

THE HIGH COURT OF TRIPURA AGARTALA

Crl. Rev. P. 76 of 2011

Smt. Anima Poddar,
D/O Sri Madhusudhan Poddar
Resident of Lembucherra,
P.O. Lefunga, P.S. Lefunga,
District-West Tripura.

..... Appellant

Versus

1. **The State of Tripura,**
(To be represented by the
Commissioner/Secretary of
Home Department)
Department of Home,
Govt. of Tripura.
2. **Sri Uttam Ghosh**
S/O Lt. Jatindra Ghosh
3. **Smt. Sita Deb (@ Dey)**
D/O Sri Kajal Deb (@ Dey)
4. **Sri Babul Ghosh**
S/O Lt. JAtindra Ghosh,
All are the residents of Yabatara,
Lefunga, P.S. Lefunga,
District-West Tripura.

...Respondents

BEFORE
THE HON'BLE MR. JUSTICE UB SAHA
THE HON'BLE MR. JUSTICE S TALAPATRA

For the appellant : Mr. P Saha, Advocate
For the respondents : Mr. RC Debnath, Addl. PP
Mr. S Lodh, Advocate
Date of hearing : 23.06.2015.
Date of delivery of
judgment & Order : _____
Whether fit for reporting : **Yes/No**

JUDGMENT AND ORDER

(Saha J)

Challenge in this petition is the judgment dated 05.09.2009 passed by the learned Assistant Sessions Judge, Court No. 1, West Tripura, Agartala in S.T. 121(WT/A) 2007, whereby and whereunder the accused respondents were acquitted from the charges under Sections 376(1)/417/323 read with Section 34 IPC.

2. Heard Mr. P Saha, learned counsel for the appellant-victim as well as Mr. RC Debnath, learned Addl. PP for the State and Mr. S Lodh, learned counsel for the accused respondents.

3. The prosecution case in short is as follows:

The victim 'X' (PW 1) lodged a complaint before the learned CJM, West Tripura, Agartala stating inter alia that accused Uttam Ghosh had a business relation with her brother, Sri Laxman Poddar (PW 3) and consequent thereto the accused Uttam frequently came to their house. One day when she was alone in the house, accused Uttam taking the advantage of that, raped her ('X') against her will. When she told the accused that she will inform regarding the incident to all other inmates, then the accused Uttam told her that he had fallen in love with her and that he would marry her as per social customs and with this assurance of marriage he left her house. The victim complainant further mentioned in her complaint petition that after this incident the accused Uttam caused further rape on her on other days for about one year by giving her assurance of social marriage and also by tempting her of his love for the complainant but the said accused avoided the complainant one year later.

4. It is also stated that on 04.03.2007, a Sunday at about 8.30 p.m. accused Uttam took the complainant to his house on the pretext of

marrying her and lodged her in his bedroom and also told her that social marriage would be performed on the following morning and with that assurance he again committed sexual relation with her but on the following morning the accused was found missing from his house. When the complainant woke up, other accused namely, Sri Babul Ghosh abused the complainant in filthy language and also assaulted her physically and tore her Saree, Blouse and outraged her modesty while she started shouting and other inmates of the house of the accused appeared and abused her and started assaulting her. She was tortured by them for the entire day physically and mentally by the accused persons, namely, Sri. Swagatam Ghosh, Sri. Anup Deb, Smt. Santa Deb and Smt. Sita Dey and thereafter, she was dragged away from that house and the local people were informed who ultimately convened a meeting on 09.04.2007 for taking a decision in the matter when all the accused appeared in the said meeting and apologized and also assured that the accused Uttam would marry her by the next Baisakha. But ultimately, accused Uttam did not marry her and thus she filed the complaint petition, as per the decision of the meeting.

5. Learned CJM, West Tripura, Agartala sent the complaint petition to Lefunga P.S. Upon receipt of the aforesaid complaint, a police case was registered under Section 417/376/323/34 IPC against six accused persons, namely, 1. Sri Uttam Ghosh, 2. Sri Swagatam Ghosh, 3. Sri Anup Deb, 4. Smt. Santa Deb, 5. Smt. Sita Deb and 6. Sri Babul Ghosh.

