

GAHC010129702013



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

Case No. : Crl.A./110/2013

SANJOY ADHIKARY
S/O SRI PADMA LOCHAN ADHIKARY, R/O VILL. COURTPARA, NO. 10,
KOKRAJHAR TOWN, P.S. KOKRAJHAR, DIST. KOKRAJHAR.

VERSUS

STATE OF ASSAM

Advocate for the Petitioner : MR.I A HAZARIKA, MR.H R A CHOUDHURY,MR.A AHMED

Advocate for the Respondent : PP, ASSAM, ,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT & ORDER (ORAL)

Date : 01-08-2024

Heard Mr. H.R.A. Choudhury, learned Senior Counsel for the appellant, who has filed this appeal challenging the judgment and order dated 22.02.2013 passed by the learned Sessions Judge, Kokrajhar in connection with Sessions Case No. 16 of 2012 whereby the appellant was convicted under Section 509 of

the Indian Penal Code, 1860 (the IPC for short) and sentenced to undergo Simple Imprisonment for one year and to pay a fine of Rs.5000/- (Rupees Five Thousand) with default stipulation.

2. Heard learned Additional Public Prosecutor Mr. P.S. Laskar for the respondent State.

3. The appellant Sanjoy Adhikary, hereinafter will be referred to as the accused.

4. The genesis of the case is that on 26.10.2011 at about 5:00 PM, the victim X was in Shyama Puja Mandap of Ward No. 10 (Office Colony), Kokrajhar along with her friend. At that time, she saw the accused at that place and she walked up to the accused and demanded money he had to repay, and also she asked the accused to return some other articles. The accused then uttered obscene words and assaulted her and she slumped to the ground and consequentially, her spectacles were damaged.

5. An FIR regarding this incident was lodged with the police, which was registered as Kokrajhar Police Station Case No. 416/2011 under Sections 294/354/506/34 of the IPC and later Sections 493/376/420 of the IPC were added. The Investigating Officer (IO for short) embarked upon the investigation. The IO went to the place of occurrence, recorded the statements of the witnesses and on finding sufficient materials, the IO submitted charge sheet against the accused under Sections 493/376/420 of the IPC. On appearance of the accused, copies were furnished and this case was committed for trial.

6. At the commencement of trial, formal charges under Section 376/354 of the IPC were framed, read over and explained to the accused. The accused abjured his guilt and claimed innocence. To substantiate its stance, the

prosecution adduced the evidence of 9 (Nine) witnesses including the Medical Officer (MO for short) and the IO. The defence cross-examined the witnesses to refute the charge. On the incriminating materials arising against him, several questions were asked to the accused under Sections 313 of the Code of Criminal Procedure, 1973 (CrPC for short). The accused denied the allegations in a blanket manner but he has admitted about the puja on the day of the incident.

Submissions:

7. It is submitted on behalf of the accused that the learned trial Court has erred in law as the evidence on record was not properly marshaled by the learned trial Court. There is no corroboration between the evidence of the witnesses PW.1, PW.2 and PW.3 and thus, their evidence was not found to be reliable, cogent and trustworthy. The charge under Section 509 IPC was not established beyond a reasonable doubt.

8. The learned Additional Public Prosecutor has laid stress in his argument that a lenient view was taken and a correct order was passed by the learned trial Court.

Discussions and decision:

9. To decide this case in its proper perspective, the evidence is reappraised.

10. The victim X testified as PW.1 that she had a love relationship with the accused from 1999. As her family was suffering from financial constraints, the accused used to help her financially. She was a student pursuing her Bachelors of Arts (B.A. in short) and at the same time she used to work as a teacher in a private school, but on the advice of the accused, she left her job and started her own school. Both the family members of the accused and the family members of

the victim had discussions relating to their marriage, and the accused promised to marry the victim and he then induced the victim to have sexual intercourse with him. The accused in this manner had physical relationship with the victim since 2002. The accused thus induced the victim to have physical relationship with him. The accused impregnated the victim but when she was carrying for three months, the accused stating that he had no financial capability to maintain the victim along with the child, compelled the victim to go ahead with abortion.

11. Meanwhile, the victim could not continue with her school business and in the year 2004, the victim came to Guwahati and she was successful to obtain employment in a B.P.O. The victim then learnt that the accused had been indulging in a love relation with another girl. When the victim confronted the accused, he denied the same and stopped any contact with the victim. The victim tried to meet the accused but the accused avoided her. Later in the year 2010, the accused eloped with another girl and married her.

12. In her cross examination, PW.1 has stated that she was a student of Class X in the year 1999. She has also admitted that she consented to the abortion procedure. She has also admitted in her cross examination that she was having physical relationship with the petitioner since the year 2002 to 2009 and at that time she was pursuing her B.A. She used to stay in a rented house during her student days and she spent many nights with the accused in a rented house at that time at Barama. She has further stated in her cross examination that she learnt that the accused would marry another girl in the year 2009 and then she sank into depression when the accused married another woman in the year 2010 but she did not lodge any FIR against the accused.

13. A scrutiny of the evidence of PW.1 reveals that the learned trial Court has correctly acquitted the accused of offence under Section 376 of the IPC as the

victim herself did not at all implicate that the accused committed sexual assault on her without her consent and against her will. She has stated in a matter of fact manner that there was a discussion between the family members that there will be an arrangement of marriage between her and the accused. When the accused married the other girl, no case was initiated by the victim against the accused.

