

GAHC010233802013



2024:GAU-AS:10581

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

Case No. : Crl.A./101/2013

MD. RUSTAM ALI
S/O LATE MUNIRUDDIN ALI, VILL. GANGAPUKHURI, P.O. and
P.S.KHOIRABARI, DIST. DARRANG, ASSAM, PIN 784522

VERSUS

THE STATE OF ASSAM,

Advocate for the Petitioner : MR.B C DAS

Advocate for the Respondent : MR. P. BORTHAKUR, LD. ADDL. PP, ASSAM, ,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 01.08.2024

Date of Judgment : 29.10.2024

JUDGMENT & ORDER (CAV)

Heard Mr. B. C. Das, learned counsel for the appellant. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This appeal is filed under Section 374 of the Code of Criminal Procedure, 1973, challenging the Judgment and Order dated 11.02.2013, passed by the learned Sessions Judge, Darrang, in Sessions Case No. 200(DM)/09, convicting the accused/appellant to suffer rigorous imprisonment for five years and to pay a fine of Rs. 1,000/- (Rupees one thousand) only, in default of which to undergo simple imprisonment for one month under Section 366 of the IPC, and rigorous imprisonment for seven years and to pay a fine of Rs. 1,000/- (Rupees one thousand) only, in default of which to undergo simple imprisonment for another month under Section 376 of the IPC.

3. The prosecution story in brief is as follows:

3.1. One Md. Mazid Ali lodged the FIR on 17.03.2009 at about 5:30 P.M., alleging that his daughter, aged about 14 years, was kidnapped by the accused/appellant while returning home from the house of one Md. Makibur Rahman. When she arrived at Katara Chowk and did not return home, he lodged the FIR at Khoirabari Police Station on the same day at 9 P.M., which was registered as Khoirabari P.S. Case No. 23/09 under Section 366(A) of the IPC.

3.2. Thereafter, the police investigated the case, visited the place of occurrence, and recorded the statement of the victim girl under Section 164 of the Cr. P.C. She was also medically examined. After completing the investigation, the Investigating Officer submitted a charge sheet against the accused/appellant under Sections 366(A) and 376 of the IPC. The case was numbered as G.R. Case No. 791/09 and was committed by the learned Judicial Magistrate, First Class, to the Court of the learned Sessions Judge, Darrang, where Sessions Case No. 200 (DM)/09 was registered.

3.3. Upon the appearance of the accused/appellant, the charge was framed under Sections 366(A) and 376 of the IPC, to which the accused pleaded not guilty and claimed to be tried. The prosecution examined a total of eight numbers of witnesses in support of their case, while the defence side did not adduce any evidence but pleaded not guilty during the recording of the statement under Section 313 of the IPC.

3.4. After hearing the arguments presented by the learned counsels for both sides and considering the materials on record, the learned Sessions Judge, Darrang, delivered a Judgment and Order dated 11.02.2013 in Sessions Case No. 200(DM)/09, convicting the accused/appellant to suffer rigorous imprisonment for five years and to pay a fine of Rs. 1,000/- (Rupees one thousand) only, in default of which he was to undergo simple imprisonment for one month under Section 366 of the IPC, and rigorous imprisonment for seven years and to pay a fine of Rs. 1,000/- (Rupees one thousand) only, in default of which he was to undergo simple imprisonment for another month under Section 376 of the IPC.

4. Mr. Das, learned counsel for the petitioner, has submitted that the prosecution witnesses could not prove the case beyond a reasonable doubt and that the recovery of the victim girl is contradictory. The medical officer could not provide any opinion regarding rape by the accused/appellant, and the entire case relies on circumstantial evidence, where the prosecution failed to establish the case against the accused/appellant beyond a reasonable doubt. However, the learned Sessions Judge convicted the accused/appellant without proper appreciation of the evidence in its true perspective, and passed the Judgment and Order dated 11.02.2013 which is liable to be set aside and quashed.

5. Furthermore, it is submitted that, according to P.W.1, on the next day

morning, at about 10 A.M., police recovered his daughter along with the accused/appellant at Baruapara and brought her to his residence, took the accused to the police station. Contradicting P.W.1's statement, P.W.2 claimed that the victim was kept on the riverbank and was brought back to her house at about 2 P.M., when her family members saw her; the accused fled away, leaving her alone, and she then returned home.

