

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLA No.23 of 2010

From the judgment dated 28.12.2009 passed by the Sessions Judge,
Keonjhar in S.T. Case No.219 of 2008.

1. Jogi @ Chakradhar Naik @ Nayak **Appellants**
2. Purna @ Parsuram Naik @ Nayak
3. Ranjan Naik @ Nayak

-versus-

State of Odisha **Respondent**

Advocates appeared in this case through Hybrid Mode :

For Appellants : *Mr. C.R. Sahu, Advocate*

For Respondent : *Mr. J. Katikia, Addl. Govt. Advocate*

CORAM:

JUSTICE S.TALAPATRA
AND
JUSTICE SAVITRI RATHO

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Date of Judgment : 21.12.2022
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S.Talapatra, J. Heard Mr. C.R. Sahu, learned counsel appearing for the
Appellants and Mr. J. Katikia, learned Additional Government Advocate
appearing for the State.

2. This is an appeal under Section 374 (2) of the Cr.P.C. from the judgment dated 28.12.2009 delivered in S.T. Case No. 219 of 2008 by the Sessions Judge, Keonjhar. Three Appellants were charged under Sections 376(2)(g)/ 306/ 34 of the I.P.C. for committing rape of the victim (the name is withheld) and for abetting her suicide, with a common intention to commit the said offences.

3. The Appellants denied the charges and claimed to be tried in accordance with law.

4. In order to substantiate the charge, the prosecution examined 8 witnesses including P.W.2 who, according to the prosecution, is the star witness. In defence, the Appellants examined two witnesses. The statement of the accused persons were recorded under Section 313 (1) (b) of the Cr.P.C. for having their response to the incriminating materials those surfaced in the evidence.

5. On appreciation of the evidence, the Appellants, namely, (1) Jogi @ Chakradhar Naik @ Nayak, (2) Purna @ Parsuram Naik @ Nayak and (3) Ranjan Naik @ Nayak were convicted under Sections 376(2)(g)/ 306 of the I.P.C. and were sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/-, in default to undergo rigorous imprisonment for two years for commission of offences punishable under Sections 376 (2) (g) of the I.P.C. and further, to under rigorous

imprisonment for seven years and to pay fine of Rs.4,000/- and in default to undergo rigorous imprisonment for one year for commission of offences punishable under Section 306 of the I.P.C. The said judgment and order of conviction and sentence are under challenge in this appeal by the Appellants.

6. Mr. C.R. Sahu, learned counsel for the Appellants, has submitted that there is no legal evidence against the Appellants and the said conviction has been returned on mere surmise.

7. Mr. Sahu, learned counsel has taken us to the testimonies of the prosecution witnesses.

8. P.W.1, Deepak Naik, a child witness was declared hostile and at the instance of the prosecution, he was cross-examined under Section 154 of the Indian Evidence Act. He has denied all the statements he had purported us made to the Investigating Officer. P.W. 2, Bijay Kumar Naik has as well, testified in the trial and stated that the Appellants are his co-villagers. His brother, Pradip Naik, has grocery shop and a betel shop. In the previous evening, when he had gone to the village chhaka for work, he saw one woman sitting in front of the betel shop of Siba Naik and three accused persons were around. Thereafter, he left the place. In the cross-examination, he has clarified that the Appellants did not talk to the said lady. On the way back, he saw the accused, the

Appellant no.3, Ranjan Naik @ Nayak was coming with the new born baby at his hands, at about 6 p.m. P.W. 3, Siba Sundar Naik, has also testified in the trial. He has stated that he saw the dead body of the deceased hanging from a mango tree at about 7 A.M. He has testified in the trial that in the previous evening, he saw that woman. She came to his shop for purchasing biscuit and after purchasing biscuit, she ate it nearby his shop. During conversation, she told P.W.3 that she was from Janha near Jajpur road and she had come to her sister's husband's house. According to P.W.3, she was mentally unsound and she sat near his shop for about 2 to 3 minutes and at that time, his co-villagers, namely, Chitamani Naik and the accused, Chakradhara Naik and Parsuram Naik were nearby his shop. The Appellants did not talk to the woman. He left for his home within five minutes. He is the seizure witness of the garments of these three Appellants; and some broken bangles and plastic chappals. In the trial, he identified his signatures on the seizure lists being Exts.1/1, 2/1, 3/1, 4/1 and 5/1. But he has not disclosed any material fact which might have supported the prosecution case. P.W.4, Laxmidhar Murmu was a Sub-Inspector of Police in Ghatagaon P.S. He had received the written report from the informant, Bharat Charan Sahoo, O.I.C., Ghatagaon P.S. and registered a case as U.D. Case No. 11/2008. Inquiry was taken up. During inquiry, the

broken bangles and plastic chappals of the deceased were seized by him. He had also seized the wearing apparels of the deceased and sent those materials to the Forensic Science Laboratory, Keonjhar for examination. He identified the handwriting of Bharat Charan Sahu, who registered the case and took up the case for investigation. He has categorically stated that he had not examined any member of the deceased's family. P.W.5, Dr. Priyambada Behera, examined the Appellant No.1, Jogi @ Chakradhar Naik @ Nayak and collected his semen in a vial. Finally, she prepared the report and observed that the said Appellant was capable of having sexual intercourse. No injury was found on his body. He had also examined the other two Appellants, namely, Purna @ Parsuram Naik @ Nayak (the Appellant No.2) and Ranjan Naik @ Nayak (the Appellant No.3). He had submitted similar reports in respect of the said Appellants.

