

GAHC010006162010



2024:GAU-AS:12569

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

Case No. : Crl.Rev.P./246/2010

MD JANNUDDI MONDAL
S/O MD ABDUL ALI MONDAL R/O VILL- PUB MOISHA, P.S. GOLAKGANJ,
DIST. DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.N N JHA, MR. SURAJIT DAS (AMICUS CURIAE),MR.K
RAJBONGSHI,MR.S P ROY,MSK KALITA,MR.D NANDI,MS.C SARMA

Advocate for the Respondent : , ,PP, ASSAM,,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 12-12-2024

- 1.** Heard Mr. S. Das, learned Amicus Curiae for the petitioner and Mr. P. Borthakur, learned Additional Public Prosecutor, Assam for the sole respondent.
- 2.** The present criminal revision petition is filed under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 10.08.2009 passed by the learned Assistant Sessions Judge, Dhubri in Sessions

Case No. 43/2008, convicting the petitioner under Section 376 IPC and sentencing him to undergo Rigorous Imprisonment (RI) for 7 (seven) years and to pay a fine of Rs. 5,000/- (five thousand) only and in default of payment of fine, to undergo Simple Imprisonment (SI) for another 1 (one) year. Further, the challenge is made against the judgment and order dated 18.09.2009 passed by the learned Sessions Judge, Dhubri in C.A. No. 8(3)/2009 upholding the judgment and order dated 10.08.2009 as noted above, by reducing the sentence from RI for 7 (seven) years to RI for 5 (five) years .

3. As none represented the petitioner and the matter is pending since 2010, this Court requested Mr. S. Das, learned counsel to assist this Court as an Amicus Curiae and accordingly, he has gone through the records and assisted this Court. He has also made his submissions.

4. Mr. Das, learned Amicus Curiae for the petitioner contends that there is a major contradiction and improvement in the testimony of the victim creating a serious doubt upon the trustworthiness of the victim. He further contends that the eye witnesses projected by the victim also did not support the case of the prosecutrix.

5. According to Mr. Das, learned Amicus Curiae, the medical evidence of the prosecutrix also did not suggest any sexual violence upon the victim rather it was specifically opined that hymen of the victim was intact and no violence mark was seen in the body of the victim and no spermatozoa was seen in the semen supplied. He further contends that the victim had narrated different versions in the FIR as well as in the statements recorded under Sections 161 CrPC & 164 CrPC and that during her testimony before the learned Trial Court. According to him, the defence was able to establish such contradictions by following the provision as prescribed under Section 145 of the Indian Evidence Act, 1872.

6. In view of the aforesaid, according to the learned Amicus Curiae, the accused/petitioner was entitled for acquittal. However, both the learned Courts below, solely placing reliance on the testimony of the victim, convicted the accused/petitioner and sentenced him to undergo RI for 7/5 years.

7. Mr. Borthakur, learned Additional Public Prosecutor, Assam submits that both the learned Courts below had concurrently held the petitioner guilty. Therefore, at this stage, this Court may not like to re-appreciate the evidence inasmuch as there is no perversity in both the judgments and orders passed by the learned Courts below and no patent defect or glaring illegality in the aforesaid judgments and orders resulting miscarriage of justice.

8. I have given anxious consideration to the submissions advanced by the learned counsels for the parties and also perused the material available on record.

9. As Mr. Das, learned Amicus Curiae for the petitioner stressed upon the perversity of the judgments and orders of the learned Courts below, this Court has perused the testimonies of the victim and the materials produced by the prosecution to bring home the charges.

10. In the FIR, the statement of the victim/informant was that she had been living with the accused/petitioner for last 3 (three) months and he promised to marry her. However, on 11.01.2007, he raped her near E & D road in a bamboo grove and while she raised hue and cry, one Md. Ijuddin Ali along with other villagers came to the place of occurrence and then the accused/petitioner assured to marry her. According to her, at the relevant point of time, the other FIR named accused persons (not sent for trial) took away the present accused/petitioner.

11. From the record, it is seen that the aforesaid incident took place on 11.01.2007 and the FIR was lodged on 13.01.2007 before the Golakganj Police Station and the same was registered as Golakganj P.S. Case No. 12/2007 under Sections 376/109/34 IPC. The statement of the victim was recorded under Section 164 CrPC on 16.01.2007. In her aforesaid statement, she stated that the accused/petitioner had committed sexual intercourse with her for last 3 (three) months on assurance to marry her and that though she initially did not agree to involve with sexual intercourse but subsequently, under his influence of marrying her, she accepted it and at the relevant point of time, the accused/petitioner fled away without marrying her.

