IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.196 of 2001

Jatia Naik & Anr. **.....** ***Appellants***

Mr. R.N. Mishra, Advocate

-versus-

State of Odisha **.....** ***Respondent***

Mr. C.K. Pradhan, AGA

CRLA No.239 of 2013

Bhagaban @ Bagan Purty **.....** ***Appellant***

Mr. R.N. Mishra, Advocate

-versus-

State of Odisha **.....** ***Respondent***

Mr. C.K. Pradhan, AGA

CORAM:

THE HON'BLE MR. JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

17.12.2024

Order No. 14

1. This matter is taken up through hybrid mode.

2. Heard Mr. R.N. Mishra, learned counsel appearing for the Appellant and Mr. C.K. Pradhan, learned Addl. Govt. Advocate appearing for the Respondent.

3. Since both the appeals arise out of a common Judgment, both were heard analogously and disposed of by the present common order.

4. While Appellant No. 1 in Criminal Appeal No. 196 of 2001 and the sole Appellant in Criminal Appeal No. 239 of 2013 were found guilty under Sec.143, 452, 354, 342, 366/149 I.P.C., Appellant No. 2 in CRA No. 196 of 2001 was found guilty for the offence under Sec.

143, 452, 354, 342, 366, 149 I.P.C.. All the Appellants however were acquitted from the charge under Sec. 506(II) I.P.C..

4.1. It is contended that while finding guilty under the aforesaid sections of the I.P.C., all the Appellants were sentenced to undergo R.I. for six (6) months under Sec.143, R.I. for six (6) months under Sec. 342, R.I. for 2 years under Sec.452, R.I. for 2 years under Sec.354 and R.I. for 2 years & 6 months and to pay fine of Rs.2000/- only and in default, R.I. for three (3) months under Sec. 366/149 IPC.

4.2. Learned counsel appearing for the Appellants contended that after commitment all the Appellants were charged for the offence under Sec. 143, 452, 354, 342, 366, 506(II)/149 of I.P.C.. It is contended that the prosecution in order to prove the allegation examined 9 nos. of P.Ws., which include P.W. 1 as the informant, P.W. 2 as the mother of the victim, P.W. 4 as the victim herself, P.W. 5 as the sister of the victim, P.W. 6 & 7 who were alleged to have seen the occurrence, P.W. 8 as the seizure witness and P.W. 9 who is the I.O. of the case.

4.3. It is contended that since most of the witnesses so examined by the prosecution are related to the victim, their evidence should not have been accepted while convicting the Appellants for the offences as indicated hereinabove. It is also contended that the evidence laid by the defence with examination of D.W. 1 and his statement that a criminal case was pending in between both the families of the accused persons and the informant was not appreciated properly. It is also contended that taking into account the statement of the victim, all the Appellants should not have been held guilty of the offences under Sec.143, 452, 354, 342, 366/149 I.P.C.. It is

accordingly contended that since without proper appreciation of the evidence laid and the fact that no independent witness corroborated the allegation of the victim P.W. 4, the order of conviction and sentence passed against the Appellants is not sustainable in the eye of law and requires interference of this Court.

4.4. It is also contended that basing on the order passed by this Court, all the three (3) Appellants are continuing on bail and in the meantime none of them have violated any of the terms and condition of the bail. It is further contended that the incident being of the year 1997 and in the meantime since more than 27 years have passed, taking into account the age of the Appellants at the relevant point of time and the present age, a lenient view be taken, if this Court upheld the order of conviction and sentence so passed.

5. Learned Addl. Govt. Advocate on the other hand in support of the impugned order of conviction and sentence contended that in order to prove the prosecution allegation the prosecution while examined 9 nos. of witnesses, also examined the victim as P.W. 4. It is contended that P.W. 4 after registration of the case against the accused persons submitted her statement under Sec. 164 Cr.P.C. and in the said statement the victim clearly implicated the Appellant-Bhagaban @ Bagan Purty in CRLA No. 239 of 2013 who caused the overt act well supported by the two Appellants in CRA No. 196 of 2001.

5.1. It is contended that the victim in her statement as P.W. 4 also corroborated the prosecution allegation. It is contended that since allegation made by the prosecution was well proved by the victim as P.W. 4, no further corroboration of the allegation is required to be

made by examining any independent witness. Statement of P.W. 4 reads as follows:-

