
(2015) 03 OHC CK 0060
In the Orissa High Court
Case No : CRLA Nos. 487 and 369 of 2009

Debadas Diari

APPELLANT

Vs

Sate of Orissa

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 366, 376

Citation : (2015) 2 ILR Ori 172

Hon'ble Judges : S. Pujahari, J

Bench : Single Bench

Advocate : P.K. Satpathy, R.N. Parija, A.K. Rout and S.P. Nayak, for the Appellant; S. Zafarulla, Addl. SC, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Pujahari, J—The appellants in both the appeals, call in question the judgment of conviction and order of sentence passed against them by the learned Additional Sessions Judge, Fast Track Court, Bhawanipatna in Sessions Case No. 127/95 of 2008. The trial court vide the impugned judgment and order held the appellants guilty of charge under Section 366/34 of the Indian Penal Code (for short "the I.P.C.") and sentenced each of them to undergo R.I. for three years and to pay a fine of Rs. 5,000/- i.d. each of them to undergo R.I. for six months more and further held the appellant, namely, Debadas Diari in CRLA No. 487 of 2009 guilty of charge under Section 376 of the I.P.C. and sentenced him to undergo R.I. for seven years and to pay a fine of Rs. 5,000/-i.d. to undergo R.I. for one year more. The prosecution placed before the trial court a case that when the victim (P.W.4) was going to Rengalipali weekly market on her way she was abducted by the appellants in a jeep at the point of knife to village Jhariguda where she was kept in confinement in a house. There the appellant-Debadas Diari committed sexual intercourse on her forcibly several times. A week thereafter when her father (P.W.3) knowing about her confinement, came there along with other villagers and requested the appellant Debadas Diari to leave the

victim, but the appellants did not pay any heed to their request and driven them out without allowing them to meet the victim. The appellant Debadas Diari thereafter took the victim to another village where he kept her in the night and in the next morning left the victim at village Bimala which is nearer to the village of the victim. The victim then went to her home and narrated the entire incident before her father which was reported to the police, but as the police did not take any action, a complaint was made before the learned S.D.J.M., Dharamgarh which was registered as I.C.C. No. 41 of 2006. Learned S.D.J.M., Dharamgarh thereafter recording the initial statement of the complainant-victim and also examining other witnesses took cognizance of commission of offences under Sections 366/376/34 of the I.P.C. and committed the case to the court of Session to face their trial.

2. Relying on the materials placed, the trial court framed charges as stated earlier against the appellants. The appellants pleaded not guilty of the charges. It appears that during the trial, prosecution examined four witnesses including the complainant-victim and her father (P.W.3) and two other independent witnesses to bring home the charges. The appellants had taken the plea of denial and false implication, but adduced no evidence in support of their plea.

3. On conclusion of the trial, the trial court relying on the evidence adduced by the prosecution, more particularly the victim, held the appellants guilty and returned the judgment of conviction and order of sentence, as stated earlier.

4. Assailing the aforesaid, learned counsel for the appellants submits that the impugned judgment of conviction and order of sentence are unsustainable in the eye of law inasmuch as there is no cogent and acceptable evidence on record to come to a conclusion that the victim was abducted by the appellants and she was subjected to forcible sexual intercourse. Rather, the materials on record would go to show that it was a case of elopement and consensual sexual intercourse. In such premises, the trial court should not have convicted the appellants. Hence, he submits to set aside the judgment of conviction and order of sentence and acquit the appellants of the charges.

5. Learned counsel for the State, however, defends the judgment of conviction and order of sentence with the submission that since it emerges from the evidence of the victim that she was abducted by the appellants and the appellant Debadas Diari kept her in confinement where he forcibly committed sexual intercourse on her and in her cross-examination nothing having been elicited disclosing that the same was a case of elopement and the victim had consensual sexual intercourse with the appellant Debadas Diari, the judgment of conviction and order of sentence cannot be found fault with.

6. Before appreciating the contention of the counsel for the parties vis-à-vis the impugned judgment of conviction and order of sentence and also other materials on record, it would be proper to have a look to an oft-quoted decision of the Hon'ble Apex Court in the case of Bharwada Bhoginbhai Hirjibhai Vs. State of

Gujarat, AIR 1983 SC 753 : (1983) CriLJ 1096 : (1983) 2 Crimes 232 : (1983) 1 SCALE 665 : (1983) 3 SCC 217 : (1983) 3 SCR 280 , wherein their Lordships in the Hon"ble Apex Court with regard to appreciation of evidence of the victim of rape have been pleased to hold that in the Indian setting, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of a girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society"..... Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society and its profile.". At paragraph-11 of the said decision, it has been held as follows;

"11. In view of these factors the victims and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated. On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye-witness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the western world (obeisance to which has perhaps become a habit presumably on account of the colonial hang-over). We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification: Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having leveled such an accusation on account of the instinct of self-preservation. Or when the "probabilities factor" is found to be out of tune."

