

12-12-2024
ct no. 13
Sl. 41
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C.R.A. 373 of 2001
Ram Chandra Saha alias Sahu & Ors.
-Versus-
State of West Bengal

Mr. Partha Sarathi Das,
Mr. Kausik Biswas

..for the apellants

Mr. Saibal Bapuli,
Mr. B. Bhattacharya

..for the State

1. The instant appeal is directed against a judgment and order of conviction and sentence dated 26th/27th July, 2001 passed by the learned Additional Sessions Judge, Uttar Dinajpur at Raiganj in Sessions Trial No. 20 of 1998 arising out of Sessions Case No. 06/98. The accused were convicted under Section 366 of the IPC read with Section 34 thereof and sentenced them to suffer rigorous imprisonment for eight (8) years and also to fine of Rs. 3,000/- (Rupees three thousand) only in default to suffer simple imprisonment for a further period of six months. As regards the charge under Section 376 of the IPC, the accused no. 1, Ram Chandra Saha @ Sahu, was acquitted for want of medical evidence.

2. The prosecution's case in brief is that on 20th April, 1993, the accused no. 3, Mai Hembram, accused no. 4, Bugli Ansari, (both women), with the assistance of Sonabanu Khatun, accused no. 5, kidnapped the victim who was the minor girl, aged 14+ years of the santhal tribal, from her residence at Bhatolehaat under P.S.- Raiganj on the pretext of showing her a cinema in Raiganj town.

3. At that relevant point of time, the elder brother of the victim PW/1, Mangal Baskey, was not present at home. The accused nos. 3, Mai Hembram, accused no. 4, Bugli Ansari and accused no. 5, Sonabanu Khatun took the victim and handed her over to accused no. 2, Md. Hanif. The said Md. Hanif along with Sonabanu Khatun took the victim to Raiganj Bus Stand and thereafter to Dalkhola.

4. The bus proceeded towards Dalkhola where the accused no. 1, Ram Chandra Saha @ Sahu boarded the bus. The victim deposed in her evidence in the trial, as also before the Magistrate under Section 164(5) of the Cr. P.C, that she tried to protest and inform the fellow passengers that she was being forcibly taken away when the accused persons, namely, Sonabanu Khatun, Md. Ansari threatened her with dire consequences if

she raised her voice. The victim kept quiet out of fear.

5. Ram Chandra Sahu thereafter took the victim to Wajitpur town, under P.S.- Dokti, Balia, District of U.P. and confined her in a house. He repeatedly raped her administering drugs during the said period of confinement. The victim further deposed in trial as she had stated under Section 164(5) of the Cr. P.C. that the accused no. 1, Ram Chandra Saha @ Sahu, was planning to get her married off to a third person.

6. Upon the complaint being received, the Raiganj Police Station, immediately registered FIR on 22nd April, 1993 and apprehended the accused nos. 3, Mai Hembram and accused no. 4, Bugli Ansari and subsequently accused no. 2, Md. Hanif and accused no. 5, Sonabanu Khatun.

7. Based on the statements of the arrested accused, the police party, inter alia, comprising PW/13, S.I. S.C. Mondal recovered the victim girl from Wajitpur after scouring several police stations. After obtaining a transit remand from the ACJM at Balia, the accused persons were thereafter produced before the Magistrate at Raiganj and were remanded into custody.

8. Ossification test of the victim was done which proved that the victim was 15 years old at the time.

9. In course of the trial, PW/1, Mangal Baskey, the elder brother and the custodian of the victim, deposed that he was away from the house when the victim girl was kidnapped. After returning to his house, he searched for his sister and could not find her and registered a complaint with the Raiganj Police Station. He thereafter went to the accused no. 2, Surja Tude @ Saula Tudu, resident of a nearby village called "Malibari".

10. The incident was thereafter informed to one Santosh Kr. Adhikary, the Pradhan of the said concerned village. PW/3, Munu Baskey and subsequently the complaint was lodged and FIR registered.

11. In course of trial the victim herself deposed about the entire incident from the time of her abduction till her recovery. She confirmed that she had given a statement before the Magistrate under Section 164 out of free will. Her evidence could not be shaken in cross-examination.

12. PW/4, Rupali Sarkar, a resident of the same village identified the accused persons. PW/5, Md.

Ali identified the victim as well as the accused persons.

13. PW/8, Dr. Ashim Kr. Mitra, the Medical Officer examined the victim at Baranagar State General Hospital, he was a Gynecologist. The said PW/8 confirmed that the hymen of the victim was ruptured. Her vaginal swab was preserved and sent for ossification test.

14. PW/9, Dr. Bhaskar Ghosal examined the accused persons and certified that they were capable of sexual intercourse.

15. PW/10, Dr. Pradip Kr. Bhattacharjee was the Medical Officer who conducted the ossification test on the victim and confirmed that she was more than 15 years of age but less than 17 years. The report of the ossification test was exhibited in the Court.

16. PW/11, Dipali Singh, Home Guard is attached to Raiganj Police Station. She accompanied the victim to the Raiganj Hospital for medical examination. PW/12, Nirmal Pal, S.I., also accompanied the victim to the Raiganj Hospital for medical examination. PW/13, S.C. Mondal, S.I. filled up the formal FIR being No. 153 dated 22nd April, 1993. He along with another S.I., PW/15, Shyamal Kr. Saha arrested the accused Md. Hanif

and his wife Sonabanu Khatun. He also conducted raids in several places and visited several Police Stations under Balia District. With the help of Dokti P.S. Officials, he arrested accused no. 1, Ram Chandra Sahu and also recovered the victim.

