive submissions so canvassed by the learned Counsel representing the parties and also on meticulous perusal of the deposition of the witnesses, particularly, the prosecutrix, P.W. 2 and medical evidence through P.W. 9, it is seen that P.W. 2 in her cross-examination, though in chief she categorically deposed that she was taken after kidnapping on 3-11-1995 to various places and in this process, the respondent put her in confinement at least for six days from 3-11-1995 to 9-11-1995 and during her shifting of houses, she was subjected to sexual assault by the respondent on several occasions in her person by force despite her resistance, categorically testified that she did not disclose to anybody that she was kidnapped by the respondent either in the house where she was put in Udaipur, or in the Kali temple where there were some pilgrims and even to the Photographer who took snap in the Kali temple on the plea that she was put under threat. Importantly, when she was, later on, produced before the Magistrate in the Court for swearing the affidavit to full view of lawyers, police personnel and other Court's staff, there also she preferred to remain silent. In fact, during the time of signing the affidavit before the Magistrate on oath stating that she married the respondent, she did not utter a single word as regards her

kidnapping to the Magistrate. Surprisingly, in her cross, she admitted that she stated to Daroga Babu that she went voluntarily with Chayan Saha, the respondent, who was her relative, being the brother-in-law Of her elder sister. However she denied the suggestion so put to her as to whether she was in love with the respondent. This piece of deposition is sufficient to hold that she never objected to such sexual intercourse which was performed for days together on several occasions and despite the opportunity or chances, she did not disclose to anybody about such incident on mere a plea that she was under threat or in fear which fact was not supported at all by any convincing evidence.

15. It would be proper at this juncture to examine the medical evidence i.e. P.W. 9 who in his deposition specifically opined that after examination, he could not give any conclusive opinion whether the girl was raped or not with total emphasis that he did not find any injury on the body of the victim girl. It is to be noticed that when the occurrence took place on 3-11-1995 and the girl produced before the police on 9-11-1995, she was examined by the doctor on 14-11-1995, as reflected from P.W. 9's deposition. In other words, she was examined after six days of her production for reasons best known to the prosecution.

16. Pertinent to mention herein that it was admitted that the prosecutrix, P.W. 2, was aged about 20 years at the time of her alleged kidnapping and she was, therefore, a major girl.

17. In a case of Ram Murti v. State of Haryana reported in AIR 1970 SC 1020, the Supreme Court dealing with a case of similar nature, where the victim girl, prosecutrix, was kidnapped and taken by the appellant, Ram Murti, being a medical practitioner and her teacher with two other accomplice and from place to place and in the process, she was confined by the accused/ appellant along with those two persons for six days i.e. from 24-3-1965 to 29-3-1965 and during these six days, she was repeatedly raped by the appellant, Ram Murti and other two persons accompanying the appellant. In deciding the aforesaid case, the Apex Court clearly held that the victim girl was aged of 18 years at the time of commission of offence and she was appeared to be a consenting party. It was further held that her statement to that effect that she was compelled or otherwise induced by the appellant needed some corroboration with some materials from some individual sources and her bare statement could not consider sufficient to sustain the conviction of the appellant. Accordingly, appellant was acquitted from the charges of 366/376, IPC.

18. In another case of similar nature i.e., State of Karnataka Vs. Sureshbabu Puk Raj Porral, , the Apex Court dismissed the appeal against acquittal preferred by the State. In the above cited case, the prosecutrix Madhubala, P.W. 7 was asked by the accused-respondent to accompany him to Bangalore to see the city. She accordingly, conceding his request, went with him on 30-12-1976 and they boarded a bus and went to Bijapur, and from there, they went to Hubli on the same day and they stayed in a double room in a lodge. According to P.W. 7, the victim girl, at night, the accused did something to her, which he ought not to

have done by force. They continued to stay at Hubli for 2 or 3 days and the accused had sexual intercourse with her. Then they went to Bangalore where also they stayed in double room for 5 or 6 days. Considering such facts and circumstances of the case and also the age of the victim being a girl of 16 years, the Apex Court maintained acquittal holding that the evidence of P.W. 7 was not acceptable.

19. Upon discreet analysis of the facts situation of the case in hand and having carefully gone through *Sushanta @ Tutan Chakraborty Vs. State of Tripura*, , *Ram Murti's case AIR 1970 SC 1020 (supra)* and *State of Karnataka Vs. Sureshababu Puk Raj Porral*, , this Court does find that the ratio laid down in those cited cases wholly support the case of the defence with a view to getting acquittal of the respondent. On the other hand, in my opinion, both the judicial pronouncements i.e. *State of Himachal Pradesh Vs. Shree Kant Shekari*, and *State of Rajasthan Vs. N.K.-The Accused*, so referred to on behalf of the prosecution do not have any relevance in the given facts and circumstances of the instant case and hence those need no consideration.

20. On scrupulous discussion and appreciation of the evidence on record, particularly the deposition of P.W. 2 as well as the medical evidence, P.W. 9, this Court is of the view that P.W. 2 herself in her cross dislodged the prosecution case allowing to record her statement to the Darogababu that she went with the respondent voluntarily and further due to the fact that during her shifting from place to place including taking her to the Kali temple as well as to the Court etc., she did not disclose the matter to any person found to be within her proximity. Under such circumstances, the impugned acquittal order deserves no interference.

21. That apart, it is also seen that the incident was of 1995 and at this stage, it is stated at the Bar by the learned Counsel of the parties including the learned P.P. that happiest part of the incident was that the same has been ended up by a marital knot tied up between the victim girl and the respondent and as a result of their wedlock, they have been blessed with a child. Taking into account these mitigating circumstances and also upon hearing the learned Counsel for the parties, this Court is of the view that there is no merit in this criminal appeal and the same stands dismissed.

Send down the L.C. records forthwith.