

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLREV No.270 of 2021

From the judgment dated 11.12.2015 passed by the learned Addl. Sessions Judge, Bhanjanagar in Criminal Appeal No.19 of 2011 confirming the judgment and order dated 26.07.2011 passed by the learned Asst. Sessions Judge, Bhanjanagar in S.T. Case No.08 of 2007.

Bhagaban Gouda

.... Petitioner

-versus-

State of Odisha

.... Opp. Party

Advocates appeared in this case through Hybrid Mode :

For Petitioner

: *Mr.K.P.Dash, Advocate*

For Opp. Party

: *Mr.K.K.Nayak, ASC*

CORAM:

JUSTICE SAVITRI RATHO

.....
Date of Judgment 25.07.2022
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Savitri Ratho, J.

The petitioner has been convicted vide judgment and order 26.07.2011 passed by the learned Asst. Sessions Judge, Bhanjanagar in S.T. Case No.08 of 2007 for commission of offence punishable under Section 376 of I.P.C and sentenced to undergo R.I. for seven years and to pay a fine of Rs.2000/-, in default of payment, to undergo R.I. for two months more. The conviction and sentence has been confirmed by judgment and order dated 11.12.2015 passed by the learned Addl. Sessions Judge, Bhanjanagar in Criminal Appeal No.19 of 2011.

2. The prosecution case in brief as per is that the victim – the daughter of Bijaya Pradhan was deaf and dumb from her childhood and was aged about 20 years at the time of occurrence. The accused - petitioner was aged about 30 years at the time of occurrence. On 09.06.2006 at 3.00 P.M., while the victim was returning from the paddy field where she had gone to attend the call of nature, the petitioner committed rape on her, assaulted her and threw her in the paddy field. She became senseless and regained her sense at 6.00 pm after which she went home and narrated the events to her family members. Her father Bijaya Jena reported the matter at the Buguda Police Station pursuant to which S.D. entry No.147 and then Buguda P.S Case No 104 dated 10.06.2006 was registered and investigation taken up. After completion of investigation, chargesheet was filed against the petitioner for commission of offences punishable under Section 376 IPC.

3. The defence plea was one of complete denial. The further plea of the accused was that he had been falsely implicated due to previous enmity.

4. The prosecution examined ten witnesses to prove its case.

P.W.1-Chakrapani Pradhan has stated that the occurrence took place on 9.6.2006 and he was the president of the caste ‘Samaj’ to which the informant belongs to. Thereafter, on 10.6.2006 the informant Bijaya

Kumar Pradhan and his brother informed him about the incident but as the caste forum was not competent to settle the dispute he requested the informant to file F.I.R. before the police and in cross-examination he stated that the police had not examined him in this case and there is no Gramya committee in their village.

P.W.2-Bibhuti Bhusan Pradhan has stated that the occurrence took place on 9.6.2006 and on that date the victim was working in his garden and he noticed that the saree she was wearing was damaged and he instructed other workers to instruct the victim to wear it properly. In cross-examination, he stated that he had not talked with the victim on 9.6.2006.

P.W.3-Surendra Pradhan is the younger brother of the informant and he has stated that on the evening of the relevant day, he found the victim girl to be crying and on his query, the victim answered him by signs that the accused after damaging her wearing saree had raped her and he was able to understand the signs of the victim and immediately he alongwith the informant and victim went to the house of their caste President, P.W.1 and on the way, the victim had also shown them the house of the accused and their caste president asked them to file F.I.R. and in cross-examination he has stated that there is a village committee in their village and he stated that he is staying separately from the informant as well as other brothers that his wife alongwith the wife of the informant were present when the victim narrated about the incident before them. In

cross examination, he has stated he could not say the exact date of the occurrence and that he was able to understand some of the signs of the victim and unable to understand some other signs and gestures.

P.W.4-Mamali Pradhan has stated that the victim was working with her in the garden of P.W.2.