17. After obtaining transit remand from ACJM, Balia, he produced Accused No. 1 along with the other accused persons before the ACJM, Raiganj. He recorded the statement of the victim under Section 164 (5) of the Cr. P.C. before the Magistrate. He was also the Investigating Officer who investigated the case and submitted charge sheet and confirmed the entire incident as recorded hereinabove.

18. PW/14, Sankar Brahma, was the Judicial Magistrate, First Class at Raiganj, who recorded the statement of the victim and confirmed the authenticity thereof. PW/15, Shyamal Kr. Saha, S.I. was the second I.O. who completed the investigation and submitted charge sheet.

19. The Sessions Judge has rightly convicted the accused persons under Section 366 read with Section 34 of the IPC.

20. This Court is, however, unable to accept the finding of the Sessions Judge that the charge under Section 376 IPC could not be proved for

want of medical evidence. This Court finds from the evidence on record that Ram Chamdra Sahu was the only person who had physical relation with the victim under force and threat. He also drugged the victim as a consequence whereof, no injuries were found on the private parts of the victim.

21. The chain of circumstances in the instant case must be deemed to have been completed. The motive of kidnapping the victim for physical relation and for subsequently forcing her in marriage or in the flesh trade are clearly established from the evidence on record. The common intention behind kidnapping the victim from the lawful custody of her brother is also clearly established. The entire chain of circumstances from kidnapping of the victim by the accused nos. 3, 4 and 5 and handing the victim over to the accused no. 2, thereafter handing her over the accused no. 1 and the subsequent events that occurred have clearly come on record, and the factum of sexual assault on the victim has been established. The chain of circumstances for conviction of the accused no. 1 under Section 376 of IPC and the accused nos. 2, 3, 4 and 5 under Section 366 of IPC are well established beyond reasonable doubt.

22. The learned counsel for the appellants has placed a portion of the evidence of the victim in cross examination that she had given statement under Section 164 of the Cr. P. C. after being abused by a police constable and therefore no credence should be given to such statement, cannot be accepted. It appears that the denial of the suggestion by using of the expression “not a fact” is missing before the beginning of the sentence in the second paragraph of her cross examination. The same has to be deduced from the last paragraph of the examination-in-chief and from the third paragraph in her cross examination.

23. The next argument of the learned counsel for the appellants is the delay of two days in lodging of the FIR and that there is no eye witness or direct evidence to implicate the accused persons.

24. This Court has carefully considered the arguments. Given the discussions already made above on the completion of the chain of circumstantial evidence, this Court is of the unequivocal view that absence of an ocular witness or direct evidence to convict the appellants is not necessary conviction in the instant case can be based on circumstantial evidence.

25. In the instant case, the victim herself has clearly deposed of the role played by each of the accused persons in the offence in question. The said statements of the victim is sufficiently corroborated by the other accused. In the instant case the evidence of the victim, read with the evidence of PW 13 and the evidence of the medical expert are sufficient to complete the chain of circumstances for convicting the accused no. 1 under Section 376 (3) of the IPC.

26. This Court has confronted the learned counsel for all the appellants as to why the accused no. 1 should not be convicted under Section 376 of the IPC. Learned Counsel has argued at length on the same.

27. Having heard the learned counsel for the appellants, this Court is of the view that the explanation offered that the accused no. 1 cannot be convicted under Section 376 (3) as there was no forensic evidence for the same, is unacceptable.

28. There is no need for forensic evidence when admittedly the fact that the victim was handed over by the accused nos. 2, 3 and 5 to the accused no. 1 and was subsequently taken to Wajitpur where she was confined in a room, drugged and sexually assaulted by the accused no. 1, has clearly come

on record. It is unusual for a 15 year old girl to have a ruptured hymen in the facts of the case. In addition thereto, the evidence of the Medical Officer that the victim was subjected to forced sexual intercourse and the evidence of the victim herself that the accused no. 1 was the person who committed the act of forcible sexual intercourse on her despite her protests, are sufficient to convict the appellant no. 1 under Section 376 of the IPC.

29. Having regard to the above, this Court is inclined to modify the order of conviction and the sentencing to the extent as follows :

30. The accused no. 1 shall in addition to the conviction under Section 366 read with Section 34 shall stand convicted under Section 376(3) of the IPC. He shall suffer imprisonment of 20 years together with fine of Rs.20,000/- under Section 376(3) of the IPC.

31. The sentences insofar as the accused no. 1 under Section 376(3) and Section 366 of the IPC read with Section 34 of the IPC shall run concurrently. The victim shall be paid a compensation of Rs.5 lac by the State.

32. Appeal is, thus, dismissed.

33. Period of detention suffered by the appellants during investigation, enquiry and trial shall be set

off from the substantive sentence imposed upon the appellants in terms of Section 428 of the Code of Criminal Procedure.

34. Trial Court Record along with copies of this judgment are to be sent down at once to the Learned Trial Court as well as the Superintendent of Correctional Home for necessary compliance.

35. With the aforesaid observations, the appeal shall stand disposed of.

36. It is submitted that the appellant no. 2 has expired and no information about the accused no. 1. The State shall verify the propriety of the death of the accused no. 2 and the State shall take steps accordingly.

37. The accused, who have been enlarged on bail are hereby directed to surrender before the ACJM, Raiganj. Their bail bonds are hereby cancelled. In default of surrender by the surviving accused, steps in accordance with law shall be taken by the CJM, Raiganj.

38. It is submitted that the accused no. 5 has already served out her sentence. The State shall verify the same and take steps accordingly.

39. The Registry shall communicate a copy of the order to the District Judge, Uttar Dinajpur for ensuring necessary compliance.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)