

(1968) 06 OHC CK 0012

In the Orissa High Court

Case No : Criminal Revision No. 670 of 1966

Sujaya Misalo and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-06-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 342
Penal Code, 1860 (IPC) — Section 32, 340, 342, 354

Citation : (1968) 34 CLT 1004

Hon'ble Judges : Acharya, J

Bench : Single Bench

Advocate : Y.S.N. Murty, for the Appellant; K.U. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

Acharya, J.—This is a revision against the Appellate judgment of Shri T. Misra, Sessions Judge, Ganjam-Boudh, Berhampur dated the 20th September, 1906 in Criminal Appeal No. 23 of 1966 maintaining the conviction of the Petitioners u/s 342 Indian Penal Code passed by Shri C.R. Patnaik, Sub-Divisional Magistrate, Parlakhemundi in G.R. Case No. 253 of 1964, but altering the sentences of two months simple imprisonment passed by the said Sub-divisional Magistrate against each of the Petitioners to payment of fine of Rs. 200 by each of them and in default undergo simple imprisonment for two months each.

2. The prosecution case in short is that on 23-12-1964 some time before sunset, Niranjane Lima, p.w. 3, while passing through the Sivedigada Stream towards the thrashing floor of p.w. 5 along with her niece, Purnima (p.w. 4), was accosted by Methrew Misalo, Petitioner No. 4 who caught hold of her (p.w. 3's) hands and dragged her against her will to the house of Jiban Chandra Misalo, Petitioner No. 3. When she was thus being dragged by Methrew Misalo, the other four Petitioners, who were lying in ambush, came out and helped Methrew Misalo in dragging p.w. 3, Niranjane to the house of Jiban Chandra Misalo. Niranjane, p.w. 3 was thereafter kept confined inside the house of accused Jiban Chandra

Misalo, and her modesty was alleged to have been outraged. Purnima (p.w. 4) who had accompanied Niranjaneer remained crying outside. Kachirijit Sualsingh (p.w. 6), on receiving information from Rome females, came and rescued Niranjaneer from confinement in the abovementioned house.

3. On the information lodged before the Police by p.w. 1, the brother of p.w. 3, the Petitioners were sent up for trial under Sections 342 and 354, Indian Penal Code.

4. In defence the Petitioners totally denied the occurrence alleging the same to be entirely false, and stated that the witnesses deposed against them due to enmity. They did not adduce any defence evidence in the trial.

5. The learned Sub-divisional Magistrate, who tried the case, convicted the Petitioners u/s 342, Indian Penal Code only, and acquitted them of the charge u/s 354, Indian Penal Code.

6. In this revision the conviction and sentence are challenged mainly on the following grounds:

(1) That on the prosecution evidence the conviction of the Petitioners u/s 32, Indian Penal Code is not maintainable in Law;

(2) that if an escape was open to a person (p.w. 3) and if she did not avail of it, her confinement in the circumstances would not amount to a wrongful confinement;

(3) that in the prosecution evidence there are missing links on vital matters for consideration, and the prosecution is guilty of suppressing those vital missing links.

7. The essential ingredients of an offence of wrongful confinement are (1) will-full restraint of a person and (2) such restraint must prevent that person from proceeding beyond certain circumscribing limit. Therefore, in order to constitute an offence punishable u/s 342, Indian Penal Code, a person should not only be wrongfully restrained but should also be kept in confinement within a circumscribed limit so that he would not be free to move out of that confinement. The liability of the Petitioners should, therefore, be examined in this context.

8. From the examination in chief of the p.w. 5 who is the cousin-brother of Niranjaneer (p.w. 3), and an eye witness to the occurrence, I find that it was Methrew Misalo, Petitioner No. 4 who alone caught hold of the right arm of Niranjaneer, and dragged her to the house of Jiban. The other Petitioners went with him (Methrew), and did not participate in the dragging. He also states that the accused persons were telling Niranjaneer Chalo Ma, Chalo, and this is also corroborated by p.w. 3. This shows that they were calling her in an endearing term. p.w. 3 in her examination in chief and also in cross examination does not ascribe any particular act against each one of the Petitioners Nos. 1, 2, 3 and 5, excepting stating in general that they encircled her and started pushing her from

