
(2001) 09 OHC CK 0021

In the Orissa High Court

Case No : Criminal Appeal No's. 18 and 24 of 1992

Kartik Chhatra and Bharat Majhi

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 376(2)

Citation : (2002) 93 CLT 210

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : D.K. Misra, H.S. Mishra, S.K. Pradhan, A.K. Misra and B.N. Bhol, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—These two appeals arise out of the order dated 23.12.1998 passed by the Additional Sessions Judge, Bolangir, in Sessions Case No. 22/9 (B) of 1998 convicting the appellants u/s 376(2)(g) of the Indian Penal Code and sentencing each of them to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 5,000/-, in default to undergo rigorous imprisonment for two years more.

2. Prosecution case as revealed from the F.I.R. as well as the evidence on record is that on 13.09.1997, the victim Pravati alias Nini Podh, aged about 17 years, along with her friend Laxmi Podh left Bolangir for Saintala by walk. They were going to the house of one of the relations of Nini Podh. While going on the road, a little distance ahead of Bijakhman petrol pump at about 2.45 P.M., they were obstructed by four boys. Three of the boys caught hold of the victim Nini Podh. While the fourth one caught hold of Laxmi Podh. Soon, two other boys came and joined the earlier four. But, on the protest of the victim and her friend, those two boys went away. The three boys who had caught hold of the victim, dragged her into the nearby Kharlikani jungle where one of them forcibly committed rape on

her. Thereafter, the boy who had caught hold of Laxmi Podh also came to the place of occurrence and committed rape on the victim for the second time.

Having extricated herself from the clutches of the boy who had caught hold of her, Laxmi Podh went to the petrol pump where she met the driver of a Tata 407 mini truck and narrated the incident before him. Soon, one Ghanashyam Mishra and Radhadevi Agrawal of Bolangir arrived at the petrol pump by a two-wheeler on their return from Saintala. The driver of the mini truck narrated the incident to them. Thereafter, Ghanashyam Mishra and another person who was present there along with the driver of the mini truck went inside the jungle in search of Nini Podh and boys. They rescued the victim from the jungle and were also able to catch hold of accused-appellant Bharat Majhi. The other boys who were present near the place of rape managed to escape. Appellant Bharat Majhi confessed his guilt before his captors and also stated the names and addresses of the other three boys including accused-appellant Kartik Chhatra, who had committed rape on Nini Podh before he had done so. Thereafter Nini Podh, Laxmi Podh and appellant Bharat Majhi were taken to the sadar police-station, Bolangir by the mini truck. Nini Podh reported the matter orally which was reduced to writing by the Officer-in-Charge of the police-station. Victim Nini Podh and accused-appellant Bharat Majhi were sent by police for medical examination and their wearing apparels were seized. Next day, accused-appellant Kartik Chhatra was also arrested from his village and was medically examined. The other accused persons remained absconding. On completion of investigation, Charge-sheet was submitted against the present appellants and others.

3. The defence plea is one of denial of the occurrence. Accused-appellant Bharat Majhi in his statement recorded u/s 313 Cr. P.C. has also stated that Ghanashyam Mishra and Radhadevi Agrawal were indulging in the business of prostitution in the locality of the alleged place of occurrence. As he raised his voice against them, they have foisted a false case against him. Curiously enough, learned counsel appearing for this accused-appellant suggested to some witnesses including the victim girl that the victim herself was doing prostitution in the locality to which Bharat protested and incurred her wrath and has been implicated in a false case.

4. In all, thirteen witnesses were examined by the prosecution. P.W.1 is the victim girl Nini Podh, P.W. 2 is her friend Laxmi Podh who has witnessed a part of the occurrence, P.W. 3 is Ghanashyam Mishra, P.W. 4 is the doctor who examined the x-ray plates of the victim to determine her age, P.W. 5 is the doctor who examined the vaginal swab of the victim, P.W. 6 is Radhadevi Agrawal, P.W. 7 is a post-occurrence witness, P.W. 8 is a witness to seizure, P.W. 9 is the driver of the mini truck, P.W. 10 is the doctor who examined accused Kartik Chhatra, P.W. 11 is the doctor who examined accused Bharat Majhi, P.W.12 is the investigating officer, and P.W.13 is the doctor who examined the victim. The defence did not choose to examine any witness.

