

IN THE HIGH COURT OF ORISSA, CUTTACK.

JCRLA No. 32 Of 2016

From judgment and order dated 03.03.2016 passed by the Sessions Judge, Phulbani in G.R. Case No. 48 of 2014/T.R. No. 23 of 2014.

Sisira Pradhan

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Appellant

-Versus-

State of Orissa

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Respondent

For Appellant:

Mr. Samarendra Mohanty

For State :

Mr. Arupananda Das

Addl. Government Advocate

P R E S E N T :

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 24.08.2022

S. K. SAHOO, J. The appellant Sisira Pradhan faced trial in the Court of the learned Sessions Judge, Phulbani in G.R. No. 48 of 2014/T.R. No. 23 of 2014 for the offences punishable under sections 376/506 of the Indian Penal Code and section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereafter for short 'POCSO Act').

The learned trial Court vide impugned judgment and order dated 03.03.2016 found the appellant guilty under sections 376(2)(i)/506 of the Indian Penal Code and section 4 of the POCSO Act and sentenced him to undergo R.I. for twelve years and to pay a fine of Rs.500/- (rupees five hundred), in default of payment of fine to undergo further R.I. for a period of two months for the offence under section 376(2)(i) of the Indian Penal Code and to undergo R.I. for one year for the offence under section 506 of the Indian Penal Code and both the sentences were directed to concurrently and no separate sentence has been imposed by the learned trial Court for the offence under section 4 of the POCSO Act in view of section 42 of the said Act by the learned Sessions Judge, Phulbani.

2. The prosecution case, in short, as per the first information report lodged by the victim 'LD' on 12.08.2014 before the officer in-charge of Sarangada police station is that on 11.08.2014 at about 10.00 a.m. while she was sleeping in her house and her parents had been to the house of her neighbour for watching television, at that time finding her alone, the appellant Sisir Pradhan entered inside her house, gagged her mouth, opened her pant and committed rape on her. When the parents of the victim arrived at the scene of occurrence, the appellant fled away giving threat to the family members with

dire consequences. On the basis of such written report, Sarangada P.S. Case No. 58 of 2014 was registered on 12.08.2014 under sections 376/506 of the Indian Penal Code and section 4 of the POCSO Act.

P.W.6 Radhakanta Sahu, who was the officer in-charge of Sarangada police station after registration of the case, took up investigation and during the course of investigation, he examined the informant and other witnesses, visited the spot, prepared the spot map Ext.9, arrested the appellant on 12.08.2014, seized the wearing apparels of the appellant as per seizure list Ext.5, sent the victim to Firingia C.H.C. for medical examination on 12.08.2014 and on the same day the wearing apparels of the victim were seized as per seizure list Ext.3. The I.O. made a prayer to the learned Special Judge, Phulbani for sending the seized exhibits to S.F.S.L., Rasulgarh, Bhubaneswar for chemical examination on 13.08.2014. The I.O. then forwarded the appellant to the Court on 13.08.2014. During course of investigation, the I.O. visited the school of the victim and seized the school admission register on production by the Headmaster as per the seizure list Ext.6 and left the same in the zima of the headmaster as per zimanama Ext.7. The I.O. prayed for recording of the 164 Cr.P.C. statement of the victim and

accordingly, the same was recorded. The I.O. received the medical examination report of the victim so also that of the appellant and on completion of investigation, submitted charge sheet against the appellant on 26.08.2014 under sections 376/506 of the Indian Penal Code and section 4 of the POCSO Act.

4. During course of trial, in order to prove its case, the prosecution examined seven witnesses.

P.W.1 'LD' is the victim, who is the informant in the case and she supported the prosecution case.

P.W.2 Manasi Digal is the mother of the victim and she stated that on the date of occurrence, she along with her husband had been to the neighbour's house to watch television and at about 10.00 p.m. they returned home and when she opened the door of her house, she saw the appellant had pounced over the victim and the appellant was in naked condition and the victim did not wear any pant and frock at that time and the appellant lifted her shirt upto her chest level. She gave a kick to the appellant whereafter the appellant picked up a quarrel with her and threatened to kill and on hearing the shout, the village members came to the spot house.