6. Additionally, P.W.3, Rahima Begum, the only eyewitness to the prosecution case, stated that the victim is her cousin sister. On the day of the occurrence, she accompanied the victim, and at Katara Chowk, the accused suddenly lifted the victim. Rahima immediately rushed to the victim's house to inform them about the incident. But, she did not raise any alarm when her sister was taken, nor did she speak to anyone on her way to the victim's house, despite having crossed about half a kilometer from Katara Chowk which is very surprising and cannot be believed.

7. The P.W.4, Muhibur Hoque, the victim's brother, narrated a different story, stating that he received information the next morning and found his sister in a senseless condition on the bank of the Kalpani River. According to him, the accused/appellant fled away seeing them but was subsequently caught by the villagers. The conflicting stories about the recovery of the girl from P.W Nos. 1, 2, 3 and 4 suggests that the victim may have eloped with the accused voluntarily and was a consenting party.

8. Despite these inconsistencies, the learned Sessions Judge reached a flawed conclusion and passed the impugned judgment and order convicting the accused/appellant. Mr. Das further submitted that, according to P.W.5, the doctor who examined the prosecutrix, he could not provide any comments regarding recent sexual intercourse, and the victim's age was estimated to be

about 17 to 18 years at the time of her examination. Thus, the doctor did not find any signs of recent rape or sexual intercourse.

9. P.W.s 6 and 7 are hearsay witnesses. As per P.W.6, he found the accused and the prosecutrix in the house of one person, at Tangla. However, the Investigating Officer did not record the statement of said person, from where the victim and the accused/appellant were allegedly recovered. Therefore, the recovery of the girl is highly contradictory and cannot be said as a reliable basis for convicting the accused/appellant.

10. Accordingly, Mr. Das submitted that the accused/appellant is entitled to the benefit of the doubt, as the prosecution has not established the case against him beyond a reasonable doubt. He further submits that the learned Sessions Judge passed the Judgment and Order dated 11.02.2013 without applying judicial mind and without proper assessment of the evidence on record. Thus, the Judgment and Order dated 11.02.2013 passed by the learned Sessions Judge, Darrang in Sessions Case No. 200 (DM)/09 is liable to be set aside and quashed and the interference of this Court is necessary.

11. On the other hand, Mr. Borthakur, learned Additional Public Prosecutor, has submitted that the testimony of all the prosecution witnesses clearly establishes that the victim was kidnapped and kept in the jungle for the entire night and that she narrated the complete incident as to how she was subjected to sexual assault by the accused/appellant. He further stated that P.W. Nos. 2 and 3 supported the prosecution's case, and P.W.3 is also eyewitness who saw the victim being lifted by the accused/appellant.

12. He further submitted that the testimonies of the prosecution witnesses could not be rebutted by the defence, either through cross-examination or by

presenting any contradicting evidence. He submits that it is a well-settled principle that a conviction can be based on the sole testimony of the prosecutrix/victim if it inspires confidence. In this case, there is no reason to disbelieve the prosecution's evidence, especially the testimony of the victim. Accordingly, he submitted that there is no need for this Court to interfere, as the learned Sessions Judge rightly passed the impugned Judgment and Order dated 11.02.2013, convicting the accused/appellant under Sections 366 (A)/376 of the IPC after proper appreciation of the evidence on record.

13. Having heard the submissions made by the learned counsels for both sides, it is necessary to assess the evidence of the prosecution witnesses before arriving at any decision.

14. P.W.1 is the father of the victim, who deposed that when he found his daughter missing from their residence, he inquired into the matter and came to know from one of his relative's daughter that his daughter had been abducted by the accused, Rostam Ali, from Katara Chowk. After receiving this information, he attempted to search for his daughter but was unable to find her, so he filed the FIR on the following morning at about 10:00 A.M. The police recovered his daughter along with the accused/appellant at Baruapara and brought her back to his residence, took the accused to the police station.

During cross-examination, P.W.1 stated that in the evening, when his daughter did not return, he searched for her with about 20 to 30 other people and lodged the FIR at the police station on the same day. He also deposed that he saw the accused running away from the company of his daughter.

