



GAHC010138042020

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

Case No. : CRL.A(J)/70/2020

RUPEN GOGOI
S/O. LT. KESHAB GOGOI, R/O. SRIPANI SILIKHAGURI, P.S. SILAPATHAR,
DIST. DHEMAJI.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Appellant : MS B SHARMA, AMICUS CURIAE

Advocate for the Respondent : MR. K K PARASAR(PP, ASSAM)

Date of judgment : 26.02.2024

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT & ORDER (CAV)

1. Heard Ms. B. Sharma, learned Amicus Curiae appearing for the appellant.
Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor appearing for
the State of Assam.

2. This Criminal Appeal (J) has been registered on receipt of an appeal petition filed by the appellant Rupen Gogoi, who is presently detained in District Jail, Dhemaji, impugning the judgment dated 13.11.2019 passed by the learned Sessions Judge, Dhemaji in Sessions Case No. 104(DH)/2014, whereby, the appellant was convicted under Section 376(1) of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 1,000/- and in default of payment of fine to undergo rigorous imprisonment for another 1(one) month.

3. The facts relevant for adjudication of the present jail appeal, in brief, are as follows: -

i. That on 11.10.2014, one Purnananda Phukan had lodged an FIR (First Information Report) before the In-Charge of Sissiborgaon Police Outpost, under Silapathar Police Station, *inter-alia*, alleging that, after the demise of the parents of the grand-daughter of the first informant, namely, 'X'(real name not disclosed, to protect the identity of the victim girl). She was taken care by the present appellant. However, it is alleged in the FIR that when 'X' grew up the present appellant started sexually abusing her and as a result 'X' became pregnant and was carrying 7 months of pregnancy when the FIR was lodged. It is also alleged in the FIR that when 'X' came to know that the present appellant was planning to kill her, she left his house on 10.10.2014 at 3:00 AM and took shelter in the house of the informant.

ii. On receipt of the said FIR, the In-charge of Sissiborgaon Police Outpost made a GD Entry No. 182 dated 11.10.2014 and forwarded the FIR to the Officer-In-Charge of Silapathar Police Station for registering a case.

Accordingly, Silapathar P.S. Case No. 246/2014 was registered under Section 376 of the Indian Penal Code read with Section 4 of the POCSO Act, 2012 and SI Jalaluddin Ahmed was entrusted to take up the investigation.

iii. During the investigation, the Investigating Officer visited the place of occurrence, drew the sketch-map of the place of occurrence and recorded the statement of witnesses as well as the victim girl. The statement of the victim was also recorded under Section 164 of the Code of Criminal Procedure, 1973 and she was subjected to medical examination. Ultimately, after completion of the investigation, a charge-sheet was laid against the present appellant under Section 376 of the Indian Penal Code.

iv. The appellant was allowed to go on bail, during the trial, by an order dated 06.02.2015 and thereafter, he faced the trial remaining on bail. During the trial, the prosecution side examined 9(nine) witnesses to bring home the charge against the present appellant. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 during which the appellant pleaded his innocence and denied the truthfulness of the testimony of prosecution witnesses. However, he declined to adduce any evidence in his defence. Ultimately, by the judgment which has been impugned in this appeal the appellant was convicted and sentenced in the manner as already described in Paragraph No. 2 hereinbefore.

4. I have considered the submissions made by learned amicus curiae and the learned Additional Public Prosecutor and have gone through the materials available on record meticulously. Before considering the rival submissions of learned counsel for both the sides, let me go through the evidence which is

available on record.

5. PW-1 Shri Purnananda Phukan stated that he knows the appellant and the victim 'X' who is his grand-daughter. After the death of victim's parents, the appellant took her to his house and she grew-up there. She helped the appellant in his household works. While the victim was staying in the appellant's house, he had physical relationship with her (victim) and as a result of which she became pregnant. On knowing about the pregnancy of the victim, the appellant made conspiracy to kill her. Then she (victim) left appellant's house and went to his (complainant) house and told him about the occurrence and then he filed a complaint at the police station. He got the ejahar written by another person and put his thumb impression therein. The victim gave birth to a female child. The appellant is a married man having children. At the time of the occurrence, the victim was aged about 14 years.