14. Now, the question that falls for consideration is whether the trial Court has erroneously held the accused guilty of offence under Section 509 of the IPC.

15. PW.1 has stated in her evidence that on 26.11.2021 at about 5.30 PM, in the Kali Puja Mandap of Courtpara, she saw the accused approaching on a motorcycle. She then asked the accused to stop and demanded the accused to return the articles that had been given to him by her. The accused verbally abused her using obscene words and saying "*whether you want money for the nights, you have spent with me.*" The accused also displayed obscene signs after uttering obscene words.

16. The victim who was outraged by the incident lodged an FIR. She has proved the FIR as Exhibit-1 and Exhibit-1(1) as her signature. The victim also deposed that during her courtship with the accused, she helped the accused with money and other articles and then the victim demanded that the accused should return back the articles. No contradictions relating to the offence under Section 509 of the IPC could be elicited through the cross-examination of the victim as per Section 162 of the CrPC vis-à-vis Section 145 of the Indian Evidence Act, 1872 (the Evidence Act for short) despite the fact that the victim was cross-examined at length. The victim's evidence is consistent to her statement under Section 164 of the CrPC marked as Exhibit-2 and proved by the victim.

17. The victim's evidence is corroborated by the evidence of PW.2 Smti. Madhumita Mandal, who has deposed that she along with the victim X were in the Kali Puja Mandap of Courtpara, Kokrajhar town and they were chatting with Arup Bhowmik. Then they saw the accused approaching on a motorcycle. The victim then called the accused and the accused stopped. Then she heard the victim was confronting the accused relating to the articles he had not returned to her. The accused then verbally abused the victim by saying that "*whether she wanted money for the nights he had spent with her*". On hearing a commotion, she rushed towards the place of occurrence and then she saw that the spectacles of the victim got damaged. The victim told her that the accused had assaulted her. Then she took back the victim to her house. No contradictions could be elicited through the cross-examination of this witness as per Section 162 of the CrPC vis-à-vis Section 145 of the Evidence Act. Although she did not witness the entire incident, PW.2 has stated that she heard the accused uttering obscene words.

18. Another witness Smt. Asha Narzary deposed as PW.3 that during Kali Puja, at about 6 PM, she along with the victim were standing by the side, near the Kali Mandir. At that time, the accused was approaching in a motorcycle. The victim then asked the accused to stop and demanded him to return the articles that are in his possession. The accused then verbally abused the victim calling her 'prostitute' and he also stated that whether she wanted money for the nights she had spent with him. The victim reacted to the words uttered by the accused. Then the accused slapped the victim.

19. This witness was also cross-examined in *extenso*, but no contradictions could be elicited through the cross-examination of the PW.3.

20. The evidence of PW.1, PW.2 and PW.3 is also supported and corroborated

by the evidence of the other witnesses.

21. Smt. Asha deposed as PW.4 that the incident occurred during Kali Puja of 2011. At the time of the incident she was in her house. She heard a commotion and went out of the house and noticed that the victim was sobbing in front of her Photostat shop. Meanwhile, many people assembled at the spot. The victim stated that the accused had assaulted her and slapped her.

22. PW.5 Sri Uzzal Biswas has stated that the incident occurred in the year 2011 at the time of Kali Puja. He heard that there was a quarrel between the accused and the victim.

23. PW.6 Smt. Sujata Mandal deposed that the incident occurred during Kali Puja. While lighting lamps on the fateful evening, she came to know from a person that the victim was crying. Instantly she came out from her house. On being asked, the victim stated that the accused had slapped her. PW.7 Moloya Dekka deposed that the incident occurred during Kali Puja. After lighting lamps she came to the Courtpara Kali Puja Mandap. She heard from the crowd gathered at the place of occurrence that the victim was in Madhumita's house. She then noticed that the victim was sobbing and she informed the police over phone.

24. Although PW.4, PW.5, PW.6 and PW.7 are not eye witnesses, yet their evidence substantiates the evidence of the eye witnesses.

25. It is apt to mention at this juncture that in this part of the world, the maxim *falsus in uno* and *falsus in omnibus* is not applicable. Although the offence under Section 376/354 of the IPC could not be established by the prosecution, yet the evidence of these witnesses relating to offence under Section 509 of the IPC cannot be ignored. There is overwhelming and robust

evidence against the accused that he had uttered obscene words and used obscene signs to the annoyance of the victim.

26. The trial Court has recorded sound reasonings while deciding this case. The defence failed to contradict the robust evidence against the appellant which led to the decision of the learned trial Court. However, much water has flowed under the bridge. This appeal has been pending for a considerable period of time. The appellant was also granted bail by this Court vide order dated 08.05.2013. The appellant was behind bars during investigation from 30.10.2011 up-to 17.11.2011. Although the conviction under Section 509 IPC is upheld, the sentence is scaled down from 1 (One) year to the period of detention already undergone by the appellant during investigation.

26. The appeal is thus partly allowed.

27. Send back the Trial Court Records along with a copy of this judgment and order.

JUDGE

Comparing Assistant