

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA NO.301 OF 2015

(From the judgment and order dated 16th March, 2015 passed by learned Addl. Sessions Judge, Parlakhemundi in S.T. No.56 of 2012)

Mukunda Parichha

... Appellant

-versus-

State of Odisha

... Respondent

Advocates appeared in the case through hybrid mode:

For Appellant : Mr.Manoj Kumar Panda,
Advocate

संयुक्त न्याये -versus-

For Respondent: Mr.Priyabrata Tripathy,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

06.01.2023.

Sashikanta Mishra,J. The Appellant challenges the judgment dated 16th March, 2015 passed by learned Addl. Sessions

Judge, Parlakhemundi, Gajapati in S.T. No.56/2012 whereby he was convicted for the offence under Section 376 and 506(ii) of I.P.C. and sentenced to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.20,000/-, in default to undergo further Rigorous Imprisonment for one year for the offence under Section 376 I.P.C. and Rigorous Imprisonment for three years and to pay fine of Rs.5,000/-, in default to undergo Rigorous Imprisonment for further six months for the offence under section 506(ii) I.P.C. Both the sentences have been directed to run concurrently.

2. The prosecution case, in brief, is that on 1st August, 2012 at about 7 A.M., the accused came to the house of the victim and asked to accompany him as she was called by Naxals. The accused also intimated the victim that if she does not go with him, in the night she will be killed by cutting of her throat. Thus, the victim being frightened accompanied the accused to the nearby forest at the end of the village where no one was present. Accused informed the victim that he

would save her from the clutches of the Naxals in exchange for having sex with him, which was opposed by her. The accused however, put her on the ground forcibly and committed rape. The victim was further threatened that he would cut her throat if she disclosed the occurrence before any person. On 12th September, 2012 there was a gathering of about 500 people for discussion regarding a letter of threat issued by Naxals to the Sarpanch of the Panchayat. In that meeting the accused admitted to have raped the victim despite her protest. As such on 13th September, 2012, the informant lodged a written complaint before the Adava P.S. basing on which P.S. Case No.32/2012 was registered corresponding to G.R. Case No.150/2012 of the Court of learned J.M.F.C., R.Udayagiri. Upon completion of investigation charge sheet was submitted under Sections 376/506 of I.P.C. and cognizance was taken and the case was committed to the Court of Session for trial.

3. The defence took the plea of denial and false implication.

4. To prove its case, the prosecution examined 12 witnesses including P.W.1 as the victim. The prosecution also proved 8 documents and two witnesses were examined on behalf of the accused.

5. The Trial Court framed the following points for determination.

(i) Whether on dated 01.8.2012 the accused had committed rape over the victim inside the forest near village Katama by having forcible sex with her?

(ii) Whether on the above day, date, time and place the accused had criminally intimated the victim by threatening her to kill her from her life if she disclosed the fact of rape before anyone with an intention to cause alarm to her?

6. On the first point, the Trial Court scanned the evidence on record particularly, that of the victim (P.W.1), her mother, villagers and the two doctors (P.Ws.9 and 10) to hold that the prosecution successfully proved the allegation of rape by the accused on the victim beyond all reasonable doubts and thus, found him guilty under Section 376 of I.P.C. On the second point, the Trial Court took note of the version of the victim that the accused had repeatedly threatened to cut her throat firstly, to commit rape on her and secondly, if she disclosed such fact before any person. Thus, the Trial Court held the Appellant also guilty for the offence under Section 506 I.P.C.

7. Heard Mr. M.K.Panda, learned counsel for the Appellant and Mr. P. Tripathy, learned Addl. Standing Counsel for the State.

8. Assailing the impugned judgment, Mr. Panda has raised the following contentions:-

(i) The so called extra judicial confession of the accused before the villagers in the meeting cannot be treated as admissible in view of the evidence that he was pressurized and threatened to do so.

(ii) The victim's version being beset with doubts could not have been relied upon by the Trial Court as the basis for convicting the accused.

Mr. Panda has relied on some decisions to buttress his contentions, which would be discussed at the appropriate place later.

9. Per contra, Mr. P. Tripathy has supported the findings of learned Trial Court by submitting that when the version of the victim is clear, cogent and credible, it is adequate to convict the accused basing on it. The victim not being an accomplice, no corroboration is necessary in a case of rape. It is further argued that the victim had adequately explained the reasons for not disclosing the fact before any person as also for lodging the F.I.R. belatedly. According to Mr. Tripathy,

therefore, the impugned judgment warrants no interference.

10. The facts of the case as revealed from the evidence on record are that the occurrence is said to have taken place on 1st August, 2012 at about 7 A.M. It is in the evidence of the victim herself as also that of her mother that she had not disclosed before any one much less her mother and family members about the occurrence. She did so for the first time on 12th September, 2012 in a meeting of the Panchayat held in the village to discuss about the letter of threat issued by the Naxals. Basing on her disclosure, the occurrence came to light and accordingly, the F.I.R. was lodged on the next day i.e. on 13th September, 2012.

Mr. Panda has raised serious objections to the reliance placed by the Trial Court on the evidence of the so called extra judicial confession made by the accused in the aforementioned meeting. In this regard, the victim (P.W.1) stated as follows:

“On 12.9.2012, a meeting was convened in our village concerning a notice given by naxals to our Sarpanch. I was also called to the meeting. The accused had also been called. Many persons attended that meeting. In the meeting I told the above incident to the Sarpanch and other gentries present namely Jugal Sualsing, Pratap Mantri and Lasinga Patamajhi. I told them that the accused forcibly raped me. In that meeting two women namely Sabitri and Nalini and a girl named Sankhini also complained to the village gentries that the accused raped them in the similar fashion under the threat of naxals. Before the village gentries the accused admitted to have raped me and other women.”