5.1 During cross-examination, the PW-1 denied the defence suggestion that the appellant did not have a physical relation with the victim.

6. PW-2, 'X' (Victim), has deposed that she knows the appellant. Informant is her grand-father. Her parents died when she was a child. After the death of her parents she started staying in the house of the appellant. She helped in his household works. The appellant has his own wife and children. PW-2, 'X' (Victim) has also deposed that in the year 2014 the appellant taking advantage of the absence of other family members at home, committed rape on her (victim) by penetrating his penis into her vagina after removing her panties. The appellant threatened her not to disclose the fact to his wife and children and if she discloses the fact, he would kill her. PW-2, 'X' (Victim) has

also deposed that the appellant had raped her 6 to 7 times on different occasions. She has also deposed that as a result of such sexual intercourse, she became pregnant. Knowing about her pregnancy, the appellant made plan to kill her. PW-2, 'X' (Victim) has also deposed that out of fear, she left his house and came to her grandfather's house and informed about the incident to her grandfather. The matter was informed to the Village Defence Party of the village. Her grandfather filed a complaint with the police. The police questioned her regarding the incident. She also gave a statement before the Magistrate. Exhibit-1 is the said statement before the Magistrate and Exhibit-1(1) is her signature therein.

6.1 During cross-examination PW-2 denied the defence suggestion that the appellant did not commit rape on her removing her panties. She stated that she was aged 15 years old at the time of the incident. She has also deposed that after returning home from the house of the appellant, she gave birth to a female child. The child is now alive. She denied the defence suggestion that at the relevant time of occurrence she was aged 18 years or more than 18 years. She has also deposed that she attained puberty while she was staying in the house of the appellant. Her aunt kept her for some days in her house, but the appellant took her to his house from the house of her aunt. She denied the defence suggestion that she has given false evidence against the appellant. She also denied the defence suggestion that she along with her grandfather filed a false case against the appellant.

7. PW-3, Shri Niranjan Chetia, has deposed that he knows the appellant as well as the victim. The parents of the victim died in her childhood. After the death of her parents, the appellant took the victim to his house. While the

victim was staying in the appellant's house, she attained puberty there. Thereafter, the appellant had an illicit relationship with her and as a result of which, she became pregnant. Knowing about the pregnancy of the victim, the appellant and his family members made conspiracy to kill her. PW 3 has also deposed that the victim left appellant's house and came to his (PW-3) house and told him and her grandfather about the incident. Her grandfather filed complaint at the police station. The police recorded his statement during investigation. After the case was filed at the police station, the victim gave birth to a female child.

7.1 He denied the defence suggestion that he did not state before the police that the victim came back to his house from the house of the appellant. He denied the defence suggestion that the victim did not conceive from the side of the appellant. He also denied the defence suggestion that he has given false evidence against the appellant.

8. PW-4, Biren Saikia, has deposed that he knows the appellant as well as informant Purnananda Phukan. The victim is the granddaughter of Purnananda. The occurrence took place about one year ago. The victim, Smti 'X' was a maid servant in the house of the appellant. The victim became pregnant through the accused. Later, the victim came back to her grandfather's house. On being asked to the victim, she told that she became pregnant through the appellant-Rupen Gogol. Later on, Purnananda Phukan filed a complaint with the police. The police recorded his statement.

8.1 During cross-examination, PW-4 denied the defence suggestion that he did not state before the police that on being asked the victim, she told him

that she became pregnant from the appellant. It is denied that the victim, 'X' did not state before him that she conceived from the appellant. He denied that he has given false evidence against the appellant. He also denied the defence suggestion that the victim did not conceive from the appellant.