> *"The occurrence took place about 3 and half years back. At about 8.30 P.M. accused Bhagan, Jatia, Dukhuram tudu and 10 others came to my house by a tracker. Out of all accused Bhagan, Dukhuram and Jatia entered into my house forcibly. At that time I was reading inside my house. All on a sudden accused Bhagan forcibly gave vermilion on my forehead. Seeing this I shouted. When I shouted Bhagan stopped my mouth by giving a napkin and dragged me to outside along with others. When my father and mother protested, the accused persons showed them Bhujali, knives etc. and they pressed the neck of my father. Thereafter the accused persons took me to their house at Uparbeda by the said tracker. On the next date I was rescued by the police.*
>
> *Cross-Examination.*
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> *2. Accused Bhagan Purty is the brother in law of my elder brother, Sastri Muduya. Accused Jatia is the brother-in-law of accd. Bhagan. Both the above accused persons were going to my house previously. Except three accused persons I do not know the others accused persons. I do not know the names and address of the other accused persons. G.R. 197/97 has been filed against me, father, mother by the sister of accused Bhagan. And that case is subjudiced in the Court of the Learned S.D.J.M., Rairangpur. My 164 Cr.P.C. statement has been recorded by the Learned S.D.J.M., Rairangpur. My 161 Cr.P.C. statement has recorded by the police. Before recording of my 164 Cr.P.C. statement, I was not examined by the police. To-day also I identified these three accused persons in the court. It is not a fact that I have not stand before the police that accused Bhagan, Dukhuram and Jatia have pressed a napkin on my mouth. So also I have not stated*

the above fact before the Learned S.D.J.M., Rairangpur U/s. 164 Cr.P.C. Statement. It is not a fact that I have not stated before the police nor stated before the S.D.J.M. that these three accused persons were dragging me from my house to the outside by giving napkin in my mouth.

3. I cannot say the English date of occurrence and also the number of the vehicle. Since last three years back I married and I have blessed a child. On the date of occurrence one realsel was going on the backside of my house and the distance was 200 yard from my house. The time of occurrence was dark night. At the time of occurrence 3 to 4 outsiders were present near the tracker. I cannot say their names. I have written the facts before the police at Jamda Outpost after I was rescued. It is not a fact that I have falsely implicated the accused persons in this case due to previous enmity as per G.R. 107/97."

6. It is contended that allegation made by the prosecution was well supported by the victim as P.W. 4 and also supported by other P.Ws. However, considering the materials placed while acquitting the Appellants from the offence under Sec. 506(2) I.P.C., learned court below held the Appellant No. 1 in CRA No. 196 of 2001 and the sole Appellant in CRLA No. 239 of 2013 guilty for the offence under Sec.143, 452, 354, 342, 366/149 of the I.P.C. and Appellant No. 2 for the offence under Sec.143, 452, 354, 366/149 I.P.C.. It is accordingly contended that the Appellants have been rightly found guilty for the offences in question and have been sentenced to undergo the imprisonment as imposed vide the impugned Judgment, which requires no interference.

7. Having heard learned counsel appearing for the Parties, considering the submissions made and after going through the

materials placed before this Court, this Court finds that basing on the allegation made by the Victim-P.W. 4, the prosecution was set into motion in G.R. Case No. 89/1997 in the court of learned SDJM, Rairangpur. After commitment of the matter, all the Appellants were charged for the offence under Sec. 143, 452, 354, 342, 366, 506(II)/149 I.P.C..

7.1. However, vide the impugned judgement dtd.13.06.2001 all the Appellants were acquitted for the offence under Sec. 506(II) I.P.C.. While Appellant No. 1 in CRA No. 196 of 2001 and the sole Appellant in CRLA No. 239 of 2013 were convicted under Sec. 143, 452, 354, 342, 366/149 I.P.C., Appellant No. 2 in CRA No. 196 of 2001 was found guilty under Sec. 143, 452, 354, 366/149 of I.P.C..

7.2. This Court after going through the statement of P.Ws., more particularly the statement of victim as P.W. 4, which remained uncontroverted is of the view that no illegality or irregularity has been committed by the learned court below in imposing the punishment against the Appellants vide the impugned judgment. However, taking into account the fact that the case is of the year 1997 and in the meantime more than 27 years have passed, taking into account the long lapse of time and the age of the Appellants at present, this Court while is not inclined to interfere with the impugned order of conviction and sentence so passed vide the impugned judgment dtd.18.03.2001 in S.T. Case No. 32/146 of 2000, but held that Appellants are entitled for their release under the provision of Probation of Offenders' Act.

7.3. This Court accordingly while disposing both the appeals without interfering with the impugned judgment, directs the Appellants in both the cases to appear before the court of learned

Addl. Sessions Judge, Rairangpur within a period of one (1) month hence. On their appearance learned Addl. Sessions Judge shall do the needful for release of the Appellants under the provisions of Probation of Offenders' Act, 1958.

8. Both the appeals are accordingly disposed of.

Photocopy of the order be placed in the connected case record.

(BIRAJA PRASANNA SATAPATHY)
Judge

Subrat

Signature Not Verified
Digitally Signed
Signed by: SUBRAT KUMAR BARIK
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 24-Dec-2024 11:45:44