

THE HIGH COURT OF TRIPURA
A G A R T A L A

CRL.A. 34 OF 2010

Sri Amulya Das,
S/O Lt. Akhil Das,
Of: 57 card Shib Bari area,
P.S.:Kumarghat,
Kailashahar, Dist.: North Tripura.

..... **Convict-Appellant.**

- V e r s u s -

The State of Tripura

..... **Respondent.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant	: Mr. Ratan Datta, Advocate.
For the respondent-State	: Mr. A. Ghosh, Public Prosecutor.
Date of hearing	: 09.09.2013.
Date of judgment	: 30.09.2013.
Whether fit for reporting	: NO.

JUDGMENT & ORDER

(Deepak Gupta, C.J.)

This appeal by the convicted accused is directed against the judgment dated 29-01-2010 passed by the learned Assistant Sessions Judge, North Tripura, Kailashahar in Case No. Sessions Trial 63 of 2008 whereby he convicted

the accused of having committed an offence punishable under Sections 457 read with Section 34 of the Indian Penal Code (IPC) and under Section 376(2)(g) of the IPC and sentenced him to undergo rigorous imprisonment for 4(four) years for the offence punishable under Section 457 read with Section 34 of IPC and rigorous imprisonment for 10(ten) years for the offence punishable under Section 376(2)(g) of IPC. Both the sentences were directed to run consecutively.

2. The prosecution story, in brief, is that on 21-02-2008, the accused (appellant) along with Bijoy Das trespassed into the house in which the prosecutrix was staying with her in-laws. It is alleged that the accused was in drunken condition. He gagged the prosecutrix by placing a cloth on her mouth and forcibly took her to a jungle where she was raped by the accused and his accomplice Bijoy Das. The prosecutrix reported the matter to the police and this report was recorded as a complaint (Exhibit-7). On the basis of this complaint, FIR (Exhibit-8) was lodged in P.S. Manu against the appellant and Bijoy Das. The prosecutrix was got medically examined. The matter was investigated by the police and after investigation, charge-sheet was filed against the two accused. Bijoy Das absconded and could not be traced out and hence, the trial was conducted only against the appellant Amulya Das.

3. After the investigation was complete, the accused was charged with having committed the offence as aforesaid. The accused pleaded not guilty and claimed trial. After trial, the accused has been convicted and sentenced as aforesaid. Hence, this appeal.

4. We have heard Mr. Ratan Datta, learned counsel for the appellant, and Mr. A. Ghosh, learned Public Prosecutor for the respondent-State.

5. It is submitted by Mr. Ratan Datta that the story of the prosecutrix is unbelievable because she was a married lady, she had no marks of injury on her person, and that the Court below has not properly appreciated the evidence. It is urged that there is great delay in filing of the FIR and there is no explanation as to what she was doing from 7 p.m. to 11 p.m. He also urges that some of the material witnesses have not been examined and for these reasons, the accused should be acquitted. On the other hand, Mr. Ghosh submits that the judgment of the learned trial Court is absolutely correct calling for no interference.

6. The prosecutrix appeared as PW-1. According to her, her husband was missing for the last three years. She resides in a house along with her parents-in-law and minor son aged two years. Her father-in-law had gone out in

connection with work and her mother-in-law had gone out to answer the call of nature.

7. The prosecutrix further states that accused Amulya Das entered her house and shouted 'Kakima, kakima' calling for her mother-in-law. Thereafter, finding the prosecutrix alone, he asked the prosecutrix to give water and 'pan' (betel leaf). According to the prosecutrix, when she went to bring 'pan', Bijoy Das also entered the house and thereafter Bijoy Das caught hold of her hand and covered her face with a black cloth and both Amulya Das and Bijoy Das forcibly took her towards the jungle where she was first raped by Amulya Das and then by Bijoy Das. Thereafter, they again dragged her near the Railway Chowmuhani by following the railway track where they again raped her. According to the prosecutrix, Bijoy Das wanted to kill her, but she begged mercy and thereafter she was permitted to go. She reached home at about 11 p.m. when she informed her in-laws about the incident. Next day in the morning, she orally informed the Darogababu about the occurrence. Her verbal complaint was noted down as Exhibit-7, on which she put her signature.

8. Thereafter, the police officials took the prosecutrix to the Manu Primary Health Centre where she was examined by the Medical Officer. She also states that

about 15/16 days after the incident, she made a statement before the Magistrate under Section 164(5) Cr.P.C.

9. She has been cross-examined and has been confronted with her complaint wherein it is not recorded that Amulya asked her for water or betel leaf. She was also confronted with her earlier statement under Section 164 Cr.P.C. and the complaint wherein it was not recorded that Amulya had come armed with a 'dao'. In cross-examination, she has clarified that the distance of the latrine where her mother-in-law had gone to answer the call of nature is about 300 cubits from her house and is surrounded by jungle. She states that she resisted when she was caught, but failed to raise an alarm because the accused covered her mouth.

10. The prosecutrix was medically examined by PW-6, Dr. Subhankar Bhattacharjee, on 21-02-2008. He found scratch marks on the left lateral side of the lip. He also found another scratch mark on the left shoulder of the prosecutrix and an abrasion on the left scapular area. He collected blood samples of the prosecutrix and handed them over to police. On examination of the private parts of the prosecutrix, he found no external injuries, but found that abrasions were present in the perineum region. He also found tenderness during insertion of finger in her private part. The cervical region was also found to be tender. As per his opinion, the prosecutrix had been subjected to sexual intercourse. In

cross-examination, he admitted that he had in his report not mentioned the age of the injuries or the time which had elapsed between the sexual assault and the medical examination. There is no other cross-examination to this witness.

