

THE HIGH COURT OF MEGHALAYA

CRIMINAL APPEAL NO. 3 OF 2010

Shri John R Marak, (in Jail), resident of Madanryting,
Shillong.

..... **Accused/Appellant**

-Versus-

The State of Meghalaya

..... **Respondent**

Shri MZ Ahmed, Senior Advocate, assisted by Mrs B
Dutta, Advocate, present for the accused/appellant.

Shri H Abraham, Advocate, present for the State
respondent.

Date of hearing 09.07.2014

Date of Judgment and Order 9th July, 2014

HON'BLE THE CHIEF JUSTICE
and HON'BLE MR JUSTICE T NANDAKUMAR SINGH

JUDGMENT AND ORDER

Oral : Hon'ble Prafulla C Pant, Chief Justice,.

1. This criminal appeal preferred under Section 374 Code of Criminal Procedure 1973, is directed against judgment and order dated 23.02.2010/24.02.2010, passed by learned Sessions Judge, Shillong in Sessions Case No. 15 of 2007, whereby, the trial court has convicted the accused John R Marak (present appellant)

under Section 376 IPC, and sentenced him to rigorous imprisonment for a period of ten years and directed to pay fine of Rs.10,000/-. The trial court has further directed that in default of payment of fine, the accused shall undergo further imprisonment for a period of six months.

2. Heard learned counsel for the appellant and learned counsel for the State, and perused the lower court record.

3. Briefly stated prosecution story is that on 15.09.2006, PW 7 L.S. (victim) along with her Aunt came to Shillong, and they booked Room No. 19 for their stay at Natraj Hotel, Police Bazar, Shillong. They reached at Natraj Hotel around 7 AM. On the same day at about 10 AM, the accused John R Marak, who was Sub-Inspector of Police, came to their room and at gunpoint took the victim forcibly to Room No. 18, and thereafter committed rape on her. PW4 Ravi Gupta, who got the room booked for the victim and her Aunt, before commission of rape by the accused John R Marak who was drunk, went from Natraj Hotel to Sadar Police Station to lodge the complaint. The police personnel from the said Police Station came to Natraj Hotel, and on their reaching the hotel, the victim disclosed that she was raped by the

accused. On the very day (15.09.2006) a First Information Report (Ext. 6) was lodged by the victim at Sadar Police Station, Shillong regarding commission of rape by the accused (present appellant). She was medically examined on the very day i.e. 15.09.2006 by PW1 Dr. (Mrs) B Mawlong, Medical and Health Officer posted at Govt. Ganesh Das Hospital, Shillong. She prepared the report Ext. 1 and collected specimen like pubic hairs, vaginal swab, blood for VDRL and saliva. The investigation of the case was taken by Sub-Inspector Smti B Lyngkhoi (PW 11), from whom it was transferred to PW8 Shri KR Marak, and completed by PW12 Smti Usha Sinha, who filed charge-sheet against the accused John R Marak for his trial relating to offence punishable under Section 376 IPC.

4. It appears that after giving necessary copies to the accused John R Marak, as required under section 207 of CrPC, and after hearing on charge, learned Sessions Judge framed charge of offence punishable under Section 376 IPC against the accused John R Marak on 28.11.2007. In response to which, the accused pleaded not guilty and claimed to be tried.

5. On this, prosecution got examined PW1 Dr.(Mrs) B Mawlong, a senior Medical and Health Officer of Ganesh Das Hospital, Shillong, PW2 Smti D Lyngdoh, Assistant Director, Forensic Science Laboratory, Shillong, PW3 Dr. (Mrs) B Lyngwa of Civil Hospital, Shillong, before whom also the victim was produced for medical examination, PW4 Ravi Gupta, who went to Police Station to report against the accused John R Marak that he was drunk, and had snatched his mobile phone, PW 5 Shri Mahatum Goala, a Kitchen Boy of Natraj Hotel, PW 6 Smti Susana Rynghsai, an official of Superintendent of Police Office, Shillong, PW7 L.S. (victim), PW8 Shri KR Marak one of the Investigating Officers, PW9 Shri P Syiem, an Officer In-charge of Sadar Police Station, Shillong, who sent the police staff to Natraj Hotel on receiving the complaint, PW10 Shri DH Pde, one of the members of police team who went to Natraj Hotel, PW11 Smti B Lyngkhoi, who started investigation and PW12 Smti Usha Sinha, Sub-Inspector of Police who completed the investigation.

6. The prosecution evidence was put before the accused under Section 313 CrPC in reply to which, he admitted that he was drunk on the day of incident.

However, he pleaded that he was in Yoga class in Reserve Police Line on 15.09.2006 from 6:30 AM. He denied the allegation and evidence adduced by the prosecution witnesses against him.

7. In defence, DW1 John R Marak got himself examined (U/s 315 of CrPC) and also got examined DW2 Shri Narayan Bahadur Thapa, DW 3 Kanak Marak, Head Constable, DW 4 Samtalsing Marak, and DW5 Simon Marak in support of plea of alibi taken by him.

8. The trial court after hearing the parties found that prosecution has successfully proved the charge of offence punishable under Section 376 IPC and convicted him accordingly on 23.02.2010, and after hearing on sentence, sentenced the convict on 24.02.2010 to rigorous imprisonment for a period of ten years and directed to pay fine of Rs. 10,000/-.

9. Admittedly, the accused John R Marak is a Sub-Inspector of Police. It is nobody's case that the victim was known to the accused or that she had any enmity with him.

