

(2024) 04 OHC CK 0125

In the Orissa High Court

Case No : Jail Criminal Appeal Nos.113, 114, 115 Of 2017 And Criminal Appeal Nos. 800 Of 2017,89 Of 2018

Rabi Lakra

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 15-04-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 313, 374(2), 383
Indian Penal Code, 1860 — Section 376(2)(g)

Citation : (2024) 04 OHC CK 0125

Hon'ble Judges : D.Dash, J;V. Narasingh, J

Bench : Division Bench

Advocate : Sahasransu Sourav, Biswajit Nayak, Pulakesh Mohanty, P.K. Mohanty

Final Decision : Disposed Of

Judgement

D. Dash, J

1. The Appellants, in the above five Appeals, have faced the trial in the Court of the learned Sessions Judge, Sundergarh in Sessions Trial No.100 of 2012 arising out of G.R. Case No.508 of 2012 corresponding to Kutra P.S. Case No.108 of 2012 on the file of the learned Judicial Magistrate First Class (J.M.F.C.), Rajgangpur standing charged for commission of the offence under section 376(2) (g) of the Indian Penal Code, 1860 (for short, 'the IPC').

The Trial Court has convicted all the Appellants (accused persons) for committing the offence under section 376(2)(g) of the IPC. Accordingly, each of them has been sentenced to undergo imprisonment for life and pay fine of Rs.5,000/- (Rupees Five Thousand) in default to undergo rigorous imprisonment for one (1) year for commission of the said offence.

In view of the above, all the five Appeals were heard together for their disposal by this common judgment.

2. Prosecution Case:-

On 25th December, 2012 night, the victim (P.W.4) had been to Premnagar Church situated at Village-Katanga to join the Christmas celebration. After attending the celebration, when she (P.W.4) was returning home from the Church, on the way these accused persons forcibly lifted her and committed rape upon her. The victim (P.W.4), returning to her house, narrated the incident before her parents. Hearing about the said incident from the victim (P.W.4), the father of the victim (Informant-P.W.2) presented a written report with the Inspector-in-Charge (I.I.C.) of Kutra Police Station.

Receiving the written report, the IIC (P.W.16), Kutra P.S treated the said report as FIR (Ext.1) and upon registration of the case, took up the investigation.

3. In course of investigation, the I.O. (P.W.16) examined the Informant (P.W.2) and then the victim (P.W.4). The I.O. (P.W.16) sent the victim (P.W.4) for medical examination by issuing necessary police requisition and got her (P.W.4) admitted in Kutra Community Health Centre. The I.O. (P.W.16) sent a requisition to the Scientific Officer, Rourkela for spot visit and seized the wearing apparels of the victim under seizure list (Ext.5). On 26.12.2012, the I.O. (P.W.16) arrested all the accused persons and also seized their wearing apparels under seizure lists (Exts.10/1, 9/1, 8/1, 7/1 & 6/1). Thereafter, all the accused persons were also medically examined. Then, the I.O. (P.W.16), having visited the spot, prepared spot map (Ext.18). Thereafter, the I.O. (P.W.18) seized the semen, blood samples & pubic hairs, saliva of the accused persons under seizure list (Ext.3). The vaginal swab, blood sample, pubic hair and saliva of the victim were seized under seizure list (Ext.2). All the seized articles were sent for chemical examination through Court. On completion of the investigation, the I.O. (P.W.16) submitted the Final Form placing these accused persons to face the Trial for commission of the aforesaid offence.

4. Learned J.M.F.C., Rajgangpur, on receipt of the Final Form, took cognizance of said offence and after observing the formalities, committed the case to the Court of Sessions. That is how the Trial commenced by framing the charge for the aforesaid offence against these accused persons.

5. The prosecution, in support of its case, has examined in total, eighteen (18) witnesses during Trial. As already stated, the informant who happens to be the father of the victim, is P.W.2 whereas the victim has been examined as P.W.4. The mother of the victim has been examined as P.W.5. P.W.1 is the scribe of the FIR (Ext.1). P.Ws.6, 7, 8, 13, 14 & 15 are the post occurrence witnesses and P.Ws.3, 9, 10 & 11 are the witnesses to seizure. P.W.12 is the Scientific Officer of Rourkela and the Doctor, who had examined the Victim, has been examined as P.W.10. The Doctors, who have medically examined the accused persons, have also been examined as P.Ws.17 & 18 during trial. The I.O. of the case has come to the witness box.