9. PW-5, Smti. Bohagi Chetia, has deposed that she knows the appellant. The informant is her father. The victim 'X', is her niece. Victim was working as a maid servant in the house of the appellant. has also deposed that has also deposed that due to sexual intercourse by the appellant, victim became pregnant. She has also deposed that on knowing about the incident from the victim, she (PW-5) asked the appellant about the occurrence, and then the appellant admitted his guilt. The appellant first accepted the victim. Later, the victim came to know that the appellant had conspiracy to kill her and then she came to her (PW-5) house knowing about the appellant's conspiracy/plan. Since then, the victim has been staying in her house. Later on, the victim gave birth to a female child in the house of the complainant. At the time of the occurrence, the victim was aged about 14 years. PW-5 has also deposed that the police took her statement and recorded her statement.

9.1 During cross-examination, PW-5 denied the defence suggestion that she did not state before the police that the victim told her that she became pregnant through the appellant and that the appellant confessed his guilt. She has denied that the appellant did not took the victim. She has denied the suggestion that she deposed falsely.

10. PW-6, Shri Thuleswar Chetia, has deposed that he knows the appellant and the informant, Purnananda Phukan. He has deposed that Victim 'X' is the granddaughter of the complainant. The occurrence took place about one year

ago, when the victim was working as maid servant in the appellant's house. Later on, he heard from the grandfather of the victim that she became pregnant through the appellant, and then victim's grandfather filed a complaint with the police. The police recorded his statement.

10.1 During cross-examination, the PW-6 admitted that he did not state before police that grandfather of the victim told him about the appellant making the victim pregnant.

11. PW-7, Chandra Hatimuria, has deposed that he knows the appellant as well as Purnananda Phukan and his grand-daughter 'X'. It was about one year ago that the victim was staying in the house of the appellant -Rupen Gogoi and he heard from the victim and Purnananda heard that there was a physical relationship between victim and the appellant. He being the VDP, vice president, had told the police about the same.

11.1 During cross-examination, PW-7 denied the defence suggestion that he had told the police that he had got to know about the incident from the victim and Purnananda. He also denied the defence suggestion that the victim and Punananda had not told him about the incident. He also denied that he has given false evidence.

12. PW-8 Dr. Kulanath Chutia, who was the Senior Medical & Health Officer at Dhemaji Civil Hospital has deposed that on 13.10.2014, at 12:00 AM, he was on duty and examined 'X' (victim girl), on being escorted and identified by UBC Jyotshna Das. He has further deposed that during examination of the victim girl he found following-

General Examination:

There was no external injury on her person.

Local Examination:

Chest shows well developed breast with prominent secondary sex characters.

Specific examination on private parts.

Vaginal walls show no any injuries or abrasions, no blood staining clothes found, no semen like material seen, a palpable mass found on the lower abdomen about 27 weeks size of fetus. Cervix shows normal structure. There was no any abrasions were seen in the cervix and any foreign found inside the cervix.

X-Ray Epi and lateral view of wrist and elbow joint were advised.

Urine for pregnancy test and ultra sound of the lower abdomen also advised.

X-Ray shows that her age was above 18 years

Urine for pregnancy =Positive result

Ultrasound: - Shows single visible intra uterian fetus of about 27 weeks

12.1 PW-8 has also deposed that in his opinion there is no evidence of forceful sexual contact, however, urine shows positive pregnancy test and ultrasound shows 27 weeks intra uterian foetus and X-ray shows she is above 18 years of age.

PW-8 has also deposed that Exhibit-2 is the medical report and Exhibit-2(1) is his signature. Exhibit-3 is the pathological report. Exhibit-4 is the laboratory test and Exhibit-5 is the X-ray report and Exhibit- 5(1) is the signature of Dr. Bhupen Kuli which is known to him.

Defence side declined to cross-examine the Doctor (PW-8).

