



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.A. 28/2022

1: Hari Sambio
S/o Late Hari Tada,
a Resident of Donyi Polo Vidya Bhawan, Itanagar PO and PS Itanagar, District
Papum Pare, Arunachal Pradesh.

VERSUS

1: THE STATE OF AP and Anr.
Through Public Prosecutor, Naharlagun.

2: Loa Yalar
D/o Loa Tai

C/o Chairperson
Oju Welfare Association
Naharlagun
Near Naharlagun Police Station
PO and PS Naharlagun
Papum Pare
Arunachal Pradesh

Advocate for the Petitioner : Karyom Dabi

Advocate for the Respondent : P P of AP

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. M. Pertin, Sr. Advocate.

For the Respondent
No.1 : Mr. G. Tado,
Addl. Public Prosecutor,
State of Arunachal
Pradesh.

For the Respondent
No.2 ('X') : Mr. T. Son, Amicus Curiae.

Date of Hearing : 22.03.2023.

Date of Judgment : 27.03.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. M. Pertin, learned senior counsel appearing for the appellant. Also heard Mr. G. Tado, learned Addl. Public Prosecutor, representing the State of Arunachal Pradesh/respondent no.1. Mr. T. Son, learned counsel Amicus Curiae appears for the respondent no.2 'X' (victim).

2. This is an appeal under Section 374 of the Code of Criminal Procedure against the judgment and order dated 17.08.2022 passed by the learned Special Judge (POCSO), Yupia, District- Papum Pare, Arunachal Pradesh in Sessions Case No.15/2016.

PROSECUTION CASE

3. In the year 2001, a young girl 'X' was married to an old person called Heri Takia. During her stay in his house, she was mentally and physically tortured by Heri Kyai and Heri Tachu (convict), the sons of Heri

Takia. The girl has alleged that both the sons of Heri Takia even raped her. She has further alleged that Heri Kyai even inserted one piece of plastic into her vagina.

4. In the year 2015, the convict Heri Tachu brought the girl to his house, situated at Mowb-II. He continued to rape her. Unable to sustain all those acts, the girl escaped and appeared before the police station. She had lodged an FIR alleging the aforesaid facts.

5. The girl was subjected to medical examination. The doctor opined that the age of the girl was between 14 to 16 years.

6. During the trial of the case, the prosecution side examined 6(six) witnesses. The appellant examined himself as the defence witness.

7. On the basis of the evidence on record, the learned Trial Court passed the impugned judgment.

8. I have carefully gone through the prosecution witnesses.

9. The first prosecution witness is the victim girl 'X'. She stated in her evidence that since her parents were poor, they sold her to the house of the convict (Heri Tachu). She claimed that she was about 2 years old at that time. She claimed that initially she was purchased by the old man Heri Takia, the father of the convict. She further claimed that he treated her as his daughter. According to the victim girl, Heri Kyai first started to sexually abuse her. He claimed that she was purchased by his father and therefore, he has a right to have sexual intercourse with her.

10. Thereafter, the present convict (Heri Tachu) started to have forcible sexual intercourse with her.

11. In her cross-examination, she stated that both the convict and his

brother Heri Kyai committed rape upon her. She denied having any knowledge if she was given in marriage to the present convict Heri Tachu.

12. The victim claimed that she was 14 years old at that time. But she did not know the date of her birth. She stated that if somebody suggests that she was 20 years old, she has to agree to that. The girl further claimed that she was given in marriage to the old man only.

13. Now, I shall take up the evidence of Smti Heri Yabin. She has stated that the victim girl 'X' was brought to the house of Heri Takia for giving her in marriage to the convict Heri Tachu. She has stated that on 04.08.2015, she along with Heri Tachu brought the girl in a bike to her residence at Mowb-II at Itanagar. The witness Smti Heri Yabin has further stated that she kept the girl in her house as her daughter. The victim girl was meant to be given in marriage to the convict Heri Tachu after few years. The witness has stated that the victim girl never complained to her about any physical assault by Heri Tachu.

14. During cross-examination, Smti Heri Yabin has stated that she did not have any knowledge about the age of the victim girl. She has claimed that the girl looked younger than her actual age.

15. The third prosecution witness is Lao Takam. He is the brother of the victim girl 'X'. He states that in the year 2001, his father gave the girl in marriage to Heri Takia and the marriage festival was conducted according to Nyishi custom.

16. In his cross-examination, he has stated that the victim girl was actually given in marriage to the convict Heri Tachu and she stayed with him for about 10 days. The witness Lao Takam has stated that Heri Kyai,

the elder brother of the present convict attempted to commit rape upon 'X' and that is why she lodged the complaint against all the family members.

17. The other witnesses examined by prosecution are- the Medical Officer and the Police Investigating Officer.

18. The convict Heri Tachu examined himself as defence witness. He admitted that the victim girl 'X' was engaged to his father in the year 2001. He claimed that his father was too old to marry the girl. Therefore, he asked him to marry the girl. Thereafter, on 04.08.2015, he brought the girl to Itanagar. The victim girl stayed with him at Itanagar for a month. The convict stated in his evidence that he brought the victim girl to Itanagar for engaging her in a job of Helper under an Anganwadi Worker in the Social Welfare Department. Heri Tachu further admitted in his evidence that while at Itanagar, the doctors had removed polythene from the vagina of the victim girl.

19. During cross-examination, the convict stated that when the victim girl was engaged to his father, she was about 7/8 years old. He denied having physical relationship with the victim girl.

20. The learned senior counsel Mr. Pertin has confined his argument on two points. The first point is that when the doctor declared the victim girl to be 14/16 years old, there is a possibility that she might be over 18 years age also and in that case, she cannot be treated as a child within the meaning of word "child" as described in Section 2(d) of the POCSO Act of 2012. The second argument of Mr. Pertin is that the victim girl was married to the present convict and therefore, his case comes within the purview of the Exception II of Section 375 of the IPC.

21. I have considered the submissions made by the learned senior counsel Mr. Pertin as well as the learned Addl. Public Prosecutor and the learned Amicus Curiae.

22. In the year 2015, the doctor held the age of the victim girl to be 14/16 years. But the sexual atrocities committed to the girl started in the year 2001. The victim girl has stated in her evidence that she has no knowledge if she was married to the present convict Heri Tachu. For these two reasons, the argument of Mr. Pertin failed to convince this Court.

23. On careful perusal of the entire evidence, I find that there are no material discrepancy and contradictions in the evidence of the victim girl. The so-called discrepancies highlighted by the learned defence counsel are the results of the unequal duel between a trained lawyer and an illiterate witness. Her evidence inspired confidence. I find that the learned Trial Court has correctly appreciated the prosecution evidence and arrived at a correct finding. This Court is of the opinion that the impugned judgment does not require any interference of this Court. Accordingly, the appeal is found to be devoid of merit and stands dismissed.

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JUDGE

Comparing Assistant