6. On the basis of the complaint, the police started investigation and finally submitted the charge sheet against the accused Uttam Ghosh under Section 417/376 IPC and against accused Babul Ghosh

under Sections 342/354/323/34 IPC and against the other accused persons under Section 342/323/34 IPC.

7. As the case was exclusively triable by the Court of Sessions, the same was committed to the court of the learned Sessions Judge, West Tripura, Agartala for trial and the same got transferred to the court of learned Addl. Sessions Judge, Court No. 4, West Tripura, Agartala for disposal in accordance with law.

8. On 10.03.2008, after hearing the parties on the charge, learned Addl. Sessions Judge, discharged the accused Anup Deb, Swagatam Ghosh and Santa Dey and charge was framed against the accused Uttam Ghosh under Section 376(1)/417 IPC. Charge was framed under Section 323/34 IPC against the accused Babul Ghosh and Smt. Santa Deb @ Dey.

9. The prosecution examined as many as 23 witnesses to substantiate its case. The defence did not examine any witness. On completion of recording of evidence, the trial court examined the accused-respondents under Section 313 CrPC and the accused persons denied the incriminating evidence appeared against them and also declined to adduce any evidence in their defence. At the conclusion, the learned trial court acquitted the accused persons, namely, Babul Ghosh and Smt. Sita Deb from the charges leveled against them as they were not found guilty. The learned trial court also acquitted the principal accused Uttam Ghosh from the charges of Section 376(1) and Section 417 IPC. Hence, the instant revision petition.

10. Mr. Saha, while urging for conviction of the accused persons, setting aside the impugned judgment, would contend that the learned trial court failed to consider the evidence of the victim, PW 1. According

to him, on 04.03.2007 the victim was for the first time raped by the accused Uttam in absence of her inmates which the victim specifically stated and the accused also admitted his guilt in the panchayat meeting held on 09.03.2007 regarding their relation and also promised to marry her in the month of Baisakha. Not only that, she had also narrated the facts relating to her physical relation with the accused before the learned Judicial Magistrate. He further submits that if a person has sexual relationship with a girl promising to marry her and later on refuses to marry her, then that would come within the purview of Section 375 IPC and an offence under Section 376(1) read with Section 417 IPC.

11. He has also taken us to the evidence of PW 2, Sukanta Podder, brother of the victim, to whom she allegedly informed that the accused Uttam had taken away her sister in his house on the pretext to marry her and ultimately she was raped by accused Uttam.

12. Finally he has taken us to the decision of the meeting of the panchayat, Exhibit MO 1, wherein the accused Uttam has signed and it is stated therein, that he also assured that he will marry the victim ('X') as his family members are also agreed and on the basis of the said assurance it was decided that in the month of Baisakha the social marriage will be solemnized between them and PWs 5 to 10 and PW 12 are the witnesses of the said meeting. Mr. Saha further submitted that due to physical relation of the accused Uttam with the victim, the Victim 'X' became pregnant.

13. Mr. Lodh, learned counsel appearing for the respondent-accused persons while supporting the impugned judgment submits that the story of assault by the accused persons, namely, Sri Babul Ghosh, Sri Swagatam Ghosh, Sri Anup Deb, Smt. Santa Deb and Smt. Sita Dey is

totally false. As the victim complainant in her complaint petition stated that Babul Ghosh abused her in filthy language, assaulted her physically and tore her clothes and also outraged her modesty but she did not state such a story in the court and she has implicated the accused Sita Dey for the alleged assault during the same morning but the said statement is totally absent in the complaint petition. In view of that, the learned trial court rightly acquitted the accused persons as she herself contradicted her own statement.

14. He further submits that the victim was a grown up woman and had developed intimacy with the accsued Uttam which ultimately made her to submit herself before the accused for sexual relationship, meaning thereby, she was a consenting party to the alleged commission of physical relation.

