

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.462 of 2021

Rajendra Mohanta **Appellant**

Mr. B.N. Mahapatra, Adv.

-versus-

State of Odisha and Anr. **Opp.Parties**

Mr. G.R. Mohapatra, ASC

**CORAM:
JUSTICE S.K. PANIGRAHI**

Order
No.
9.

ORDER
31.05.2022

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the appellant and learned counsel for the State.
3. The appellant has filed this appeal in the matter of Jenapur P.S. Case No.40 of 2021 corresponding to C.T. (Spl) Case No.16 of 2021 pending in the court of the learned District and Sessions Judge-cum-Special Judge, Jajpur. The appellant has been charge sheeted for commission of offences punishable under Sections 376, 493, 417 and 506 of IPC read with section 3(1)(r)(s) and 2(va) of the SC/ST (PA) Act.
4. The prosecution story, in brief, is that on 11.02.2021, the informant/ victim lodged a written

complaint before the Jenapur police station wherein she submitted that the appellant and the victim were in a romantic relationship since last one year. The appellant had given assurance to marry the victim. On 08.02.2020, the appellant took her to a Padia (open field) where he had sexual intercourse with her against her consent. Thereafter he took her to his house at Hatibari, Sukindra. He and his family members subsequently backtracked from agreeing for the marriage proposal.

- 5.** Learned Counsel for the appellant submits that the appellant has been languishing in custody since 23.03.2020. He further submits that all the allegations against him are false, baseless and the appellant is no way connected to the matter. On perusal of the FIR and the other connected materials, no prima facie case, can be made out against the appellant. Both the individuals have attained the age of majority and the sexual relationship between them was consensual. Moreover, the medical report does not show any sign or symptoms of rape. Hence, the appellant should be released on bail.

6. In the case of **Kaini Rajan v. State of Kerala**¹, this Court has explained the essentials and parameters of the offence of rape. In the said decision, the Court observed and held as under:

“12. Section 375 Indian Penal Code defines the expression “rape”, which indicates that the first Clause operates, where the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will; and second, where it is done without her consent; the third, fourth and fifth, when there is consent, but it is not such a consent as excuses the offender, because it is obtained by putting her on any person in whom she is interested in fear of death or of hurt. The expression “against her will” means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. “Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. Section 90 Indian Penal Code refers to the expression “consent”. Section 90, though, does not define “consent”, but describes what is not consent. “Consent”, for the purpose of Section 375, requires voluntary participation not only after the exercise of

¹ (2013) 9 SCC 113.

intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.”

7. The Supreme Court in the case of *State of M.P. vs. Madanlal*² has held as under:

“18. The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to

² (2015) 7 SCC 681

remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error.

19. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the *elan vital*, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. It has to be kept in mind, as has been held in **Shyam Narain v. State (NCT of Delhi)**³ that:

“27. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilised norm i.e. 'physical morality'. In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the

³ (2013) 7 SCC 77

other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men.””

8. Considering the nature and gravity of the accusation, character of evidence appearing against the appellant, the stringent punishment prescribed and that there are reasonable grounds for believing that the appellant is not guilty of the offence alleged or not likely to commit any such offence, which is not possible to record in this case. Hence, the prayer for bail is devoid of any merit. Accordingly, the prayer for bail of the appellant stands rejected.

9. The CRLA is, accordingly, disposed of.

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

(S.K. Panigrahi)
Judge