Besides leading the evidence by examining the above witnesses, the prosecution has also proved several documents which have been admitted in evidence and

marked Exts.1 to 24. Out of those; important are the FIR (Ext.1); medical examination report of the victim (Ext.11); and the spot map (Ext.18). The Chemical Examiner's report has been admitted in evidence and marked Ext.24.

6. The accused persons, having taken the plea of complete denial and false implication have, also examined two witnesses (D.Ws.1 & 2). All the accused persons, during recording of their statement under section 313 Cr.P.C., have taken a specific stand that as they were raising their voice against one Rampal Kapoor, who was illegally carrying out mining activities in their village, the victim, who was working as a maid servant in his house, at the instance of said Rampal, has falsely implicated them in this case.

7. Learned counsels for the Appellants (accused persons), inviting our attention to the deposition of the victim (P.W.4), submitted that the Trial Court ought not to have placed implicit reliance upon said evidence in order to held that the prosecution has established the charge against these accused persons beyond reasonable doubt. According to them, the way the incident has been narrated by the victim (P.W.4) to have taken place when viewed with the reaction and her conduct makes her evidence unbelievable. They submitted that the evidence of the victim (P.W.4) is exaggerated and that also do not derive corroboration on some vital aspects, which stands as the impediment for the acceptance of the evidence of the victim (P.W.4) as the sole basis for fastening the guilt upon the accused persons. They further submitted that the defence evidence to the effect that the accused persons were having rivalry with that Rampal Kapoor under whom the victim (P.W.4) was working and for that reason, false accusation have been levelled against the accused persons has not been considered in its proper perspective.

In the alternative, learned counsels for the Appellants (accused persons) submitted that the sentence imposed upon these accused persons, being the maximum as provided for commission of the said offence under section 376(2) (g) of the IPC, the reasons given by the Trial Court are not adequate in support of such imposition of the maximum sentence. They submitted that these accused persons are in custody since 26.12.2012 and taking into account the fact that all of them were them the age group of 30 to 35 years as they have remained in custody for all these periods, this Court should consider reduction of the period of the custodial sentence, as has been imposed upon them by the Trial Court.

8. Mr.P.K. Mohanty, learned Additional Standing Counsel for the Respondent-State, while supporting the finding of guilt against the accused persons, as has been returned by the Trial Court, submitted that the evidence of the victim (P.W.4) is consistent and even in that situation, which she faced she has narrated everything in detail with regard to the role of each of these accused persons. According to him, merely for her failure to state as to who among these accused persons had removed her undergarment and she, being not able to say as to when one was raping, who were the others, who were pressing her hands is of absolutely no significance so as to be taken note of when it further remains

undisputed that the victim (P.W.4) is an illiterate girl then aged about twenty-two (22) years. He further submitted that the evidence of the victim (P.W.4) receives full corroboration from the evidence of the Doctor (P.W.10), who had immediately examined the victim (P.W.4) on police requisition and given the report (Ext.11). He submitted that the Trial Court, taking into account the manner in which the incident took place and the role played by these accused persons therein as established from the evidence, has rightly passed the judgment of conviction and order of sentence.

9. Keeping in view the submissions made, we have carefully read the impugned judgment of conviction. We have also extensively travelled through the depositions of the witnesses (P.W.1 to P.W.18 and D.Ws.1 & 2) and have perused the documents admitted in evidence and marked as Ext.1 to Ext.24.

10. The incident, having taken place in the night of 25th December, 2012, the FIR (Ext.1) has been lodged on the next morning and the I.O. (P.W.16), receiving the FIR after having registered the case, has immediately recorded the statements of the father of the victim and also the victim (P.W.4), who was then medically examined.

The Informant is P.W.2, who happens to be the father of the victim (P.W.4) in clear terms, has stated that in the evening of 25th December, 2012, her daughter (victim-P.W.4) had been to witness the dance programme to Village-Prem Nagar and around mid-night, he (P.W.2) and his wife (mother of the victim-P.W.5) as well as their younger daughter returned home leaving the victim (P.W.4) there. He has further stated that it was around 3.00 a.m., his daughter (Victim-P.W.4) returned home and then she was under depression and she informed about the incident that the accused persons intercepting her on the way, gagged her mouth and forcibly took her away to Village-Litibeda where they committed rape upon her. He has also stated to have noticed the wearing apparels of her daughter (P.W.4) to have been stained with mud and bangles to have broken. It is his evidence that first the victim (P.W.4) told the incident to her mother (P.W.5) and then he (P.W.2) was informed about the same by his wife (P.W.5). The FIR (Ext.1) has been lodged promptly thereafter and so also the victim has been medically examined after recording of her statement by the I.O. (P.W.16) under section 161 of the Cr.P.C. Despite cross-examination, we find nothing to have been elicited from him to entertain any doubt with regard to the factum of disclosure of the incident by the victim (P.W.4) before her mother (P.W.5) and then to him (P.W.2). The mother of the victim (P.W.5) has spoken the something on oath. There is no such significant variance in their evidence.

