
(2015) 09 OHC CK 0048
In the Orissa High Court
Case No : Govt. Appeal No. 61 of 1998

State of Orissa

APPELLANT

Vs

Laxmidhar Naik and Others

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : (2015) 09 OHC CK 0048

Hon'ble Judges : C.R. Dash, J

Bench : Single Bench

Advocate : Manoj Mishra, Pramod Kumar Das, B. Mishra, S.R. Pradhan and S. Senapati, Advocates for the Respondent

Final Decision : Dismissed

Judgement

C.R. Dash, J—This appeal, at the instance of the State, is directed against the judgment of acquittal dated 26.07.1996 recorded by the learned Special Judge, Keonjhar in Trial Case No. 34 of 1994.

2. The occurrence happened on 25.06.1994 (Saturday) at about 10 P.M. in the night near the U.P. School of Village-Tuntuna under Champua Police Station in the district of Keonjhar.

3. The prosecution case in brief is that, Laxmidhar Patra (not examined) was working at Barbil as a labourer and he was staying there. He used to come to the village in the weekend and give money to his wife (mother of the victim) for maintenance of the family. The father of the victim did not come to the village for some weeks. The mother of the victim (not examined) left for Barbil to fetch money from her husband, leaving her two daughters, i.e., victim (P.W. 1) and her sister (P.W. 2) in their house at village - Tuntuna. Victim's mother did not return to the village for some days. The victim (P.W. 1) started working as a daily labourer in a plantation work at village - Sagada. Abhimanyu Mahanta (not examined and not charge sheeted as an accused) was looking after the plantation work and the payment of the labourers in the plantation work. The

said Abhimanyu Mahanta told the victim to make her payment on Saturday in her house. In the evening of 25.06.1994, Abhimanyu Mahanta with Chittaranjan Naik (accused-respondent No. 2) came to the house of victim (P.W. 1) and Chittaranjan Naik offered Rs. 150/- to the victim (P.W. 1) to accommodate Abhimanyu Mahanta in her house for the night. The victim refused. At about 10 P.M. in the night, the victim (P.W. 1) with her younger sister (P.W. 2) went to sleep in the house of her elder father (P.W. 3). The house of P.W. 3 is at a distance of about 1 K.M. from the house of the victim (P.W. 1). On their way, all the accused-respondents prevented them near the Village School and forcibly lifted the victim (P.W. 1) to the back of the School and committed rape on her one after another. The victim's sister (P.W. 2), however, escaped and went to the house of P.W. 3 (her elder father). As a result of sexual assault on the victim (P.W. 1), she became senseless. After some time, she regained her senses and found Upendra Nayak, accused-respondent No. 6 to be present there by her side. The said Upendra Nayak is a peon of the School. He offered his napkin and took her to the School room. Towards last part of the night, the victim (P.W. 1) came back to her house. In the meantime, her younger sister (P.W. 2), who had been to the house of her elder father (P.W. 3), reported the incident before her elder father (P.W. 3). P.W. 3, in her first attempt, searched for the victim, but in vain. At last, the victim was brought to the house of P.W. 3, where she narrated the entire incident before the wife of P.W. 3 (wife of P.W. 3 has not been examined as a witness). Thereafter, on coming to know about the incident, P.W. 3 went to the house of Hare Krushna Naik (P.W. 4), Panchayat Samiti member. He (P.W. 4) also came to the victim and she narrated the entire incident before him.

4. On instruction of P.W. 4, the victim along with P.W. 3 and her younger sister went to Champua Police Station and orally reported the matter before the O.I.C. (P.W. 13), who registered the case and took up the investigation. In course of investigation, the victim was medically examined on Police requisition by Dr. Soudamini Dhal (P.W. 8) and Dr. Basanti Mohapatra (P.W. 9). They gave the medical report negating the factum of ravishment of the victim. Thereafter, the victim was sent to the S.C.B. Medical College & Hospital, Cuttack for her further examination by the Department of Forensic Medicine & Toxicology. Dr. Suniti Acharya (P.W. 10) examined the victim and gave her report vide Ext. 12. Jitendra Kumar Naik (accused-respondent No. 8) was medically examined on Police requisition by P.W. 7 during the investigation. Similarly, Chaga @ Chagala @ Aswini Kumar Naik (accused-respondent No. 7) was medically examined during the investigation by the Medical Officer (P.W. 11). The wearing inner garment ("Chadi") of the victim was seized by the Investigating Officer during the investigation in presence of P.W. 12. In course of investigation, P.W. 13 handed over the charge of investigation to the Circle Inspector of Police, Champua (not examined). He, on completion of investigation, submitted the charge sheet against the accused respondents implicating them in the offences as narrated in para-1 of the impugned judgment.