13. PW-9, Shri Tuchen Chutia, stated that on 11.10.2014, he was posted at

Silapathar Police Station as Officer-In-Charge. He has deposed that on that day, the In-Charge, Sissiborgaon Outpost, Jalaluddin Ahmed (since deceased), received an *Ejhar* from Purnananda Phukan and made GD Entry No. 182 dated 01.10.2014 and forwarded the original copy of *ejahar* to Silapathar Police Station for registering a case. On receipt of the *ejahar* he registered a case as Silapathar P.S. Case No.246/2014 under Section 376C read with Section 4 of POCSO Act, 2012 and entrusted Md. Jalaluddin Ahmed, SI to take up investigation of the case. During the investigation Jalaluddin Ahmed visited the place of occurrence, drew sketch map, recorded the statements of the witnesses, arrested the appellant and forwarded him to the court. The victim was produced before the Magistrate and she gave statement before the Magistrate under Section 164 of the Code of Criminal Procedure, 1973. The victim was medically examined. After the completion of the investigation, Jalaluddin Ahmed submitted a charge-sheet against the accused under Section 376 of the Indian Penal Code. PW-9 has also deposed that Exhibit-6 is GD Entry. Exhibit-7 is the *ejahar* and Exhibit-7(1) is his signature with note. Exhibit- 7(2) is the signature of Jalaluddin Ahmed which is recognised by him. Exhibit-8 is the sketch map and Exhibit-8(1) is the signature of SI Jalaluddin Ahmed which is known to him. Exhibit-9 is the charge sheet. Exhibit-9(1) is the signature of SI Jalaluddin Ahmed which is recognised by him.

13.1 During cross-examination, he has deposed that witness-Niranjan Chetia did not state before him that the victim had secretly come to his house. Witness-Biren Saikia did not state before him that on being asked the victim did not state that she became pregnant as a result of her physical relation with the appellant. He has further deposed that witness- Bohagi Chetia did not state before him that the victim told him that she became pregnant and the

appellant was responsible for her pregnancy.

14. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 by the trial court, during which he pleaded his innocence and denied the truthfulness of the testimony of the prosecution witnesses, however, he denied to adduce any evidence in his defence.

15. Ms. B. Sharma, learned Amicus Curiae, has submitted that the trial court convicted the present appellant only on the basis of uncorroborated testimony of the prosecutrix (victim girl). It is further submitted by learned Amicus Curiae that though the other witnesses, namely, PW-1, PW-3, PW-4, PW-5, PW-6 and PW-7 have deposed that they came to know about the incident from the victim girl as she has informed them about the incident, however, the victim while deposing as PW-2 has not stated before the trial court that she had informed about the incident to the aforesaid PW's and therefore, it is submitted that the testimony of other PW's is only hearsay and may not be relied upon to convict the present appellant.

16. Learned counsel for the appellant has also submitted that no DNA test was done for any cross-matching to find out as to whether the appellant is the father of the baby delivered by the victim girl.

17. It is further submitted by the learned Amicus Curiae that the trial court had erred in relying on the hearsay evidence of other witnesses and uncorroborated testimony of the victim girl and coming to the finding of guilt of the appellant. It is also submitted that the FIR in this case was lodged after a lapse of 7 months of the alleged incident, which itself makes the prosecution story unreliable. Therefore, it is submitted by learned Amicus Curiae that the

conviction and sentence imposed on the appellant are liable to be set aside.

18. On the other hand, Mr. K.K. Parasar, learned Additional Public Prosecutor, has submitted that in the offence of such a nature it would be wrong to expect it to be witnessed by other eye-witnesses and the only natural witness in such kind of cases is the victim girl herself and if her testimony remains consistent throughout the proceedings, she may be relied on, and the trial court has rightly convicted the appellant by relying on the testimony of the victim girl.