With the above evidence, let us approach to the evidence of the victim (P.W.4), who is a star witness for the prosecution. She then was is a young illiterate lady. It is her evidence that she was returning from the Church after attending the function. She states that when she had covered certain distance from the Church towards her village, these accused persons intercepted and they forcibly dragged her to road side up to a distance of one km and there, by removing her dress

and undergarment, they, one after another, raped her. She has further stated that when she tried to shout, they gagged her mouth. It has also been stated by her that after committing the rape, they left the place leaving her alone. Her categorical evidence is that on returning home, she narrated everything to her parents and in the morning, she had gone to the police station with her father (P.W.2), who lodged the report (Ext.1) before the police.

It is also the evidence of the victim (P.W.4) that because of the forcible rape, she had sustained scratch injuries on her chest and other parts of her body. It has also been stated by her that when she was being raped by one, the other accused persons were pressing her hand and legs. It is no doubt true that she has not been able to say as to who among them had so pressed her neck and throat and had covered her eyes by hands while gagging her, but that in the facts and circumstances under which the incident took place is of absolutely no significance to be taken note of. Her (P.W.4) evidence receive full corroboration when we turn our attention to the medical evidence falling from the lips of P.W.10. She (P.W.10) is the Doctor, who had medically examined the victim (P.W.4) on 26.12.2012 at 4.00 am. The medical evidence is consistent with the evidence of P.W.4 (victim) as regards the injuries on of her face, back and neck when the Doctor (P.W.10) has stated to have noticed multiple injuries present over there. Her (P.W.10) evidence is also to the effect that the victim was then under pain over her throat, neck and other parts of the body. That Doctor (P.W.10), during geneitalia examination, has also noticed the injuries during and she has categorically stated that those marked injuries suggested that there was sexual intercourse within 24 hours of her examination. In addition to the above, the medical examination report, which has been admitted in evidence and marked Ext.24 shows that the semen was found on the chadi of the victim and it was also so detected on the full pant of accused Rabi, chadi of accused Piyush, full pant of accused Manoj, chadi of accused Lukas as well as on the T-shirt of accused Sabir Kumar. When the victim (P.W.4) has stated that the place where the rape was committed was a muddy one, soils have been collected from the shawl of the victim (P.W.4) and so also the soils were collected from the wearing apparels of the accused persons. Furthermore, it is important to note that the pant of accused Lucas was seized from the spot.

With the available evidence on record, not only we find the evidence of the victim (P.W.4) to be free from any such blemish but also as wholly reliable in order to form the basis of conviction even without corroboration from any quarter. Even then, we find that her evidence receive corroboration from the other available evidence as already discussed.

In that view of the matter, in our considered view, the Trial court has rightly convicted the accused persons for committing the offence under section 376(2) (g) of the IPC.

Now, coming to the alternative submission of the learned counsels for the Appellants (accused persons) as to the quantum of sentence, we find these

accused persons, to be then at the relevant time were within the age group of 30-35, to have committed the offence upon the victim on 25.12.2012. The punishment for commission of the offence under section 376(2)(g) of the IPC is rigorous imprisonment for minimum period of ten years extending to life and fine. As provided therein, the Court, for adequate and special reason, was having the power to impose the sentence of imprisonment of either description for a term of less than ten years. All these accused persons hail from a district, which is within the scheduled area of the State. All along during trial, they were in custody and have been continuing as such till now. Taking into account all these factors, we find it to be a fit case for alteration of the period of custodial sentence imposed on the accused persons. Accordingly, we are of the considered view that the sentence of rigorous imprisonment for a period of twelve (12) years and the fine with the default stipulation, as has been ordered by the Trial Court, would serve the interest of justice and meet its ends, which we so order. It is further directed that on realization of the fine, the same be paid to the Victim (P.W.4) towards compensation.

11. With the above modification as to the order of sentence dated 28th August, 2017 passed by the learned Sessions Judge, Sundergarh in Sessions Trial No.100 of 2012, the Appeals stand disposed of..

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