P.W.1 further stated that she was called to the meeting because she was seen going with the accused. According to P.W.8, the villagers of Katama brought the accused to the Panchayat Office on the allegation of rape on the victim girl and a meeting was convened wherein the entire villagers were present. P.W.7 says that the meeting was convened to discuss about the threatening letter issued by an unknown person and 500 villagers attended the said meeting. He also says that in the said letter, the name of Mukunda was

written at the bottom for which the accused, who is also named Mukunda, was doubted.

11. This Court is of the view that if the meeting was convened to discuss the letter of threat issued by the Naxals, there is no reason why the victim and other girls of the village would be called to attend the same. Moreover, there is no evidence that the victim or her father had made any complaint in the village, which could be the basis or reason for convening the meeting. P.W.6 also says that the meeting was convened to discuss about the threat over letter received by the villagers and nearly 500 people attended the said meeting and there was allegation against the accused of committing rape on the victim and others. He further says that the minutes of the said meeting was prepared by the Sarpanch and he was signatory to the same. The Ward Member cannot say why the meeting was convened in the village. Thus, the purpose for which the meeting was held is not clear. The so-called letter of threat received by the villagers was never

proved nor was the minutes of the meeting. This raises a doubt whether such a meeting took place at all.

12. It is the prosecution case that the accused confessed of committing rape on the victim. In this regard, the evidence of the Sarpanch is relevant, who being examined as P.W.8, stated as follows:-

“The villagers of Katama brought the accused to the Panchayat Office on the allegation of rape on the victim girl. We convened a meeting and the entire villagers were present. One Asinga Majhi acted as the President. When the said Asinga Majhi questioned the accused with regard to the allegation of rape, the accused did not admit the same. Then the villagers left the accused in my custody for three days and after three days again they threatened the accused to take away his life. As the life of the accused was at risk, I proceeded to the P.S. and produced the accused before the Police. In this said meeting the victim informed everyone that the accused committed rape on her against her will. In the said meeting also other victims namely, Sankini, Nalini and Sabitri alleged against the accused that he committed rape on them.”

13. This clearly suggests that the accused was put under some kind of coercion and/or pressure. Mr. Panda has relied upon a decision of a Division Bench

of this Court rendered in the case of **Sunadhar Khilla v. State of Orissa**; reported in 2008 (2) Crimes 690, wherein in a case involving similar facts, it was held that the statement made by the accused under threat and force cannot be treated as voluntary. It is well settled that the so-called extra judicial confession must be voluntary and without any kind of coercion or pressure from any quarter. In view of the admission of P.W.2 that the accused was left by the villagers in his custody for three days and they also threatened to take away his life, the so-called extra judicial confession cannot be said to have been voluntarily made so as to be accepted.

14. If the evidence relating to the extra judicial is brushed aside, the Court is left only with the evidence of victim (P.W.1). It is the settled position of law that the sole testimony of the victim is adequate to prove the offence of rape provided it has a ring of truth in it and is otherwise truthful and believable. In the instant case, the victim was allegedly raped on 1st August,

2012. Till 12th September, 2012 she did not disclose the same to anyone including her mother. She explains that she did not disclose as the accused had threatened to kill her, but she did so in the meeting because she could gather courage seeing many persons. This Court has already disbelieved the factum of convening of the meeting. Even otherwise, it does not stand to reason or a probable or normal conduct on the part of a girl as young as the victim was at the relevant time to hide such fact from her own mother for whatever reason but could disclose the same before 500 villagers in the village meeting. The above act of the victim militates against normal human conduct. Moreover, if a minor girl like the victim was forcibly raped, it is only natural that she would have sustained injuries not only on her private parts but also on her body. There is nothing in the evidence to show that the victim had sustained any such injuries or if she had sustained any injury how could she conceal the same for nearly two months after the occurrence and not say anything about it even to her mother.

For all the above reasons therefore, the version of the victim becomes difficult to believe.

15. The Court must distinguish between a mere possibility and probability because a case is to be decided on broader probabilities. Merely because, an act is theoretically possible does not necessarily mean that the same is probable under the facts and circumstances of the case. In other words, the Court is required to make a broader assessment of the evidence on record to find out whether the version of the witnesses suggest the probability of the occurrence having taken place. In the instant case this Court, for the reasons discussed herein before cannot persuade itself to believe the version of the victim. At the very least two views are possible namely, one favouring the prosecution and the other favouring the accused in the peculiar circumstances of the case. It is trite that the latter has to be accepted.

16. Reading of the impugned judgment reveals that the Court below has accepted the version of the victim

on the ground that no corroboration is necessary. Learned Court below has also considered the theoretical possibility that a woman ordinarily would not like to speak about something affecting her character and estimation. While the above may be a plausible presumption of the conduct of a woman subjected to rape the same would be too broad a generalization to be accepted in every case as a rigid formula. Such theorizing, divorced of the peculiar facts and circumstances can result in erroneous appreciation of the evidence adduced in a particular case, which unfortunately, the impugned judgment is found to be suffering from. Hence, the impugned judgment of conviction and sentence cannot be sustained in the eye of law.

17. For the foregoing reasons therefore, the appeal is allowed. The impugned judgment of conviction and sentence is hereby set aside. The Appellant be set at liberty forthwith if not required to be detained in

connection with any other case and his bail bonds be discharged.

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(Sashikanta Mishra)
Judge

Ashok Kumar Behera