P.W.3 Suratha Digal, who is the father of the victim stated in the same manner as that of P.W.2.

P.W.4 Krushna Chandra Pradhan was the home guard of Sarangada police station and he is a witness to the seizure of the wearing apparels of the victim and that of the appellant as per seizure lists Exts.3 and 5 respectively.

P.W.5 Pedra Nayak, who was the Headmaster of the School where the victim was prosecuting her studies, is a witness to the seizure of the admission register vide Ext.8.

P.W.6 Radhakanta Sahu, who was the Officer in-charge of Sarangada police station is the investigating officer of the case.

P.W.7 Dr. Sanjeet Mohapatra, who was the Medical officer of Phiringia C.H.C examined the victim as well as the appellant on police requisition and proved its medical examination reports under Ext.2/2 and Ext.15 respectively

The prosecution exhibited fifteen documents. Ext.1 is the F.I.R., Ext.2 is the medical examination report of the victim, Ext.3 is the seizure list in respect of the wearing apparels of the victim, Ext.4 is the 164 Cr.P.C. statement of the victim, Ext.5 is the seizure list in respect of seizure of the wearing apparels of the appellant, Ext.6 is the seizure list of the admission register

where the victim was prosecuting her studies, Ext.7 is the zimanama of the said admission register, Ext.8 is the admission register, Ext.9 is the spot map, Ext.10 is the petition filed by the I.O. before the learned Special Judge, Phulbani for sending the seized exhibits to S.F.S.L., Rasulgarh, Ext.11 is the petition filed by the I.O. before the learned Special Judge, Phulbani for recording the statement of the victim under section 164 Cr.P.C., Ext.12 is the letter of the I.O. to the Medical Officer dated 12.08.2014 seeking opinion on the medical examination of the appellant on certain queries, Ext.13 is the letter of the I.O. to the Medical Officer dated 13.08.2014 to medically examine the appellant after his arrest, Ext.14 is the exhibit forwarding report to the S.F.S.L., Rasulgarh and Ext.15 is the medical examination report of the appellant.

5. The defence plea of the appellant is that the father of the appellant so also the father of the victim had applied for allocation of Indira Awas in village Katiguda and since Indira Awas was allotted in favour of the father of the appellant, there was ill-feeling between the two families for which a false case has been foisted.

6. The learned trial Court after analyzing the evidence on record came to hold that the date of birth of the victim is

08.08.2001 and the occurrence took place on 11.08.2011 and as such, the victim was minor as on the date of occurrence. The learned trial Court did not place any importance on the defence plea that on account of enmity between the parties, the case has been foisted and that the witnesses are interested to depose against the appellant. It was further held that even though the sister of the victim, who was five years old, was sleeping in the spot room and therefore, she was not examined, but for that the prosecution case cannot be viewed with suspicion and no adverse inference can be drawn. It was further held that the prosecution had neither produced the seized articles during trial nor the chemical examination report was received and therefore, the seizure of wearing apparels of the victim as well as the appellant is of no value.

After analyzing the evidence of the doctor (P.W.7), who examined the victim as well as the appellant, the learned trial Court has held that the medical evidence is reliable and lends corroboration to the evidence of the victim that rape was committed on her. It was further held that the evidence of the witnesses lends corroboration to the unimpeachable evidence of the prosecutrix and there is proof of penetrative sexual assault on the victim. It was further held that the appellant had

threatened and declared with an intention to kill just after he was caught red handed in the transaction of rape and accordingly, it was held that the prosecution established the charges beyond the shadow of doubt.

7. Mr. Samarandra Mohanty, learned counsel appearing for the appellant contended that the victim's evidence cannot be accepted and she cannot be said to be a truthful witness and being a child, there is every chance of tutoring her by her family members in view of the background of dispute, which was existing between the parties relating to allotment of Indira Awas in favour of the father of the appellant. It is further contended that even though the wearing apparels of both the victim as well as the appellant were seized and sent for chemical examination, but no report has been received and no reason has been assigned by the prosecution as to why it was not produced during trial and therefore, it is a fit case where benefit of doubt should be extended in favour of the appellant.