15. P.W.2, the victim in this case, testified that on the day of the incident, at about 5:00 PM, she was returning home after cutting betel nuts at the house of

Makibar Rahman. On arriving at Katara Chowk, the accused, Rostam, grabbed her, covered her mouth, and took her to Khaloipara village, into a jungle. There, the accused forcibly committed sexual intercourse with her. Despite her attempts to protest, the accused did not listen, and she was kept in the jungle for the entire night. At about 2:00 A.M., the accused brought her about 2 kilometers to the house of one person. She could not raise an alarm because the accused hold her neck and gagged her mouth. The following day, at about 10:00 A.M., the accused took her to the bank of the Kalpani River and then to the house of an Assamese person. Afterward, she was kept by the riverbank and was brought back toward her home at about 2:00 P.M. Her family members suddenly saw her, and the accused tried to flee away leaving her alone. She further deposed that at the time of the incident, a girl named Rahima Begum, the daughter of her brother Nurul Hoque, was also present with her. Subsequently, the police recorded her statement, and she was medically examined. She exhibited her statement as Exhibit 1, with her signatures as Exhibits 1(1) and 1(2).

In her cross-examination, P.W.2 specifically stated that while she was in the jungle with the accused/appellant, she heard her parents shouting and saw the beam of their flashlight in the jungle.

16. P.W.3, Miss Rahima Begum, claimed herself as an eyewitness to the case. She deposed that she accompanied the prosecutrix when they were returning home. She stated that the prosecutrix is her cousin sister and that, while returning from the house of Makibar Rahman, the accused/appellant suddenly appeared at Katara Chowk and lifted P.W.2 in her presence. She immediately rushed to the prosecutrix's house to inform her family about the incident. According to her, there were no other people present at the scene.

In her cross-examination, P.W.3 stated that the prosecutrix's house is about half a kilometer from the place of occurrence. During the recording of evidence, the Court assessed the child witness's capacity to provide rational answers and, considering her maturity, her statement was recorded.

17. P.W.4, the brother of the victim, deposed that on the day of the incident, his sister went to the house of Makibar Rahman to cut betel nuts, accompanied by Rahima Begum (P.W.3). While returning home, the accused lifted his sister from behind, by gagging her mouth. After receiving this information, he, along with his father and others, searched for his sister until 12:00 A.M. (midnight) but could not find her. The following day, he received information that the prosecutrix was found on the bank of the Kalpani river, where she was found in a senseless condition. Upon seeing them, the accused attempted to flee, but he was caught by the villagers.

18. P.W.5, the doctor, deposed that on 19.03.2009, while serving as the Senior Medical and Health Officer at Mangaldai Civil Hospital, he examined the prosecutrix. He found no spermatozoa in the vaginal swab taken from her. According to the radiological examination, the age of the victim was approximately 17 to 18 years; however, the doctor could not provide an opinion regarding recent sexual intercourse. Exhibit 2 is the report.

19. P.W.6, Md. Kazimuddin, deposed that after receiving information from the father of the prosecutrix, he went to search for the victim. On that same day, they attempted to lodge an FIR, and afterward, she was recovered from one house.

20. P.W.7, Rajib Ali, another brother of the prosecutrix, stated that he was informed by his father via telephone that his sister had been kidnapped by the

accused/appellant. He immediately rushed home but could not find his sister. The following day, she was recovered from the bank of the river and they brought her back to the house.

21. P.W.8, Muslimuddin Ahmed, is the investigating officer (I.O.). During the investigation, he visited the place of occurrence, prepared a sketch map, and recorded the statements of witnesses. Initially, he could not locate the missing girl. The following day, he, along with the Circle Inspector of Police, went to Tangla village, where they recovered the victim and the accused, who had been confined by the villagers. The statement of the victim was recorded, the accused/appellant was arrested, and the victim was examined by a doctor. At that time, the police also seized underwear from the victim's possession. Exhibit 3 is the sketch map, and Exhibit 4 is the seizure list. After completing the investigation, he submitted a charge sheet against the accused/appellant under Sections 366 and 376 of the IPC. Exhibit 5 is the charge sheet, and Exhibit 5(1) is his signature.