15. He has taken us to the evidence of PW 16, Dr. Bappaditya Som, the Doctor who has examined the victim and stated in his evidence that he has examined the victim and concluded that she was habituated to sexual intercourse and appeared to be pregnant for about 20 weeks and in his cross he has specifically stated that the pregnancy, as mentioned, might have occurred before 12/18 days/weeks and after 06.01.2007. He has again contended that that the pregnancy of the victim cannot be due to alleged sexual relation with the accused on 04.03.2007. Therefore, even if any promise is made in the meeting of the panchayat that was not relating to the sexual intercourse. He finally contended that in a case of acquittal when two views are possible then the view of the learned trial judge cannot be said to be wholly unreasonable.

16. Mr. Debnath, learned Addl. PP appearing for the State submits that as the State has not preferred any appeal he has no other alternative except to support the judgment of acquittal, more so, when the learned Addl. PP in his argument before the trial court submitted that the prosecution had not been able to establish the case against the accused under Section 376(1) IPC for the simple reason that the prosecutrix (complainant) was a grown up woman and had become intimate to the accused which ultimately made her submit to the accused, meaning thereby she was a consenting party to the commission of intercourse by the accused.

17. To appreciate the submission of the learned counsel for the parties, it would be proper on our part to discuss the evidences of PW 1, the victim, PW 2, PW 3, PWs 5 to 10, PW 12, PW 13, PW 15, PW 20 and PW 23.

18. PW 1, in her evidence sated that accused Uttam visited their house for his business purpose with her elder brother and they became intimate to each other. On 09.03.2007, later on says on 04.03.2007 at about 8.30 p.m. accused Uttam came to her house when she was alone and approached for physical relation with him on the plea that he would marry her. He established physical relationship accordingly and also promised to marry her on the following day. This physical relation was held in her own house itself. Later on, says, she was taken to the house of Uttam and she had physical relation during the same night. She also stated that when she got up from sleep she found Uttam was missing. In the mean time, the sister of accused Uttam namely Sita Dey along with Swagatam Ghosh, Anup Deb and Babul Ghosh came to that house and started assaulting her by kicks and fists and by pulling her hair.

Thereafter, she left that house for that day without any food and at about 9.30 p.m. accused Swagatam Ghosh and Sita Dey assaulted and dragged her out of that house. She also stated that she had informed regarding the said incident to her mother and brothers, namely, Sukanta and Laxman. Accordingly her brother Sukanta informed the matter to the Lefunga P.S. and he was advised to inform the matter to the Panchayet. Thereafter, the Panchayet was informed and accordingly a meeting was held in Yatabtara Baluwari Centre where she attended the meeting along with her guardians. The accused Uttam was also present in the said meeting and he promised before the Panchayet that he will marry her in the month of Baisakh. Thereafter, the accused refused to marry her. Then another meeting was held at Lembucherra Bazar where she attended but the accused did not come. Thereafter, she lodged a complaint before the Court and the Court sent the complaint to the police. This witness also stated she made statement before the Judicial Magistrate, 1st Class, West Tripura, Agartala, who recorded her statement under Section 164 CrPC. This witness also identified the accused, Uttam, Sita, Babul in the Court.

19. In her cross, she has stated that she informed her mother when she was taken back to her house by the accused but such statement was not found in her 161 statement. She also stated that she did not tell regarding her pregnancy in the complaint petition out of shame. She further stated that accused Uttam had a business dispute with her brother Laxman.