5. Prosecution has examined altogether 13 witnesses as introduced (supra) to

prove the charge against the accused-respondents.

6. The defence plea is one of complete denial. They have taken further plea that the victim is a girl of immoral character and she was having affairs with Abhimanyu Mahanta and others. On the date of occurrence, she was caught red-handed by the members of the Yubak Sangha of the village while having sexual act with Abhimanyu Mahanta, watcher of the local Cashew-nut field and the case has been falsely foisted against them.

7. So far as the factum of commission of rape is concerned, it is well settled in law that, the evidence of the victim is sufficient to warrant a conviction, provided her evidence inspires confidence of the Court. In the present case, the victim (P.W. 1) has tendered evidence regarding the factum of commission of rape by all the accused-respondents. Such assertion by the victim has however been negated by the medical evidence of P.Ws. 8 & 9. The occurrence happened on 25.06.1994 at about 10 P.M. The victim was examined by P.W. 8 under the supervision of P.W. 9 at about 11.30 A.M. on 27.06.1994. P.W. 8 found some facts during the vaginal examination of the victim, which was sufficient to negative the allegation of rape. She (P.W. 8) found 2 lateral tears at 4 and 8 O? clock position on the hymen of the victim. She, however, did not find any inflammation or bleeding from the said tears, though the examination was done within two days of the alleged occurrence. P.W. 10, on the other hand, found six hymenal tears at 1, 4, 6, 7, 9 and 11 O? Clock position without any bleeding, but P.W. 10 examined the victim after about two months and 18 days of the occurrence. It was specifically opined by P.W. 10 that after so many days of the occurrence, it is difficult to opine about the factum of victim's ravishment.

8. P.W. 10 has further opined in her cross-examination that the hymenal tears might have been caused after 26.06.1994 or prior to 15 days of the examination of the victim by her. Such an opinion, does not definitely points out to the suspicion so far as the finding of all the Medical Officers are concerned. Even if I eschew, the finding of the Medical Officer (P.W. 8), evidence of P.W. 10 also fully do not support the factum of rape, as alleged by the victim (P.W. 1). In such a situation, without being swayed away by the medical opinion and finding, the Court is to fall back upon the evidence of the victim, provided it inspires confidence of the Court.

9. Learned trial court, after thorough discussion of the evidence of the victim and the medical opinion on the point, has taken into consideration the evidence of the victim in its totality. Admittedly, the occurrence day was a rainy day and it was a dark night. There is inconsistency of the evidence of P.Ws. 1, 2 & 3 so far as the identity of the accused-respondents are concerned. P.W. 1, at the first instance, did not name the accused-respondents. Wife of P.W. 3, before whom the victim (P.W. 1) had narrated the entire incident, has not been examined. P.W. 3, who is none other than the elder father of the victim (P.W. 1), and who had the occasion to know about the occurrence at the first instance, has testified that the victim told that the village boys have allegedly ravished her. He had not

taken anybody's name. No step was taken by the I.O. to get the accused-respondents identified in course of investigation. Learned trial court painstakingly discussed the entire evidence of P.Ws. 1, 2, 3 & 4 on these aspects and tilted towards accepting the defence version, which has had the potency of competing probability vis-à-vis the prosecution case. Taking into consideration all the aforesaid aspects, learned trial court chose not to accept the evidence of P.W. 1. Learned trial court had the occasion to mark the conduct and demeanor of the witnesses including the victim (P.W. 1) during the trial. When the evidence of P.W. 1 did not inspire confidence of the Court to record the finding of guilt against the accused-respondents, it is difficult to take a different view in appeal by the State.

10. Learned Additional Government Advocate, though with vehemence impugns the judgment of the trial court, he has no answer so far as question of identification of the accused-respondents is concerned.

11. Taking into consideration the evidence of P.Ws. 1, 2, 3 & 4 in its entirety, I do not find any merit in the Govt. appeal, which is accordingly dismissed.