P.W.5-Bijaya Pradhan is the informant in this case and he corroborated the F.I.R. story in his examination-in-chief and he stated that at about 6.00 p.m. on 9.6.2006, his daughter told him by sign that the accused had raped her on the bank of river called “Boda” and his daughter also identified the accused to be the person who was sitting in front of the house of P.W.1 .He has also stated that the F.I.R was scribed by one Raju Pradhan as per his instruction and he proved the same as Ext.1. In cross-examination he stated that he is an illiterate person and the F.I.R. was scribed at Jagannath Prasad and his brothers accompanied him to lodge the F.I.R. and the F.I.R. was lodged at 8.00 p.m. and he stated that the victim had not shown them the place where she was raped. But the police during investigation visited the spot and he had accompanied the police at the time and the victim and his brother accompanied the police during the spot visit. But he had not gone to the spot and stayed at a little distance from the spot and that nobody was present when the victim narrated about the incident and the victim had also disclosed about this incident before other villagers when she was returning.

P.W.6 is the victim who is deaf and dumb. She was examined with the help of her mother who acted as an expert and who is well acquainted with the signs of the victim. The victim identified the accused who was standing in the dock on the date of her giving evidence and she stated that the occurrence took place at about 4.00 p.m. near the river of their village and at the time when she had gone to attend the call of nature the accused made her naked and raped her near the river bank and the victim also gave signs in the court that she was made naked by the accused and during the offence of rape the accused made her flat on the ground and raped her thereafter and after rape the accused left the spot and her saree was damaged and she proved her damaged saree as M.O.1 and the under garment of the accused as M.O.II and she stated that she had identified the accused to her mother and relatives and that she was also examined in the medical. In cross-examination she admitted that after the incident she had attended her work and returned home after two hours and her parents were present in the house when she returned home and she narrated the incident before her parents and she stated that she cannot say for how much time rape continued and the occurrence place is an open place that she is an illiterate lady and had knowledge to put her signature.

P.W.7-Duti Krushna Pradhan is witness to seizure and stated that the police had seized the damaged saree in her presence and prepared seizure list vide Ext. 2 where he had signed.

P.W.8- Bana Behera did not support the prosecution case.

P.W.9-Dr. Geeta Sahu is the Medical Officer has stated that she examined the victim on 12.6.2006 on police requisition and opined her age to be between 18 to 20 years as per her physical, dental, radiological and laboratory tests and that there was medical evidence of recent sexual intercourse and spermatozoa was noticed on examination of vagina of the victim, who was identified by one constable namely Krushna Chandra Patra as well as the father of the victim as per her report Ext.3, where the victim had signed vide Ext.3/2. In cross-examination also stated the x-ray plate of the victim girl is not available in the record and other external injuries of the victim may be possible depending upon the place where the victim was raped and she gave final opinion on 28.6.2006 and the report was prepared alongwith her examination and after receipt of the radiological part of examination and after examination of x-ray plate.

P.W.10-Bidya Dhar Biswal is the Investigating Officer who corroborated the prosecution case and proved the documents as mentioned earlier. He has stated that he had not recorded the statement of the victim girl under Section 161 Cr.P.C. as she is deaf and dumb but she narrated about occurrence by signs and that the spot is a field where brinjals are cultivated.

5. That the learned trial court after analysing the evidence came to the conclusion that the prosecution had successfully established

that the petitioner- accused had committed rape of the victim against her will and without her consent on 09.06.2006 at 3.00 pm and convicted him for commission of the offence under section 376 IPC and sentenced him to undergo R.I. for seven years and to pay a fine of Rs.2,000/- and in default of payment to undergo R.I. for two months more with a direction that the period of detention of the convict should be set off against the period of sentence under section 428 Cr.P.C.

6. The petitioner accused filed Criminal Appeal No.19 of 2011, challenging his conviction and sentence. The same was dismissed vide judgment and order dated 26.07.2011 passed by the learned Asst. Sessions Judge, Bhanjanagar in S.T. Case No.08 of 2007, confirming his conviction and sentence.

7. Mr. Dash, learned counsel for the petitioner has submitted that the conviction of the petitioner is liable for interference as the evidence of P.W.6-prosecutrix cannot be relied upon as she has not been examined by police and her statement under Section 161 and 164 Cr.P.C. has not been recorded for which he has been prejudiced as he has been unable to cross-examine her with reference to her earlier statements. Referring to her deposition, learned counsel for the petitioner submits that evidence of the victim is totally unnatural as after the alleged rape, she has worked for two hours and thereafter returned home. He also submitted that the conviction of the petitioner is

liable to be set aside as the medical evidence does not support the commission of rape (there is no physical injury on the victim) and even though the alleged place of occurrence is an open space, but there are no other witnesses to the occurrence. His alternate submission is that the petitioner is in custody since more than 6 years as during trial, he had been remanded to custody on 11.06.2006 and has been released on bail on 03.08.2011 and thereafter, he was arrested on 15.02.2021 and is continuing in custody till date.

