

CAUSE TITLE
CRIMINAL APPEAL NO.24(3)2017.

Appellant : Md. Sariful Islam.

Respondent : State of Assam.

ADVOCATES :

For the Appellant : Mr. Z.H. Bora, learned Advocate.

For the State : Mr. J. Saikia, the learned Public Prosecutor.

Cases referred to in chronological order :-

1. Hon'ble the Supreme Court in *Puran Chand vs State of Himachal Pradesh (2014) 5 SCC 689* decided on 23.04.2014.

2. Hon'ble the Supreme Court in *Karulal & Ors. Vs State of Madhya Pradesh, in Criminal Appeal No.316 of 2011* decided on 09.10.2020.

**IN THE COURT OF THE SESSIONS JUDGE, LAKHIMPUR,
AT NORTH LAKHIMPUR.**

Present: Smt S.P. Khaund, (M.A. Economics, L.L.B.),
Sessions Judge,
Lakhimpur, North Lakhimpur.

CRIMINAL APPEAL NO.24(3)2017.

Appellant : Md. Sariful Islam.

Respondent : State of Assam.

Date of argument : 22.12.2020.

Date of judgment : 03.03.2021.

J U D G M E N T

1. This Appeal is preferred against the Judgment and Order of the Asstt. Sessions Judge, Lakhimpur, in Sessions Case No.15(NL)2017, convicting the accused, Sariful Islam and sentencing him to undergo Rigorous Imprisonment for 6 (six) months u/s 448 of the Indian Penal Code (IPC for short) and Rigorous Imprisonment for 7 (Seven) years u/s 376 IPC, and a fine of Rs.10,000/- (Rupees Ten Thousand) only with default stipulation. The sentences are to run concurrently.

BACKGROUND FACTS :

2. The genesis of the case is that on 30.06.2016, at around 8 pm, while the victim X was sleeping with her children, the accused figuring as Appellant in this case barged into her house and

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gagged her and committed rape on her. The victim raised alarm, but the Appellant fled away.

3. On receipt of the ejahar, a Laluk P.S. Case No.227/2016 u/s 448/ 376 IPC was registered against the Appellant, and investigation commenced. During the course of investigation, the Investigating Officer (I.O. in short) arrested the appellant and on finding a prima facie case, he submitted charge-sheet u/s 448/ 376 IPC.

4. On appearance of the Appellant, copies were furnished and this case was committed for trial by the court of commitment vide GR Case No.1672/2016. Subsequently, this case was transferred to the court of Asstt. Sessions Judge, Lakhimpur, for disposal.

5. After hearing both the sides, a formal charge u/s 448/ 376 IPC was framed, read over and explained to the appellant, to which he pleaded not guilty and claimed to be tried.

6. To substantiate its stance, the prosecution adduced the evidence of 7 (seven) witnesses, and exhibited various documents, whereas the defence did not adduce any evidence, but cross-examined the witnesses.

7. The statement of the Appellant u/s 313 CrPC was recorded and his plea was evasive, as he denied his involvement in the crime, in a blanket manner.

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POINTS DECIDED :

8. The Trial court decided this case on the following points :

“ i) Whether on 30.06.2016 at 8.30 pm at Balijan Gaon, the accused committed house trespass by entering into the house which was used as a home dwelling and which was in possession of informant/ victim with an intent to commit an offence of criminal trespass and thereby committed an offence punishable u/s 448 IPC ?

ii) Whether on the same day at the same time and at the same place, the accused committed rape on victim and thereby committed an offence punishable u/s 376 IPC ? ”

CONTENTION OF THE PARTIES

9. The learned P.P. has submitted that this is an open and shut case. The evidence against the Appellant is impeccable and uncontroverted. The learned counsel for the Appellant laid stress in his argument that it is not possible to commit rape on a woman, who was sleeping with four children. There is no evidence about any broken door. No injuries were detected on examination of the victim. The witnesses are all interested witnesses. It was not possible to identify the Appellant at night. There was a subsisting acrimonious relationship between both the parties, and PW.3 has admitted about a dacoity case launched by the accused against them, and so on and so forth.

DECISION THEREON AND THE REASONS FOR THE DECISION :

10. As this is a first Appeal, the evidence can be taken into account. The victim is the complainant. She has proved the F.I.R.