10. PW7 (victim) is the star witness of the case. She belongs Rongksoi, Karbianglong (Assam). She has stated on oath that on 15.09.2006 she came to Shillong along

with her Aunt Smti Atai Kamai (not examined). She further stated that they got booked room (No. 19) in hotel Natraj, Police Bazar, Shillong. On the same day (15.09.2006), according to her, the accused John R Marak came to her room and took her at gunpoint to Room No. 18 of the same hotel where she was raped. She further told that she came to know from the hotel staff that the accused was a police personnel. The victim has further told that some people might have gone to Police Station and police came to the hotel. She further told that she went to the Police Station and lodged a First Information Report (Ext. 6) which was proved by her. PW 7 L.S. (victim) further told that she was medically examined by the Medical Officer. She identified her undergarment (Material Ext. 1) taken at the time of medical examination. She has further proved Ext. 13 a blood stained piece of cloth recovered from room No. 18 of the hotel. She has been subjected to cross-examination but nothing has come out which creates doubt in her testimony.

11. On behalf of the appellant, it is argued that the medical examination report proved by PW1 Dr.(Mrs) D Mawlong, Medical Officer, does not support the

prosecution case that the victim was subjected to rape. We have perused the said medical report in which it is mentioned that “no external injury was seen, and hymen was not intact (old tears seen)”. Since it has come on record that the victim was a married woman as such there was no question of hymen being intact or bleeding on account of tearing of hymen. Merely on account of absence of intact hymen, testimony of the victim cannot be doubted, particularly when it is corroborated from other evidence on record.

12. PW 4 Ravi Gupta has disclosed that the accused was in drunken state in the hotel on the day of incident, and he went to complain against the accused to the Police Station (after his mobile was allegedly snatched by the accused). PW9 Ploster Syiem, Officer In-charge of Sadar Police Station has corroborated that on 15.09.2006 at about 12:10 pm he received a telephonic call from the Manager of Natraj Hotel that there was a problem between one police Sub-Inspector and one client of the hotel. On which after making necessary entry in the General Diary, he deputed police staff to go to the hotel. PW10 Shri Dame Hiwot Pde who was on duty at Sadar Police Station has corroborated the factum relating to lodging of First

Information Report by the victim on the day of incident. Not only this PW6 Susana Ryngksai has further corroborated the prosecution story stating that she was on duty in Superintendent Office on the day of incident and she was directed by Sub-Inspector Smti Barbara Lyngkhoi to take the victim L.S. (PW7) to Govt. Ganesh Das Hospital, Shillong for medical examination.

13. PW 12 Smti Usha Singha, Sub-Inspector of police who concluded the investigation has stated that the presence of accused John R Marak in the hotel Natraj on the day of incident was found to be true. As such the defence story narrated by DW1 John R Marak, DW 2 Narayan Bahadur Thapa, DW 3 Kanak Marak, DW 4 Samtalsing Marak and DW 5 Simon Marak does not help the appellant in the present case. In substance, it has been stated by the defence witnesses that Yoga classes start from 6:30 AM till 8:30 AM, and the accused had gone to Yoga class. The time of commission of rape from the evidence on record is about 10 AM. The sole witness PW 11 Barbara Lyngkhoi who stated in the examination-in-chief that the rape was committed at 7 AM, in cross-examination it is clarified by her that at about 7 AM the victim reached in the hotel, and the rape was committed

at about 10 AM. Statement of PW5 Mahatum Goala, a Kitchen Boy of the hotel is of little importance as he has simply stated that on 15.09.2006 he heard from the staff of the hotel that one Police Officer at gunpoint dragged a lady from her room. His testimony is hearsay, as such need not be read in support of the prosecution. But evidence of the Forensic Expert PW2 Smti D Lyngdoh that blood stained piece of cloth (found from room No. 18) did contain blood group A (i.e. that of the victim).

14. On behalf of the appellant, attention of this Court is drawn to the case of ***Radhu vs State of Madhya Pradesh (2007) 12 SCC 57*** and it is argued that false accusation of rape cannot be ruled out. We have carefully gone through the evidence of the present case and the aforesaid case law. In the case of Radhu (supra), there were too many discrepancies in the statement of the victim, and in the circumstances, the Court found that false accusation cannot be ruled out. In the present case, the victim was not even known to the accused.

15. Also reliance is placed on behalf of the appellant in the case of ***Yerumalla Latchaiah vs. State of Andhra Pradesh (2006) 9 SCC 713***. We have gone

through the judgment of the Apex Court in said case and found that it was a case of alleged rape with the victim aged eight years, and there was no medical evidence on record to suggest that hymen was torn or that there were any other sign of commission of rape. In the present case, the accused is said to have committed the crime at gunpoint with a married woman, as such the case of Yerumalla (supra) cannot be applied to the present case.

16. Having re-appreciated the entire evidence on record and after considering the submissions of the learned counsel for the parties, in the above circumstances, we do not find any illegality committed by the trial court in appreciating the evidence on record and coming to the conclusion that the prosecution has successfully proved the charge of offence punishable under Section 376 IPC against the accused John R Marak. We further agree with the trial court that the sentence for rigorous imprisonment for a period of 10 years and fine of Rs. 10,000/- is just and proper in the facts and circumstances of the case.

17. Accordingly, the criminal appeal is dismissed. Lower court record be sent back to make the accused John R Marak undergo remaining part of the sentence awarded by the trial court.

JUDGE
(Hon'ble Mr Justice TNK Singh)

(Prafulla C Pant)
CHIEF JUSTICE

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09.07.14