5. According to the F.I.R. story, accused-appellant Bharat Majhi was brought to

the petrol pump where he is stated to have confessed his guilt. P.W.1. the victim, has identified the appellants in court apart from corroborating the statements made in the F.I.R. The attempt made on behalf of the appellants to dislodge her from her earlier statement during cross-examination has miserably failed. P.W. 2. Who is a witness to a part of the incident, has corroborated the statement of the victim fully and there is no material discrepancy in her statement except the fact of taking tiffin on the way, as stated by P.W. 1. P.W. 3. Ghanashyam Mishra, who had rescued the victim and had also caught hold of accused-appellant Bharat Majhi, has stated about that he found the incident which he had witnessed. He has stated that he found the victim naked when he rescued her from the jungle. He has also stated about the seizure of the wearing apparels of the victim and appellant Bharat Majhi, to which he was a witness. His version supports the evidence of P.W. 1. During cross-examination on behalf of accused-appellant Kartik Chhatra, P.W. 3 has stated that one Lalu Satpathy identified this appellant to him on the outside verandah and told him that he (Lalu) had also identified the appellants to the victim and others. This part of his statement does not find corroboration from any other witness. P.W. 6, Radhadevi Agrawal, has stated about the part of the incident which had taken place before her. She has stated that accused-appellant Bharat Majhi disclosed his name. Thereafter he and the two girls were taken to town police-station and therefrom to Sadar police station within whose jurisdiction the place of occurrence is situated. P.W. 7 is a post-occurrence witness. His evidence is of little importance as whatever he has stated are all hear-say. P.W.8 is a witness to the seizure of the wearing apparels of accused-appellant Bharat. P.W. 9 is the driver of the mini truck. He has not supported the prosecution case and has been cross-examined by the prosecution. When the statement made by him before police was confronted to him, he denied to have made any such statement.

6. Now, coming to the medical evidence, P.W. 4, after examining the x-ray plates of Nini Podh, has opined that she was more than 16 years and less than 18 years of age. P.W. 5, who examined the vaginal swab of the victim, has opined that there was no sperm - living or dead, in it. She has also stated in cross-examination that the sperm remains alive in the swab for 48 to 72 hours. Dead sperms remain in the swab normally for three days. P.W. 10, who examined appellant Kartik Chhatra, has stated that the appellant had well developed sexual organs and he was capable of committing sexual intercourse. But, there was no sign of recent sexual act on his private part atleast within 24 hours. There was no sign or mark of any injury. P.W. 11, who examined appellant Bharat Majhi, found some injuries on his body. The injuries could be possible by assault by means of blunt weapon. He has also stated that nail is not a weapon as such, but, when used it can cause injury. He has not found any blood stains on the private part of the appellant. P.W. 13 is the doctor who examined the victim. She found one abrasion in the inner side of labia minora, one abrasion in the inner side of the left labia minora and two recent radiate ruptures on the hymen, the edges of which were swollen, red and painful. The ruptures were bleeding on

touch: The hymen admitted two fingers with difficulty. External genitalia were red, inflamed and painful. The age of the injuries was within two days. P.W. 13 also found as many as ten injuries on the back of the victim including three crescentic abrasions. The crescentic abrasions were caused by nails. She has also stated that the abrasions on the back of the victim suggest struggle and resistance by her caused by friction against rough surface. The age of the injuries was within two to three days.

7. Apart from the above the wearing apparels of the victim and appellant Bharat Majhi were sent for chemical examination. The serological report shows that there were patches of human blood and semen on the skirt of the victim. The wearing apparels of Bharat Majhi also contained a few small blood patches.

8. The trial court, after analysing the evidence on record, held the appellants guilty of the offence u/s 376(2)(g) IPC and sentenced them as stated above.

9. It is urged on behalf of the appellants that even though by 14.09.1997 both the appellants were available there was no T.I. parade for identifying them". Moreover, as per the evidence of P.W.3, the appellants were identified to him and to P.Ws.1 and 2 by one Lalu Satpathy on the verandah prior to their identification in court. Therefore, such identification is not admissible in evidence and the appellants should not have been held guilty on such identification. It is also urged that the distance between Bolangir and Saintala is about 40 Kms. So, it cannot be believed that the two girls, i.e., the victim and P.W. 2, would take the risk of going such a long distance by walk. The fact that the prosecutrix had gone to Saintala with her brother on an earlier occasion by bus shows that she was aware of the distance. Learned counsel for the appellants want to discredit the statement of P.Ws. 3 and 6 on the ground that they had got prior acquaintance with the victim, as stated by P.W.1. But these witnesses have denied to have any prior acquaintance with the victim. This shows that they have deposed falsehood. Moreover, these witnesses have taken extra interest in the case by not only bringing the victim and appellant Bharat Majhi to the police-station but also visiting the police-station as well as the hospital on subsequent occasions. This would go to show that they are highly interested witnesses and as such their version should not be accepted. It is also submitted that the so-called confessional statement of appellant Bharat Majhi cannot be utilised against the appellants as it has not been proved that such statement was made without any inducement, threat or promise having reference to the charge against the accused. Even P.W. 1, in her statement has not stated anything regarding the alleged confession made by appellant Bharat Majhi. It is further submitted that there is material discrepancy between the evidence of P.Ws.1 and 3 in as much as P.W.1 has stated that by the time the rescuers arrived at the spot, the second man nearby, naming accused Bharat, was committing rape on her and that her clothes were on her body, which is contrary to the averment of P.W.3, who has stated that by the time he reached the spot, appellant Bharat was standing naked and the victim was lying naked. In view of such contradiction, the story of