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as Ext.1, wherein Ext.1(1) is her signature. She has testified as PW.1 that about nine months ago at about 8.30 pm, while she was sleeping with her children, the appellant broke into her house and gagged her by her mouth and forcibly committed sexual assault on her. As the Appellant was about to leave, she raised alarm and her brother-in-law pursued him, but he managed to escape leaving his slippers in the process. Her statement was recorded by the Magistrate as Ext.2, wherein Ext.2(1) is her signature. This evidence of PW.1 is corroborated by the evidence of PW.2, Md. Habizul Islam. He testified that the incident occurred in the month of 'Roja'. At about 8 pm, he heard a commotion emanating from the victim's house, and he saw her running out towards the road. He also noticed the Appellant emerging out of her house. The Appellant left behind one of his slippers which was seized by the police in his presence vide Ext.3, wherein Ext.3(1) is his signature.

11. This witness, PW.2 is the brother-in-law referred to by PW.1. Thus, it can be safely held that the evidence of PW.1 is corroborated and supported by the evidence of PW.2.

12. The evidence of PW.3, Md. Shamsheer Ali also depicts that the incident occurred in the sacred month of 'Ramjan'. At about 8 pm, he was about to visit the Mosque, and then he heard a commotion emanating from the victim's house, and when he reached her doorstep, the Appellant pushed him aside and he fell down while the Appellant fled away.

13. It is apt to mention at this juncture that PW.2 and PW.3 are brothers, son of Lt. Naused Ali. PW.1 is their sister-in-law.

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14. The learned counsel for the Appellant laid stress in his argument that all the witnesses are related witnesses. I have scrutinised the evidence. It is apparent that Rajibul Islam, who testified as PW.5 is not related to the victim. Sultan Siddique, who testified as PW.4 admitted in his cross-examination that the victim is related to him, but this does not negate the fact that when PW.1 raised alarm at about 8.30 pm, PW.4 and PW.5 heard her shrieks and then, both of them went out of their individual residences. PW.4's evidence further depicts that he came out from his house and he saw the Appellant running away from PW.1's house. PW.5 testified that he came out of his house with a torch light and when he reached PW.1's courtyard, he saw the Appellant running away and he flung his torch towards the Appellant. The witnesses, PW.2, PW.3 and PW.4 may be related to the informant (PW.1), but this does not dispel the fact that the Appellant was seen running away from PW.1's house by the witnesses when PW.1 raised alarm.

15. I would like to refer with profit to the decision of Hon'ble the Supreme Court in *Karulal & Ors. Vs State of Madhya Pradesh, in Criminal Appeal No.316 of 2011* decided on 09.10.2020, wherein, it has been held that - "**19. It may further be noted that Babu Lal (PW.11) is an unrelated witness. His testimony substantially supports the evidence of PW.3 and PW.12 in all material particulars. In any case, being related to the deceased does not necessarily mean that they will falsely implicate innocent persons.**"

16. In this instant case too, PW.5 was not related to the victim. Moreover, the evidence of all the witnesses corroborated each other, on material particulars. The defense plea of false implication also holds no water. The evidence of all the witnesses including the related witnesses was found to be credible.

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17. It was also observed in Karulal's case (Supra) that - "**21. On this issue, we may benefit by adverting to the observation of Justice Faizan Uddin in Sushil & Ors. Vs State of U.P. , (1995) Supp 1 SCC 363, where the learned Judge so correctly observed : "8..... It goes without saying that enmity is a double-edged weapon which cuts both ways. It may constitute a motive for the commission of the crime and at the same time it may also provide a motive for false implication. In the present case there is evidence to establish motive and when the prosecution adduced positive evidence showing the direct involvement of the accused in the crime, motive assumes importance. The evidence of interested witnesses and those who are related to the deceased cannot be thrown out simply for that reason. But if after applying the rule of caution their evidence is found to be reliable and corroborated by independent evidence there is no reason to discard their evidence but it has to be accepted as reliable....."**

18. In the instant case, PW.1 has denied of any dacoity case pending against her or her husband in her cross-examination. PW.3 has admitted about a dacoity case, but this evidence of PW.3 remained unsubstantiated. It is not clear against whom, the dacoity case was launched by the Appellant. The onus was on the Appellant to prove any dacoity case against the victim or her family.

19. There appears to be no reason why a victim would raise alarm, at night. The Appellant was seen running out of the victim's house. It may be true that the victim was sleeping with her children, but there appears to be no justified ground that

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a victim would put her honour at stake and falsely implicate of having been sexually assaulted by a person in her husband's absence. The victim's husband was not at home when the incident occurred and her evidence depicts that her husband works as a labourer in Arunachal Pradesh.