9. P.W.6, Dr. Sudhansu Kumar Das, carried out the post mortem examination on the dead body of an unknown female. He found the following injuries on the dead body:

- (i) *Ligature mark if 3.5 cm in width around the neck. The mark was yellowish in colour. It was situated above the thyroid cartilage and below the chin encircling the neck from middle of right*

mandible to middle of neck obliquely with a single knot found below middle of right mandible.

(ii) Abrasion of size of 2.cm x 2 cm on right lower lip.

(iii) Both labia majora were wide apart with minora protruding outside. Labia was red and inflamed having white stain. Hymen had old tear. Vaginal orifice was dilated and was easily admitted 2 to 3 fingers.

(iv) There was sign of recent sexual intercourse.

10. P.W.6 has categorically opined in his report (Ext.12) that the death of that unknown woman occurred due to asphyxia for hanging. In the cross-examination, he has stated that the death was suicidal in nature. He has even conceded that he could not say the time of sexual intercourse that the female had prior to her death.

11. According to our considered opinion, the post mortem examination report is not very specific as regards the time of occurrence. P.W.7, Bharat Charan Sahu, was O.I.C. of Ghatagaon P.S. on the day when the dead body of that woman was discovered. He registered the case and took up the investigation. P.W.8, Binod Behera Patel, was the Circle Inspector of Police at that point of time. He took

the charge of investigation from P.W.7 and submitted the chargesheet against the Appellants. He has narrated, though briefly, how he had investigated the case. He has also stated that he had sent the material objects, as seized at the time of investigation, for forensic examination. The report (Ext.19) was received by him and that he had estimated by virtue of the report that the death was suicidal and it was caused by hanging. The Appellants claimed their innocence all through the trial. In their examination under Section 313 of Cr.P.C. also, they have reiterated their innocence.

12. After their examination under Section 313 of Cr.P.C., the Appellants adduced two witnesses viz. D.W.1, Chintamani Naik and D.W.2, Bhagaban Naik. D.W.1, Chintamani Naik has stated in the trial that he met the Appellant No.1, Jogi @ Chakradhar Naik @ Nayak and the Appellant No.2, Purna @ Parsuram Naik @ Nayak at Sanabarabeda Chaka as they were going to Chatagaon hospital with rice for Ranjan Naik @ Nayak, as Ranjan was attending the hospital for looking after his newly born daughter. After some time, Ranjan and his wife came in a vehicle with the child and he went away. D.W.2, Bhagaban Naik, has followed suit.

13. On appreciation of the evidence, the trial judge has observed that from the totality of the evidence on record, one can conclude that these

three accused persons committed gang-rape on the deceased and the deceased, because of the gang-rape, was abetted to suicide. Minor discrepancies here and there are to be over-looked, no undue importance can be given to those minor discrepancies. Having observed thus, the trial judge has held that the prosecution has proved its case beyond reasonable doubt. As consequence, he convicted the Appellants.

14. Mr. J. Katikia, learned Additional Government Advocate appearing for the State has submitted that there are adequate materials for convicting three Appellants. He has referred to the evidence for demonstrating the materials in support of the circumstance of last seen together.

15. On appreciation of the entire evidence, we find that there is no material at all to even suspect the Appellants as the authors of the crime. They were found around the betel shop, where so many other persons were present. The judgment of conviction has been returned on sheer surmises and without an iota of legal evidence. As such, we have no hesitation to hold that the judgment of conviction is liable to be set aside and accordingly, it is ordered.

16. As consequence of our finding, as noted above, we set aside the order of sentence. We have been told that the Appellant No.3, Ranjan Naik @ Nayak is on bail and other two Appellants, viz. the Appellant

No.1, Jogi @ Chakradhar Naik @ Nayak and the Appellant No.2, Purna @ Parsuram Naik @ Nayak are still in jail. We hold that the Appellant No.3 is acquitted from the criminal liability and he is entitled to remain free, unless he is wanted in any other case. Similarly, the other two Appellants, viz. the Appellant No.1, Jogi @ Chakradhar Naik @ Nayak and the Appellant No.2, Purna @ Parsuram Naik @ Nayak are, for the same set of reasons, acquitted from the charge as brought against them. They shall be released forthwith, if not wanted in any other case. The sureties are discharged from their obligation, so far as Appellant No.3 is concerned.

17. In the result, this appeal stands allowed.

18. L.C.Rs., if still are lying in the Registry, be returned. Release order be issued in respect of the Appellants No.1 and 2 forthwith.

19. Urgent certified copy of this order be granted on proper application.

(S.Talapatra)
Judge

(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated 21st December, 2022/Puspa