20. PW 2, Sri Sukanta Podder, brother of the victim, in his evidence stated that his sister became close to the accused Uttam and one day the accused took his sister to his house in their absence. On the following

evening they came to know that his sister was in the house of accused Uttam and at about 9.00 p.m. his sister returned home crying and informed that she was assaulted by the accused Babul, Sita, Anup and Swagatam in their house and dragged out and left by them in Lembucherra Bazar, which is about 30 cubits from her house. He also stated that the victim informed them that the accused Uttam had taken away her on the previous evening on the pretext of marriage. She also told them that she was raped by the accused Uttam on the previous night. Thereafter, they went to the Lefunga OP and informed the incident orally but the police advised them to inform the Panchayat. Accordingly, he informed the Panchayat and there was a meeting on 09.03.2007 where the accused was also present and admitted in the said meeting that he had taken away his sister on the promise of marriage but ultimately he did not marry his victim sister. Thereafter, another meeting was held but no result.

21. In cross, this witness specifically stated that he did not inform the police that the accused Uttam raped his sister and the assurance given by the police to approach the Panchayat.

22. PW 3, Sri Laxman Podder is a seizure witness of two resolutions taken by the Panchayat.

23. PWs 5 to 10, 12, 13, 15 and 20 are witnesses who deposed about the meeting on two dates, i.e. 09.03.2007 and 30.04.2007. these witnesses deposed that they heard about the alleged incident from the victim and her mother and accordingly they arranged two meetings on 09.03.2007 and 30.04.2007. some of them also deposed that the accused Uttam admitted his guilt in one of the meetings but in subsequent meetings, he did not attend.

24. PW 16, Dr. Bappaditya Som, who has examined the victim on 21.05.2007 as produced in connection with Lefunga PS case No. 20/2007. In his deposition he has specifically stated that the victim was habituated to sexual intercourse. Her hymen was ruptured and she appeared to be pregnant for about 20 weeks. He has also prepared a report (Exbt.5).

25. In his cross, he stated that the pregnancy as mentioned in the report might have occurred about 12/18 days after 06.01.2007 and pregnancy of 20 weeks may be calculated in terms of four months plus.

26. The learned trial court while acquitting the accused respondents has considered the evidence recorded by him and came to the conclusion that PWs 5 to 10, 12, 13, 15 and 20 have deposed that they have heard the alleged incident from the complainant and her mother and accordingly they arranged the two meetings but the mother of the victim has not been surprisingly cited as a witness in the case though she was expected to be an important witness. The complainant had first informed her mother, according to her testimony, along with her brother but non-examination of the mother by the Investigation Officer has created cloud around the evidence of the victim.

27. To examine as to whether any case is made out under Section 417 of the IPC, learned trial court held that there are contradictions between her written complaint and the statement made before the learned Judicial Magistrate and also in her deposition in Court and ultimately held, "According to this statement, therefore, there was no sort of inducement from the side of the accused and not to speak of any false promise of marriage. Of course, there has been a claim of marriage by the complainant but it was only after she became pregnant and approached accused accordingly. It is more curious to note that the same woman while deposing as

PW.1 has badly contradicted all these statements made by her in complaint petition as well as before the Learned Judicial Magistrate. As PW.1 she deposed that on 9.03.2007 or on 4.03.2007, as the witness was confused, at about 8.30 p.m. accused Uttam came to her house when she was alone and approached her for physical relation with him on the plea that he would marry her and accordingly there was physical relationship as she stated. She then immediately said that accused promised to marry her on the following day but the witness who has claimed to be the victim of sexual assault has immediately stated in the witness box that the physical relationship as mentioned by her had taken place in the house of the accused during the night after she was taken to that house by the same accused. The victim woman has thereby badly confused and has contradicted herself as to the date and place of occurrence. The investigation officer (PW. 23) in course of investigation has identified the place of occurrence as the house of the victim and no other place while the victim as discussed has shifted the place of occurrence to the house of accused Uttam Ghosh so as to deal a severe blow to the prosecution story.”