8. Mr. K.K.Nayak, learned Addl. Standing Counsel has submitted that the statement of the victim was not recorded separately by the police as she is deaf and dumb and there is no infirmity in the impugned judgments as the victim who has been examined as P.W.6 has stated about commission of rape on her by the petitioner whom she has identified in Court and her evidence has been corroborated by the evidence of doctor, P.W.9 and her father P.W.5. He further states that even though the deceased is a deaf and dumb girl, she has deposed about the incident in sign language which has been interpreted by her mother, who is an expert in such language. He has also submitted that the evidence of P.W.3, the uncle of the victim girl also corroborates the evidence of the P.W.6.

9. The Supreme Court in a catena of decisions has held that in case of rape, the sole evidence of the prosecutrix will be enough to

sustain a conviction if her evidence is found to be cogent and reliable. It is therefore necessary to examine the evidence of P.W 6 the deaf and dumb victim, with care. She has been examined with the help of her mother, who acted as an expert and who is well-acquainted with the signs of the victim. She stated that the occurrence took place at about 4 P.M. near the river of their village and at the time, while she had gone to attend the call of nature, the accused made her naked and raped her near the river bank. The learned trial Court noted her signs in the court that she was made naked by the accused and during the offence of rape and the accused made her flat on the ground and raped her and after her rape the accused left the spot. Her wearing saree was damaged and the same has been marked as M.O. I and the under garment of the accused as M.O. II and that she sustained minor injuries on her back during the occurrence. She has stated that she had identified the accused to her mother and relatives and that she was also examined in the medical. In cross-examination at paragraph-4, she has admitted that after the incident, she had attended her work and returned home after two hours and her parents were present in the house when she returned home and she narrated the incident before her parents and she stated that she could not say for how long the rape continued and that the occurrence place is an open place. She has admitted that she is an illiterate lady and had knowledge to put her signature.

I do not find any major infirmity in the evidence of P.W 6, so as to keep it out of consideration. Merely because she admitted that she had gone to her work for two hours after the rape does not render her evidence liable for rejection. Her evidence has been corroborated by the evidence of P.W.3, her younger brother, her father P.W.5 who is also the informant and to whom she had shown the accused, P.W.2 her employer who noticed her damaged saree, P.W.9 the Medical Officer who had examined her and found minor injuries on her back which was noticed by the I.O. I therefore find no merit in the contention of the learned counsel for the petitioner that he has been prejudiced as he could not cross examine the victim with reference to her statements before the police. So there is no reason to interfere with the conviction of the petitioner for the offence under Section 376 IPC, which is confirmed.

10. Now to deal with the contention of the alternate prayer of the learned counsel for the petitioner for reduction of sentence in case the conviction of the petitioner is confirmed.

The custodial sentence imposed on the petitioner is the minimum prescribed for the offence of Section – 376 IPC. The statute provides that the Court has the discretion to impose a sentence of imprisonment less than the prescribed minimum for ‘adequate and special reasons’. In the present case, the victim is a deaf and dumb

woman. She has been raped and assaulted by the accused on account of which she became unconscious and regained consciousness in the evening. The Courts below have already imposed the minimum sentence of seven years. The fine amount is also nominal. No special reason has been urged by the learned counsel for reducing the sentence. Therefore, I do not find any special reason for reducing the sentence. I am also of the opinion that in the facts of the present case and when such crimes are increasing every day, reducing the sentence will have a wrong social impact.

At this juncture, it would be apposite to refer to the decision of the Supreme Court in the case of ***State of Punjab vs. Rakesh Kumar*** reported in ***(2008) 12 SCC 33***, in the matter of reduction of sentence for an offence of rape. While reducing the sentence from seven years to three years, the Court found that the victim who was 16 years had stated accused and she were in love and she had sexual intercourse with the accused because of that. While doing so, the Court has held as follows :

....“ Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest,

cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.”...

11. The conviction of the petitioner for the offence under Section – 376 IPC and sentence to undergo R.I. for seven years and to pay a fine of Rs.2000/-, in default of payment, to undergo R.I. for two months more, is therefore confirmed.

12. The Criminal Revision is dismissed.

13. The records of the trial Court and appellate Court be sent back forthwith.

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(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated 25th July 2022 /Bichi