Mr. Arupananda Das, learned Additional Government Advocate for the State on the other hand supported the impugned judgment and order of conviction and submitted that from the evidence of the victim so also from the entry made in the school admission register Ext.8, it appears that the victim

was aged about thirteen years at the time of occurrence and her evidence regarding commission of rape not only gets corroboration from the evidence of her parents i.e. P.Ws.2 and 3 but also the doctor (P.W.7), who not only noticed injuries on the private part of the victim but also stated that the victim has been subjected to sexual intercourse. It is contended that merely because the chemical examination report has not been produced in the Court, the same cannot be a ground to discard the prosecution case more particularly when the evidence of the victim and her parents so also the medical evidence supports the prosecution case and therefore, the appeal should be dismissed.

8. Adverting to the contentions raised by the learned counsel for the respective parties, let me first discuss about the age of the victim as on the date of occurrence.

The victim has stated her date of birth as 08.08.2001. The father of the victim, who has been examined as P.W.3, has also stated about the same date of birth of the victim. The Headmaster of the School where the victim was prosecuting her studies has been examined as P.W.5 and he stated that the school admission register was seized during the course of investigation by the I.O. and he has proved the relevant entry in respect of date of birth of the victim as 08.08.2001. The doctor

(P.W.7) who examined the victim has stated that the age of the victim was about twelve years, but however, he fairly stated in cross-examination that he has not conducted any examination to determine the age of the victim and it was on the basis of the statements of the relatives that he has mentioned the age of the victim to be twelve years. Nothing has been elicited in the cross-examination of any of these witnesses and no suggestion has been given that the victim's age is more than what has been reflected in the school admission register.

The learned trial Court after assessing the evidence of the aforesaid witnesses came to the conclusion that the victim was minor as on the date of occurrence. In view of the oral evidence adduced by the prosecution so also the documentary evidence, I am of the view that the prosecution has successfully established that the victim (P.W.1) was minor and she has just completed thirteen years at the time of occurrence.

9. Coming to the evidence of the victim, she has stated that the occurrence took place on 11.08.2014 inside her house at village Katiguda at 10.00 p.m. and she was with her younger sister inside her house and her parents went to see television to the neighbour's house and seeing her alone, the appellant came inside her house, shut the door and forcibly opened her pant and

committed rape on her and when her parents returned home, they saw that the appellant pounced over her and her mother gave a kick blow to the appellant, but the appellant started quarreling with her mother and threatened to kill her mother. On hearing the quarrel, the villagers approached her house. She stated about her medical examination so also seizure of wearing apparels by the police and she stated that they had one room house and she had two brothers and two sisters and they were jointly living in that house. She however stated that the appellant's house was situated five to six houses away from her house. In the cross-examination, the victim has specifically stated that the appellant gagged her mouth in his hands for which she could not raise any shout and the appellant inserted his penis into her vagina. She admitted that she has not stated about the kick blow given by her mother to the appellant and also the quarrel with her mother before the I.O. or the Magistrate. Suggestion has been given to the victim that as Indira Awas house was allotted to the father of the appellant and her father was debarred from getting Indira Awas house, there was inimical relationship between the two families for which the case has been foisted, but she has denied the suggestion. The evidence of the parents of the victim corroborates the evidence of the victim and both of them stated that when they returned

home after watching television in the neighbour's house and opened the door, they found the appellant pounced over the victim and the appellant was in a naked condition and the victim was not wearing any pant or frock. Both of them have also stated that the appellant picked up quarrel with them and threatened them to kill. In the cross-examination, P.W.2 has stated that her little child was sleeping at the time of occurrence in the house and she was five years of age. Nothing has been elicited in the cross-examination by the defence to create any doubt about the veracity of those two witnesses.