22. From the testimony of the prosecution witnesses, it is evident that the victim was allegedly kidnapped from Katora Chowk by the accused/appellant while she was returning home with P.W.3. This account is corroborated by the prosecutrix, who stated that she was lifted by the accused while she was coming with P.W.3. P.W.3 also confirmed that the accused suddenly appeared at Katora Chowk and abducted the victim, after which she rushed to inform the family. Notably, P.W.3 mentioned that there were no other people present at the time of the incident, which raises reasonable doubt since the incident reportedly occurred around 5:00–5:30 P.M. in a chowk and chowk of the village generally considered to be busy area.

23. P.W.1, the father of the victim, indicated that she was recovered on the

next day after the incident but did not specify where from she was recovered. In contrast, P.W.2, the victim stated that she was recovered along with the accused/appellant at about 2:00 P.M. the following day, which contradicts the testimonies of P.W.1. Furthermore, according to P.W.2, she was taken into the jungle, and the accused held her captive until about 2:00 P.M. the next day. Next day she was initially taken to a house where she was kept and then again she was brought near to the river bank and thus, she was returning home along with the accused/appellant. But, surprisingly she did not raise any alarm nor tried to report the matter to anyone or call for help ever, when she saw her family members in a flash of a torch light or even having hearing their shouting. Additionally, P.W.3, who claims to have witnessed the incident, did not raise any alarm or inform anyone about what had happened, despite being present when her cousin was taken. P.W.4, the victim's brother, deposed that he found his sister in a senseless condition at the riverbank, which contradicts the testimonies of P.W.1 and P.W.2, in regards to her recovery. P.W.6 and P.W.7, who are hearsay witnesses, also provide conflicting reports regarding the recovery of the victim. P.W.6 claims she was found in a house, while P.W.7 states she was recovered from the riverbank.

24. It is a well-settled principle that a conviction can be based on the sole testimony of the prosecutrix if it inspires confidence. However, the inconsistencies and contradictions in this case raise significant doubts about the credibility of the prosecution's case.

25. In the case of **State of Himachal Pradesh v. Raghubir Singh, (1993) 2 SCC 622; 1993 SCC (Cri) 674**, the Hon'ble Supreme Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence

has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by the honourable Supreme Court in Wahid Khan v. State of Madhya Pradesh (2010) 2 SCC 9; AIR 2010 SC 1, placing reliance on an earlier judgment in Rameshwar S/o Kalia Singh v. State of Rajasthan, AIR 1952 SC 54. Thus the law that emerges on the issue is to the effect that the statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix.

26. In the present case, the testimony of the witnesses is unreliable, with numerous contradictions regarding the recovery of the victim. These inconsistencies cast doubt on the prosecution's case. This Court is of the opinion that the prosecution has failed to establish the case against the accused/appellant under Sections 366(A) and 376 of the IPC beyond a reasonable doubt.

27. Furthermore, the medical evidence indicates no recent signs of sexual intercourse, despite the victim being examined the day after the alleged incident. The prosecutrix claimed that she was kept overnight by the accused/appellant and was subjected to sexual assault, yet there is no evidence of injuries or marks on her private parts, nor any medical findings supporting claims of rape.

28. Thus, the contradictory statements from the witnesses, coupled with the medical evidence, lead to the conclusion that the prosecution has not substantiated its claims. Considering all aspects of this case, the discrepancies

between the testimonies of the witnesses and the medical evidence undermine the prosecution's case, leading to the conclusion that the allegations remain unproven.

29. So from the entire discussion made above, it is seen that the prosecution has failed to prove the case against the accused/appellant beyond all reasonable doubt. More so, the medical evidence as well as the prosecution witnesses does not support the case of the prosecution.

30. In view of the above discussion, this Court is of the opinion that the Judgment and Order passed by the learned Trial Court needs interference of this Court, and the same is liable to be set aside and quashed. Consequently, the appeal stands allowed and the Judgment and order dated 11.02.2013 passed by the learned Sessions Judge, Darrang in Sessions Case No.200(DM)/09, stands set aside and quashed. The appellant is acquitted from all the charges. Bond, if any shall stands discharged. The accused/appellant be acquitted and set at liberty forthwith if not required in connection with any other case.

31. Send down the case record along with a copy of this judgment to the learned Court below.

32. With the above observation, the criminal appeal stands disposed of.

JUDGE

Comparing Assistant