7. Keeping in mind the aforesaid, when the case in hand is addressed, it is seen that the trial court in this case placing reliance on the sole testimony of the victim found the appellants to be guilty of the charge and has convicted them and sentenced them. The evidence of the victim would go to show that while she was going to Renganpali Weekly market, the present appellants forcibly took her

in a jeep on the point of knife and kept her in a house where appellant - Debadas Diari said to have had forcibly sexual intercourse with her keeping her in confinement for about seven days. When the father of the victim knowing the aforesaid fact came there along with his other villagers, appellant - Debadas Diari also did not allow them to meet her, but the on the next day took her to another village and left her there. Such theory of forcible abduction of the victim and also sexual intercourse with her requires to be taken with pinch of salt, even though nothing has been elicited in the cross-examination, inasmuch as on account of inherent improbability in her such version and the probabilities factors militating against the same. There is no material that the victim was kept in a close watch during those seven days by the appellants. In such premises, when no evidence has been adduced by the victim to have made any effort to escape from them and also reported the matter to any other villagers complaining such an offence to have committed by the appellants, in the absence of any threat extended to her by appellant - Debadas Diari and others, such version of the victim appears to be untrustworthy. The same is more so for the reasons that the independent witnesses, such P.Ws. 1 and 2 examined in this case have deposed that the father of the victim stated before them that the victim had fled away from the village along with appellant - Debadas Diari and staying in village- Jhariguda and, as such, they accompanied him in a jeep to village- Jhariguda in order to bring back the victim. Furthermore, non-reporting of the matter immediately to the police, even if the victim who had been to the market did not return, by the father of the victim also casts a cloud on such version of the victim that she was abducted. It also transpires from the evidence of P.W.3, the father of the victim that soon after his return from village- Jhariguda, he went to Jaipatna Police Station and reported the matter, but the police did not take any action, appears to be contrary to the evidence of the victim (P.W.4), who stated that on her return she along with her father went to the Police Station and reported the matter, but the police did not take any action on it. The same casts a serious doubt on their version regarding inaction of the police in not registering the case and, as such, they are coming to the court and lodging the complaint. There is no manner of doubt that even a person without going to the police can approach straight to the Magistrate and for that, a case of the prosecution cannot be discarded. But, when the evidence on record discloses that the complainant herself went to the Police Station, but the police did not take any action and the same is found to be untrustworthy, that impeach the credibility of the evidence of the witnesses in this regard. Non-reporting of such heinous and serious offence to the police and making a complaint at a belated stage also corrode the credibility in the version of the witnesses, such as, P.Ws. 3 and 4 with regard to the victim being abducted and subjected to sexual intercourse forcibly, more so when there is delay in making the complaint which appears to have not been explained properly, more so with regard to the victim staying in the company of appellant - Debadas Diari. It is, according to the victim, appellant - Debadas Diari kept her for seven days, whereas according to the father of the victim, after two months, the victim came back and then she was pregnant. All these

aforesaid factors corrode the credibility in the version of the victim. Rather, the aforesaid would go to show a case of elopement and consensual sexual intercourse wherein appellants in CRLA No. 369 of 2009 appear to have helped.

8. Hence, on reappraisal of the evidence on record, this Court is of the view that the trial court erred in appreciating of the material evidence on record and recording a conviction solely basing on the testimony of the victim which is not wholly reliable, without any corroboration. Therefore, this Court is of the view that there being no cogent acceptable evidence to record the finding of guilt against the appellants, they are entitled to an order of acquittal. Resultantly, for the foregoing reasons, both the criminal appeals are allowed. The impugned judgment and order dated 19.8.2009 passed by the learned Additional Sessions Judge, Fast Track Court, Bhawanipatna in Sessions Case No. 127/95 of 2008 convicting all the appellants in both the appeals for commission of offence under Section 366/34 of the I.P.C. and sentencing each of them to undergo R.I. for three years and to pay a fine of Rs. 5,000/- i.d. each of them to undergo R.I. for six months more and further convicting the appellant, namely, Debadas Diari in CRLA No. 487 of 2009 under Section 376 of the I.P.C. and convicting him to undergo R.I. for seven years and to pay a fine of Rs. 5,000/- i.d. to undergo R.I. for one year more are set aside. All the appellants in both the appeals are acquitted of the said charges.

Since the appellant, namely, Debadas Diari in CRLA No. 487 of 2009 is in jail custody, he be set at liberty forthwith, unless his detention is required in connection with any other case.