19. Learned Additional Public Prosecutor has also submitted that during the cross-examination of the doctor (PW-8), who had examined the victim girl, as well as during the cross-examination of the Investigating Officer, the defence side never raised the plea of non-performance of any DNA examination.

20. Learned Additional Public Prosecutor also submitted that it is no longer *res integra* that conviction may be based on the testimony of the victim girl only, even if the same is not corroborated by other witnesses.

21. I have considered the submissions made by learned counsel for both the sides and perused the evidence on record very carefully.

22. In this case, the testimony of prosecution witnesses shows that the victim girl, after the demise of her parent was residing with the appellant, who was taking care of her after the death of her parents. It also appears from the testimony of PW-2(victim) that when she grew up, the appellant started sexually abusing her as a result of which she became pregnant. The facts of this case shows that the victim girl was an orphan having lost her parents and was dependent on the appellant for her survival and under such circumstances, mere delay in lodging of the FIR would not cast aspersions on

the prosecution story. The testimony of PW-8 shows that the victim girl, when she was examined on 13.10.2014, i.e. two days after lodging of the FIR, was found to be pregnant and was carrying a 27 weeks foetus. The fact that the victim girl was subjected to sexual intercourse is apparent from the fact that she was pregnant and delivered a girl child. The pertinent question is as to whether it was the appellant who had subjected her to sexual intercourse and whether such act was without the consent of the victim girl. The victim girl, while deposing as PW-2, categorically stated that she was subjected to forcible sexual intercourse by the present appellant on several occasions when she was staying with him. Her testimony could not be demolished during her cross-examination.

23. It also appears that even if we ignore the testimony of other witnesses, who have implicated the present appellant, the version of the victim girl (PW-2) has remained consistent throughout the criminal proceeding. In her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 also the victim girl has narrated the same story which she had deposed as PW-2 before the trial court. Though, the Investigating Officer could have taken steps for paternity test of the child of the victim girl, however, by not conducting such a paternity test, in itself, would not be fatal to the prosecution case, if the testimony of PW-2(victim) is otherwise trustworthy.

24. It has been rightly submitted by learned Additional Public Prosecutor that conviction on the basis of the testimony of the sole prosecutrix is possible if the court finds the same to be credible and trust-worthy. In the instant case, the appellant side has failed to show any motive or reason for which the victim would have falsely implicated the appellant, who took care of her after the

death of her parents. There does not appear to be any reason for which the victim girl would falsely implicate the appellant with the allegation of rape. The consistency in the version of the victim girl throughout the criminal proceeding lends credibility to her testimony and mere non-performance of DNA test to find out the paternity of the baby of the victim girl when no such plea was taken by the defence side during the trial would not make the testimony of PW-2 (victim girl) untrustworthy or unreliable. The Exhibit 1, which is the statement of the victim recorded under section 164 of the code of criminal procedure, corroborates the testimony of the PW-2, wherein she has deposed that the appellant had subjected her to forcible sexual intercourse and threatened her to kill her if she discloses about the incident to anybody else. The testimony of the victim girl that she did not disclose to anyone about the incident due to fear is also believable under the facts and circumstances of the case. The victim has testified that she came to the house of her grandfather out of fear and told him about the incident. The grandfather, while deposing as PW-1, has corroborated this testimony by stating that his granddaughter, after fleeing away from the house of the appellant had informed him about the incident. The finding of the trial court that the appellant had committed rape on the victim girl, i.e., PW-2 "X", therefore, does not warrant any interference by this court.

25. For the reasons stated above, this court is of the considered opinion that the testimony of PW-2(victim girl) is reliable and inspires confidence about its truthfulness. This court is of the considered opinion that under the facts and circumstances of this case, the trial court has correctly convicted and sentenced the appellant by the impugned judgment and it does not warrant any interference by this court and accordingly, this appeal is dismissed.



26. Send back the record of the trial court to the trial court along with a copy of this judgment.

JUDGE

Comparing Assistant