20. The evidence of PW.1, PW.2, PW.3, PW.4 and PW.5 also clearly depicts that the incident occurred in the 'Ramjan' month of the previous year, at about 8.30 pm. Thus, it can be safely held that the incident indeed occurred on 30.06.2016. The F.I.R., Ext.1 has been proved by PW.1, which clearly depicts the date and time of the incident. The learned defence counsel's argument that there is no signature on the F.I.R. can be safely brushed aside.

21. I have carefully perused the F.I.R.

22. The evidence of PW.1 is consistent to the contents of the F.I.R. (Ext.1) as well as to her statement u/s 164 CrPC, which has been proved as Ext.2. Ext.2(1) and Ext.2(2) are the signatures of PW.1 on her statement recorded by the Magistrate. No contradictions **u/s 145 of the Indian Evidence Act, 1872** (Evidence Act for short) could be elicited through the cross-examination of the witnesses. It is true that PW.1 has been cross-examined in extenso, but no contradictions could be elicited through her cross-examination. The cross-examination of PW.1 is only denial of suggestions by the learned defence counsel. The I.O. (PW.7) was also not cross-examined according to the dispensation of Section 145 of the Evidence Act. Thus, it can be safely held that the testimonies of the witnesses could not be contradicted or controverted.

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23. The learned counsel for the Appellant emphasized through his argument that it is not possible for a person to commit rape on a woman, who was sleeping on the same bed with her children. It was submitted that due to an earlier acrimonious relationship between both the parties, a false case was slammed against the Appellant. The Medical Officer did not detect any injuries of struggle on the victim nor any injuries of rape were detected on examination of the victim. Moreover, the incident occurred at night and it was not possible to identify the Appellant at night. The arguments put forward by the learned counsel for the Appellant holds no water. No instance of any criminal case launched against the victim or her family members has been proved by the Appellant. The Appellant was seen by the witnesses with the help of torchlight. It has to be borne in mind that the victim was a married woman and the injuries of rape will seldom be detected if brutality is absent. It is a fact that the M.O.'s evidence as PW.6 depicts that no injuries could be detected on examination of the victim.

24. Regarding lack of injuries of a woman, who was sexually assaulted, I would like to rely on the decision of Hon'ble the Supreme Court in *Puran Chand vs State of Himachal Pradesh (2014) 5 SCC 689*, wherein it has been observed that "**13. While we have noted that the doctor has not categorically denied the rupture of hymen of the victim girl, we also take note of the fact that the version is supported by other attending circumstances and evidence adduced by the prosecution through the victim girl which is supported by her father and brother. Even if we were to doubt the prosecution version due to alleged infirmity in the medical evidence, it cannot be overlooked that the**

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case of this nature will have to be examined with the aid of the accompanying circumstantial evidence in order to test the veracity of the prosecution case.” In Puran Chand’s case (Supra), the hymen of the victim was found intact after her medical examination.

25. Reverting back to this case, it is held that the prosecution case, which was proved by credible witnesses cannot be thrown out. The prosecution version cannot be brushed aside totally and will have to be judged by other attending circumstances brought on record. In Puran Chand’s case (Supra), the Appeal was dismissed because the plea of enmity between both the parties was also held to be unreliable. I would also like to add that the defence skillfully eluded to mention the age of the victim’s children. There is no evidence that the victim was sleeping on the same bed with four children. Her evidence gives a hint that she was sleeping along with her children. The Appellant grabbed this opportunity as the victim was alone and attacked the defenceless woman, whose husband was not at home. It was correctly held by the Trial Court that the accused committed house trespass and sexually assaulted the victim ‘X’ (PW.1).

26. In view of the aforesaid scrutiny and analysis of the evidence on record, I find no substance in this Appeal, and hence, uphold the decision of the Trial Court. Before parting with this record, I would also like to mention that there was no delay in lodgement of the F.I.R.. The incident occurred at night and we cannot expect a woman to visit the Police Station in the middle of the night. So, the F.I.R. was lodged on the following day. Regarding the accused ‘breaking into the victim’s house’, it was meant that the accused

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barged into the victim's house. A broken door is not required to be seized. A person, who is guilty cannot get away with impunity. The traditional dogmatic hyper technical approach has to be replaced. The minor contradictions projected by the defence can be safely brushed aside.

27. The Appeal is dismissed. However, the period of detention already undergone by the Appellant since inception is set off with his custodial sentence.

28. Send back the LCR with a copy of this Judgment.

Judgment is signed, sealed and delivered in the open Court on the 3rd day of March, 2021.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Transcribed and typed by :
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