detection of appellant Bharat Majhi or catching him red handed from the spot cannot be accepted. Criticising the conclusion of the trial court by relying on the evidence of P.W. 1, it is submitted that on the solitary evidence of the prosecutrix, there may be conviction provided the evidence is believable, trustworthy and unambiguous. In the instant case, the evidence of the victim P.W.1 has to be examined in the back drop of the broad improbability of the prosecution case. P.W.1 has stated that she had not informed anybody in her house that she was going to Saintala and she met Laxmi on the way who was also going to Saintala on foot. Accordingly, both of them proceeded towards Saintala by walk. P.W.1 has stated that she and P.W.2 were obstructed by six boys including appellant Kartik, where as P.W.2 has stated that Kartik was not one of the boys who had obstructed her and P.W.1. Further, P.W. 1 has stated that a slap was given to appellant Bharat Majhi in presence of P.W.6. But P.W.6 had not gone to the place of occurrence and was only present at the petrol Pump. In view of these contradictions the evidence of P.W. 1, cannot be said to be trustworthy, believable and unambiguous and no conviction can lie on such evidence. Learned counsel for the appellants also tried to create doubt regarding the seizure of the wearing apparels of the victim and appellant Bharat Majhi. It is submitted that there is no evidence regarding supply of substitute clothes to them by anybody, which would mean that they remained naked in the police-station after seizure of their wearing apparels. Such a fact is quite improbable. On these grounds, it is submitted that the appellants are entitled to an order of acquittal.

10. The medical evidence shows that the victim was above 16 years of age. So, sexual intercourse on her would amount to rape only if it is proved that the same was committed against her will or without her consent. P.W. 13, the lady doctor who examined the victim, has found injuries on the private part of the victim, which is indicative of the fact that there was recent sexual intercourse. The injuries found on the back of the victim suggest that she was protesting and struggling. So, sexual intercourse was committed on her without her consent. In other words, she was raped.

11. Now, it is to be determined who is/are the author (s) of the crime. In the case of State of Punjab Vs. Gurmit Singh and Others, the Supreme Court has stated that the courts must deal with cases of rape with utmost sensitivity. They should examine the broader probabilities of a case and not get swayed away by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement of the victim before relying upon the same as a rule, amounts to adding insult to injury. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and, to an extent, is even more reliable. The evidence of a victim of sexual offence is entitled to great weight, absence of corroboration notwithstanding. In the present case, P.W.1, has categorically stated that she was

dragged into the jungle by three boys including appellant Kartik Chhatria. There, kartik committed rape on her. Just after Kartik had finished, Bharat Majhi, who was dragging her friend P.W.2. arrived at the spot and he also committed rape on her. The evidence of P.W.1 has been amply corroborated by P.Ws.2, 3 and 6. The discrepancies pointed out by the learned counsel for the appellants are quite insignificant and do not affect the prosecution case in any manner. As regards non-holding of T.I. parade, the offence took place in broad day light. A girl can never forget a man or men who committed rape on her that too in broad daylight, though she might not be knowing his/their name (s). Therefore, in my opinion, holding of T.I. parade was not necessary in the instant case, particularly when one of the accused (appellant Bharat Majhi) was caught at the place of occurrence and he disclosed the names and addresses of other accused persons including appellant Kartik Chhatria. The trial court has appreciated the evidence and the materials on record in proper perspective and has come to the conclusion that the appellants are guilty of the offence alleged against them. I do not find any infirmity in the same so as to warrant interference by this Court. I have carefully considered the submissions made on behalf of the appellants and I am of the opinion that they are not acceptable in law.

12. For the foregoing discussions, I do not find any merit in the present appeals, which are accordingly dismissed. The order of conviction and sentence passed against the appellants is confirmed.

13. Appeals dismissed.