The doctor (P.W.7) who examined the victim so also the appellant on 12.07.2014 stated that the victim was subjected to sexual intercourse and she had an injury i.e. abrasion 0.2 x 0.2 cm on right angle of mandible and there was injury on labia minora. He further stated that on examination of the female genital, he found that there was fresh bleeding. The doctor (P.W.7) also examined the appellant on police requisition and gave his report indicating therein that the appellant was capable of sexual intercourse. In cross-examination, the doctor has specifically stated that the bleeding injury found in laiba minora was not possible due to menarche of the victim since she had not attended menarche at the time of her examination. Thus, not

only the evidence of the victim gets corroboration from the evidence of her parents but also the doctor, who examined on the next date of occurrence. It is true that the minor sister who was aged about five years was present in the spot room where the occurrence took place, but since there is evidence on record that she was sleeping, her non-examination no way affects the prosecution case.

In this case, the exhibits were sent for chemical analysis on 16.08.2014 by the learned S.D.J.M., Phulbani to the Director, S.F.S.L., Bhubaneswar but strangely the chemical analysis report was not proved during trial by the prosecution. In case of this nature, the prosecuting agency is duty bound to take expeditious steps for obtaining the chemical examination report and serological report, if any and produce the same before the trial Court for assisting the Court in arriving at a just conclusion regarding the guilt or otherwise of the accused. In most of such cases, it is experienced that the preparation is getting delayed and in some cases, it is not produced at all in the trial Court. It is high time for the State Government to see that there is development in the infrastructure and more and more staffs are engaged not only in the State Forensic Science Laboratory but also in the Regional Forensic Science Laboratories so that

preparation of the CE reports so also the serological reports are expedited.

Law is well settled that evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable and it is not expected that a victim of rape to shield the real culprit and implicate someone falsely in sexual assault on her. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

In view of the available materials on record particularly, the age of the victim and her unimpeachable evidence, which appears to be cogent and truthful and which is corroborated by the evidence of her parents as well as the doctor, I am of the view that the learned trial Court has rightly found the appellant guilty under sections 376(2)(i)/506 of the Indian Penal Code and section 4 of the POCSO Act, but in view of section 42 of the POCSO Act, the learned trial Court has imposed the punishment for the offence under section 376(2)(i) of the Indian Penal Code so also the offence under section 506 of the Indian Penal Code.

The minimum sentence prescribed for the offence under section 376(2)(i) of the Indian Penal Code is ten years. It appears that the appellant was taken into judicial custody since 13.08.2014 and he was never released on bail either during trial or during pendency of the appeal before this Court. Thus, he has already undergone the substantive sentence of eight years by now. In view of the factual scenario and taking into account the passage of time, I reduce the sentence imposed for the offence under section 376(2)(i) of the Indian Penal Code from R.I. for twelve years to R.I. for ten years. The sentence imposed for the offence under section 506 of the Indian Penal Code remains unaltered so also the fine amount, which has been imposed for the conviction of the appellant under section 376(2)(i) of the Indian Penal Code. The sentence that has been modified for the offence under section 376(2)(i) of the Indian Penal Code so also the sentence for the offence under section 506 of the Indian Penal Code shall run concurrently.

It appears from the impugned judgment that the learned trial Court has recommended the case of the victim to DLSA, Kandhamal to award just and appropriate compensation to the victim, but there is nothing before this Court whether the compensation amount has been received by the victim or not. If

the same has not yet been paid, the D.L.S.A, Kandhamal shall examine the case of the victim after conducting the necessary enquiry in accordance with law for grant of compensation under the Odisha Victim Compensation (Amendment) Scheme, 2018 as per the notification dated 20.10.2018 of Government of Odisha, Home Department.

Let a copy of the judgment be sent to the District Legal Services Authority, Kandhamal for compliance.

Trial Court's record with a copy of this judgment be communicated to the concerned Court forthwith for information and necessary action.

With the aforesaid modification of the sentence, the JCRLA stands disposed of.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 24th August 2022/PKSahoo