11. PW-2, Smt. Shefali Das, the mother-in-law of the prosecutrix, fully supported the version of the prosecutrix. According to her, when she returned to her house after answering the call of nature, she called out for her daughter-in-law, but got no response. 2(two) hours later, her husband came home and at about 11 p.m. her daughter-in-law (the prosecutrix) came home and reported that she had been raped by the accused persons.

12. The version of the father-in-law (PW-3), Matilal Das, is also similar. He also states that when the daughter-in-law reached home at 11 p.m., she informed him that she had been raped by the appellant and Bijoy Das. In cross-examination, he has stated that the SPO camp is situated about 1½ furlong from his house and he had requested the SPO personnel to take his daughter-in-law to the police station. He also states that at night, the Darogababu came to their house.

13. PW-4, Umakanta Das, states that first he and PW-3, the father-in-law, searched for the prosecutrix but

could not trace her out. Next morning, he went to the house of PW-3 and Rakhi told him that she had been raped by Amulya and Bijoy Das.

Similar is the statement of PW-5, Bapi Das.

14. According to PW-7, Anukul Malakar, he recorded the complaint of the prosecutrix at about 11 a.m. in Manu Police Station and thereafter, obtained her signatures on the basis of which formal FIR was lodged. He then took the victim to the Doctor for medical examination. In cross-examination, he stated that he did not know whether any telephonic information was given from SPO camp, Shib bari to Manu Police Station about the occurrence.

15. The accused has produced two defence witnesses, DW-1 and DW-2, who have stated that on 20-02-2008 the accused was with them for the entire day and in fact up to 10 p.m. at night. DW-1 is a carpenter like accused Amulya and according to him, he and Amulya were working together and thereafter, they attended a puja at the house of Subhash Chakma (DW-2). DW-2 has also supported the same.

16. As far as the defence of alibi is concerned, it is apparent that this is a defence which is an afterthought. No such defence was put to any of the prosecution witnesses. No such defence was taken by the accused in his statement

recorded under Section 313 Cr.P.C. and it is more than obvious that this defence has been concocted at a later stage.

17. As far as the defence about delay in lodging of the FIR is concerned, no doubt, there is material on record to show that the SPO camp is located just at a distance of 1½ furlong from the house of the complainant. It has been strenuously urged by Mr. Ratan Datta that the FIR should have been lodged then and there. There can be no dispute with the submission that normally the FIR should be lodged at the earliest. However, one cannot lose sight of the fact that in the year 2008, Tripura still faced a lot of terrorist problem and it would not have been possible for the prosecutrix and her family members to go from the village to the police station at Manu. Much reliance has been placed on the statement made by the father-in-law (PW-3) in cross-examination that at that night, Darogababu came to their house. It appears to us that either this is a typographical error or the witness who is a rustic villager is talking about Darogababu of the SPO camp. He is definitely not talking about Darogababu of Manu Police Station. In fact, when the Investigating Officer (PW-7) appeared in Court, no suggestion was put to him that he had visited the house of the prosecutrix at night. In this view of the matter, we are of the considered view that this defence cannot be accepted

because there is no delay in lodging the FIR. In any event, delay by itself cannot be a ground to acquit the accused. All that is required in case of delayed FIR is that the prosecution evidence should be scrutinized with greater care and caution.

18. The law is well settled that in a case of rape, conviction of the accused can be based even on the sole uncorroborated testimony of the victim. The statement of a victim should not be treated like the statement of a criminal. No suggestion has been put to the prosecutrix that she herself had any inimical relations with the accused. The only suggestion put to her is that she has given evidence against the accused at the instance of her father-in-law. At the same time, it has been suggested that her relation with her father-in-law are not cordial. Be that as it may, if the prosecutrix had no personal animosity with the accused, why should she have falsely implicated them in the case?

19. The prosecutrix has given a version which is believable. According to her, she was subjected to rape 4(four) times over a period of about 3 to 4 hours. It has been urged on behalf of the defence that there is no explanation what she did from 7 p.m. to 11 p.m. To say the least, this defence is totally insensitive. A woman cannot be raped four times in four minutes. She was raped by both the accused, once in the jungle and once near the Railway Chowmuhani. She was first dragged to the jungle, taken there, raped, then

taken along the railway track to the Railway Chowmuhani and then raped again. Thereafter, Bijoy Das threatened to kill the prosecutrix. All these things could not have been done in a matter of minutes. This must have taken at least 3 to 4 hours and tallies with the statement of the prosecutrix.

20. In the present case, the statement of the prosecutrix is fully corroborated by the Doctor who has found injury marks not only on the person of the prosecutrix but has also found that there was tenderness in her private parts. Normally, such tenderness would not appear in the private parts of a married woman when she is subjected to sexual intercourse, but because of the forcible nature of the intercourse, such tenderness could have occurred in her vital part.

21. The statement of the prosecutrix is also fully corroborated by her in-laws. In Indian society, it is seldom that in-laws would come up fully in support of their daughter-in-law, even when she has been subjected to rape. The statement of these two parents-in-law fully corroborates the prosecutrix.

22. In view of the above discussion, we find no merit in the appeal. However, as far as the question of quantum of sentence is concerned, we are of the considered view that though the sentence imposed may be justified, the learned

trial Court gravely erred in directing that the sentences should run consecutively without giving any reason why he was ordering so. We, therefore, while upholding the judgment of conviction as well as the sentence passed upon the accused direct that both the sentences shall run concurrently.

23. Accordingly, the appeal is disposed of in the aforesaid terms.

24. Send down the lower court records forthwith.

JUDGE

CHIEF JUSTICE