28. The learned trial court also noted inter alia, that “the doctor who examined the victim in Gynaecology Department in the Hospital on 21.05.2007 has deposed as PW.16 that he examined the victim and found she was pregnant for about twenty weeks. In his cross-examination witness stated that the pregnancy as mentioned might have occurred about 12/18 days after 6.01.2007 which was the date of last menstruation period of victim while the said victim as PW.1 has given two dates as already mentioned and both the dates (9.03.2007 and 4.03.2007) fall during the month of March, 2007 though according to the Doctor the pregnancy might have taken place after about 12/18 days from 6.01.2007 meaning thereby that the pregnancy at any cost might have occurred within 26.01.2007. So the alleged incident of intercourse by accused on prosecutrix on 4.03.2007 or 9.03.2007 has again been left in serious doubts and the contradictions as noted above are bound to shake the

version of the prosecution to a great extent thus causing serious doubts in the mind of the Court as to the veracity of the evidence given on behalf of the prosecution and as such doubts are naturally to go in favour of the accused.”

29. We have considered the evidence on record as well as the findings of the learned trial court. We are of the view that the learned trial court rightly discussed the statement of the prosecutrix regarding promise of marriage by the accused and so far the pregnancy is concerned. From the evidence of the doctor, PW 16 it can be easily held that the victim was pregnant almost two months before the incident of alleged rape. It also appears from the 313 statement of the accused that he has attended the first panchayat meeting and was forced to agree regarding his guilt.

30. In a criminal case, degree of proof is the dictum than that what is required in a civil proceeding and if there is slightest doubt in the mind of the Court regarding involvement of the accused person, then the Court should not go for convicting the accused person with such a doubt, rather it would be proper for the Court to pass an order of acquittal in favour of the accused. When trial Court after proper appreciation of the evidence of the witnesses passed an order of acquittal, it would not be proper for the appellate Court to disturb the said order unless the said order of acquittal is wholly perverse and unreasonable, even if two view are possible, then also, the appellate Court should not disturb the said order, rather, the Court should uphold the view that favours the accused.

31. Our aforesaid views get support from the decision of the Apex Court in ***State through Inspector of Police, A.P. Vs. K. Narasimhachary,***

(2005) 8 SCC 364, wherein the Apex Court held that when two views are possible, a judgment of acquittal is to be justified.

32. In ***Kalyan Singh Vs. State of M.P., (2006) 13 SCC 303***, particularly in paragraph 7 the Apex Court held:

“7. The High Court while dealing with the matter, in our considered opinion, failed to apply the proper tests in deciding a case where a judgment of acquittal has been recorded. The views of the learned trial Judge cannot be said to be wholly unsustainable. It is now well known that if two views are possible, the appellate Court shall not ordinarily interfere with the judgment of acquittal. We do not, however, mean to law down the law that the High Court, in a case where a judgment of acquittal is in question, would not go into the evidence brought on records by the prosecution or by the State but we would like to point out that even if the High Court reserved the judgment of acquittal recorded by the trial Court, it is incumbent of the High Court to arrive at the conclusion that no two views are possible.”

33. We are aware of the rule of practice that ordinarily this Court should not interfere with judgments of acquittal on a mere re-appreciation of evidence. But if these are glaring infirmities in the judgment of the High Court resulting in a gross miscarriage of justice, obviously it is the duty of this Court to interfere.

34. In the instant case, we find that the learned trial court did not commit any wrong while coming to the conclusion that the pregnancy was not the result of alleged rape but the same has happened before the alleged rape. More so, the deposition of the victim regarding promise is also doubtful. Upon scrutiny of the evidence, we are of the further opinion that even if there was any sexual intercourse between the victim and the accused Uttam then also there is no evidence that the accused Uttam forced the victim to go for sexual relationship and unless the sexual relationship was a forced one, it cannot be said that the accused Uttam raped the victim, rather she was a consenting party to the said sexual relationship.

35. As it is stated above, that where two views are possible regarding the involvement of an accused person the view which favours the accused should be accepted and the learned trial court has already acquitted the accused respondents on benefit of doubt, thus, it would not be proper for this Court to convict the accused-respondents setting aside the order acquittal.

36. In the result, the instant revision petition is dismissed being devoid of merit and the order of the learned trial court is maintained.

Send down the LCR forthwith.

JUDGE

JUDGE

lodh