

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 356 OF 2013
(Arising out of S.L.P.(CrI.) No. 2911 of 2012)

UTTAM SUTRADHAR

Appellant(s)

VERSUS

THE STATE OF TRIPURA THROUGH S.H.O.

Respondent(s)

O R D E R

The appellant stands convicted under Section 376 (I) IPC and sentenced to seven years with fine and a default stipulation. At the Bar there was no controversy with regard to the fact that the appellant has in fact completed his sentence. Mr. Abhimanue Shrestha, learned counsel for the appellant, however, sought to press the appeal on merits seeking acquittal and, therefore, we heard the parties at length.

The primary contention on behalf of the appellant is that the witness being dumb, no oath having been administered to her, cross-examination has not been possible causing serious prejudice to the appellant. The deposition of the prosecutrix, therefore, cannot be completely relied upon in the facts and circumstances of the case. In the alternative, it was submitted that the prosecutrix was a consenting adult and merely because the relationship may not have fructified into matrimonial relations, will not make the offence under Section 376(1) of IPC.

Mr. Shuvodeep Roy, learned counsel for the State submits that the victim may have been dumb but she gave sufficient indication in

the Court, by signs and gestures, pointing towards the appellant suggesting that her pregnancy was attributable due to him. He also pointed out that the child born, was sent to the orphanage.

We have considered submissions made on behalf of the parties. The appellant was an unmarried man staying in the neighbourhood of the prosecutrix. He developed relations with the family of the prosecutrix and became a frequent visitor and subsequently developed intimacy with the prosecutrix. It is not in dispute that the prosecutrix was an adult approximately between 17 to 22 years of the age. The relationship between the parties appears to have continued till the pregnancy was visibly detected.

PW 5 is the sister-in-law of the prosecutrix. She deposed that she was married to her brother seven years ago and in the course of her stay and interaction with the prosecutrix over a period of seven years she was well conversant with the signs and gestures of the prosecutrix to understand the communications being made by her. She deposed that the appellant was a neighbour visiting them often, and would interact with the prosecutrix also by signs and gestures. The prosecutrix has told her with signs and gestures that she had physical relations with the appellant and also told her to arrange their marriage. The prosecutrix had also told her that the appellant had assured her of marriage because of which she agreed to the physical relations. There is nothing in the evidence of PW 5 which creates any doubt in our mind. On the contrary, her statement that she was in a position to fully understand the signs and gestures of her sister-in-law living with her for seven years is completely acceptable to us in the course of

normal human conduct and understanding of a handicapped person with whom one has been living for long years. The appellant does not deny that he was living in the neighbourhood and that he was a frequent visitor to the house of the prosecutrix. It is not the case of the appellant that the prosecutrix was having an affair or established physical relationship with any other, except a vague suggestion of an unnamed fictional person.

The High Court has taken the view that the appellant, considering the handicap of the prosecutrix in fact never had the intention to marry her but only exploited the situation for his own lustful benefit to establish physical relations with her. The prosecutrix being dumb was obviously enamoured by the appellant and she thought that the appellant was coming to her aid notwithstanding her disability which would not be a handicap between their love relationship. It was under this misconception that the prosecutrix consented. We find ourselves in full agreement with the reasoning of the High Court. Had the prosecutrix not been suffering from the handicap of being dumb, entirely different considerations may have arisen. Keeping in mind the physical condition of the prosecutrix, we find no reason to come to any different conclusion.

The submission on behalf of the appellant that he has been prejudiced because he was denied the opportunity of cross-examination due to the handicap of the prosecutrix does not appeal to us. Section 119 of the Indian Evidence Act before its amendment in 2013 read as follows:

"119. Dumb witnesses.—A witness who is unable to

Speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence."

The Trial Court while recording the statement of the prosecutrix has noticed that she was dumb and she can only make sounds by mouth and give signals by hands. She was examined in camera in presence of the appellant and the counsel for both sides. The Court was satisfied that it was in a position to understand on basis of her signs, gestures and postures as to what she was trying to communicate. In the circumstances, no oath was administered to her. Standing in the dock she pointed out her fingers and eyes towards the appellant who was present in the dock and by signs and gestures indicated that on various occasions the appellant had called her away and embraced her. The mere absence of any clear signals in respect of the pregnancy loses much of its relevance in view of the signs and gestures of the prosecutrix read with the evidence of PW 5.

In 2012 (5) Scale 570 [*State of Rajasthan vs. Darshan Singh @ Darshan Lal*] it was held that a dumb person is a competent witness. If the witness is not able to read and write the statement can be recorded in sign language. In the facts of the present case, we are satisfied that the learned Trial Judge had taken all precautions in consonance with the provisions of Section 119 of the Evidence Act and mere failure on the prosecutrix to be cross-examined to the satisfaction of the appellant cannot be said to have caused any prejudice to him.

In the circumstances, we find no reason to interfere. The appeal is dismissed.

Pending application(s), if any, shall stand(s) disposed of.

.....J.
(NAVIN SINHA)

.....J.
(KRISHNA MURARI)

New Delhi;
March 03, 2021.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 356/2013

UTTAM SUTRADHAR

Appellant(s)

VERSUS

THE STATE OF TRIPURA THROUGH S.H.O.

Respondent(s)

Date : 03-03-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE KRISHNA MURARIFor Appellant(s) Mr. Abhimanue Shrestha, Adv.
Ms. Anuradha Mutatkar, AOR
Ms. Mamta Saxena, Adv.For Respondent(s) Mr. Shuvodeep Roy, AOR
Mr. Kabir Shankar, Adv.
Mr. Rahul Raj, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of signed order.

Pending application(s), if any, shall stand(s) disposed of.

(NEETA SAPRA)

COURT MASTER (SH)

(Signed order is placed on the file)

(DIPTI KHURANA)

COURT MASTER (NSH)