12. During the trial, the victim/informant examined herself as PW-2 and she stated

that on the date of incident, i.e., on 11.01.2007, when she was working at her house, the accused/petitioner came to her house and pulled her holding her hand and gagging her mouth and picked her up and took her nearby a bamboo grove and raped her. According to her, the accused/petitioner gagged her mouth and raped her. Thereafter, the accused/petitioner put on his clothes and while he was about to go, at the relevant point of time, she raised alarm and on hearing her alarm, Mahar Ali, i.e., PW-3 & Hazarat Ali Mandal, i.e., PW-4 reached the place of occurrence.

13. Her statement in the FIR and the statements recorded under Sections 161 CrPC & 164 CrPC were duly contradicted by the defence. The fact remains that during her testimony before the Trial Court, the victim did not state anything about the alleged relationship and that they were living together for a period of 3 (three) months was also not disclosed, though she stated having existing love affair between them and their staying together was disclosed in the FIR, in her statement recorded under Section 164 CrPC. In her testimony before the Court, she projected it to be a case of forceful kidnapping and rape.

14. The two witnesses i.e., PW-3 and PW-4 deposed that these two persons i.e., the accused/petitioner and the victim were quarrelling at the street and they intervened and at that relevant point of time, the victim stated that the accused person was refusing to marry her. The Investigating Officer during his cross-examination also admitted that the victim did not state before him as regards the accused/petitioner gagging her mouth and taking her to the bamboo grove and that on her screaming, Hazarat Ali Mandal and Mahar Ali came to rescue her.

15. The incident took place on 11.01.2007 and the victim was examined by the concerned Doctor on 15.01.2007. According to the aforesaid doctor, the hymen of the victim was intact and no violence mark was seen in her body and no spermatozoa was seen in the semen supplied and he also opined that it could not be ascertained whether she was raped or not .

16. It is settled proposition of law that the conviction under Section 376 IPC can be

founded on the sole testimony of the prosecutrix unless there is compelling reason for seeking corroboration. The testimony of the victim of sexual assault is vital unless there is compelling reason which necessitates looking for corroboration of her statement, the Court should find no difficulty in acting on the testimony of the victim of sexual assault alone to convict an accused subject to the condition that her testimony inspires confidence and is found to be reliable. A prosecutrix in a sexual offence case is trustworthy when she provides consistent, credible and reliable testimony about the crime, having a satisfaction upon the Court that the accounts of event, she had narrated, are believable and not contradicted by the other evidence. In such a case, such statement is a significant factor in determining the guilt and innocence of the accused.

17. In the case in hand, as recorded herein above, it cannot be said that the statement of the prosecutrix was consistent. At one point of time, she stated that there had been love affair between her and the accused and they were living together and that the accused had sexual relationship on the pretext of marrying her and at the same time, she stated that during the aforesaid period, she was taken to the bamboo grove near E & D road and was raped by the accused/petitioner. In her statement recorded under Section 164 CrPC, she again stated that they had consensual sexual relationship. However, in her testimony before the Court, she narrated altogether two different stories, firstly forcefully picking her up by the accused/petitioner from her residence to the bamboo grove and secondly that she was raped. Such contradiction had also duly been confronted to her by the defence during her cross-examination before the Court and proved such contradictions and material improvement. Therefore, in the aforesaid backdrop, the learned Trial Court could not have treated the testimony of the prosecutrix as consistent, reliable or trustworthy testimony. Even if the corroboration that sought to have been projected by the prosecutrix, those corroborating witnesses i.e. PW-3 & PW-4 did not support her case and such testimony further creates dents the trustworthiness of the testimony of the victim.

18. In view of the aforesaid, in the considered opinion of this Court the determinations made by the learned Trial Courts below are perverse and such judgments

and orders had been passed ignoring the relevant material and relying on the irrelevant material. Accordingly, this criminal revision petition stands allowed by setting aside the judgments and orders dated 10.08.2009 and 18.09.2009, noted herein above.

19. Accordingly, the petitioner is hereby acquitted from the charge of offence under Section 376 IPC. Bail bond stands discharged.

20. Registry to communicate this order to the learned Trial Court below so that the petitioner can be intimated as regards passing of this order inasmuch as no Advocate has represented him and it is not possible for the learned Amicus Curiae to do the aforesaid exercise. While parting with the record, this Court puts on record its appreciation as regards able assistance rendered by Mr. S. Das, learned Amicus Curiae Curiae. Accordingly, Registry shall ensure that Mr. S. Das, learned Amicus Curiae be paid the legal fee, as payable to a Legal Aid Counsel as per the existing norms fixed by the Legal Services Authority.

21. LCR be returned back.

JUDGE

Comparing Assistant