behind to go with Methrew. P.w. 4, the niece who was going along with p.w. 3 states in her examination in chief that "On the way near a Tamarind tree in the back-yard of accused Jiban Misala, accused Methrew coming from behind held Niranjanees by her arms. I was then following her. The other four accused persons in the dock then came down to the stream from the back-yard of Jiban Misala and took away Niranjanees to the house of Jiban with the help of Methrew. Some one was pulling her arms and some one was pushing". Thus she also does not ascribe any particular act individually to any of the Petitioners Nos. 1, 2, 3, and 5 regarding restraining her wrongfully in proceeding further. Thus the evidence of p.w.3 is not in conformity with that of p.w. 4 with regard to the fact of pushing and or pulling of p.w. 3 by these Petitioners, and is inconsistent with the evidence of p.w.5 who definitely states that "the others went with him (Methrew) but they did not participate in the dragging". p.w. 6 is the person who actually rescued p.w. 3 from the house of Jiban. He was the first person who received immediate information from some females of the village to the effect, that accused Methrew dragged away Niranjanees from the stream to the house of Jiban. This witness did not see Petitioners Nos. 1, 2, 3 and 5 anywhere near about that place nor did he have any information either from the village females or from the victim p.w. 3 about these Petitioners participating in the incident in any manner whatsoever.

9. So from all that has been discussed above the complicity of these Petitioners" (1, 2, 3, and 5) with regard to this part of the occurrence so as to constitute the first ingredient of the offence u/s 340, Indian Penal Code as stated above, is doubtful. Here it must be borne in mind that neither in the charge framed against such of these Petitioners, nor in their examination u/s 342, Code of Criminal Procedure, liability for constructive criminality was either alleged or ascribed to them.

10. Let me now see if any responsibility can be ascribed to these four Petitioners in wrongfully keeping p.w. 3 confined in the house of Jiban. p.w. 3 the victim does not state in what particular manner these Petitioners participated in keeping her confined in the said house. p.w. 4 is unable to say as to what happened inside the house of Jiban after Niranjanees was dragged to that place. p.w. 5 is absolutely silent regarding these Petitioners with reference to this part of the incident. p.w. 6 is although silent about these four Petitioners, and states that when he got inside the house of Jiban he found Niranjanees crying there and accused Methrew sitting by her side holding her arm. Thus these four Petitioners cannot be said to have participated in any way restraining p.w. 3 so as to prevent her from proceeding beyond a circumscribed limit.

11. This being so, I would accept the first contention of the learned Counsel for the Petitioners in so far as it relates to Petitioners Nos. 1, 2, 3 and 5, that on the prosecution evidence on record the conviction u/s 342, Indian Penal Code of these four Petitioners cannot be sustained.

12. With regard to the case against Petitioner No. 4, I find that the prosecution

evidence is consistent althrough and proves all the ingredients so as to constitute an offence u/s 340, Indian Penal Code. Apart from the evidence of p.w. 3, the victim woman, there is the evidence of p.w.s.4 and 5 to the effect that Methrew Misala on the date and time of occurrence accosted p.w. 3, and caught hold of her arm, against her consent and inspite of her protest, and forcibly dragged her to the house of Jiban while she was proceeding along with p.w. 4 towards the thrashing floor of p.w. 5. Thus, the first ingredient constituting an offence of wrongful confinement i.e. of wrongfully restraining p.w. 3 by obstructing her so as to prevent her from proceeding towards the thrashing floor of p.w. 5 has been established beyond all reasonable doubts.

13. I have now to examine if such restraint thereafter prevented p.w. 3 from proceeding beyond a certain circumscribed limit. Having gone through the prosecution evidence very carefully I can confidently hold that the Petitioner No. 4 after wrongfully restraining p.w. 3 kept her confined in the house of Jiban till she was rescued by p.w. 6 from that place. In this respect, apart from the evidence of p.w. 3 both p.w.s. 4 and 5 in an unequivocal manner state that near the Tamarind tree in the back-yard of the accused Jiban Misalo, accused Methrew came out and caught hold of the hands of Niranjane, p.w. 3 and dragged her to the house of Jiban. p.w. 6 who came afterwards to rescue Niranjane from her confinement in the said house also states that he was informed by some females that accused Methrew dragged away Niranjane from the stream bed to the house of Jiban. There, p.w. 3 was kept confined in the only room in that house, being guarded by Methrew Misala, Petitioner No. 4. When p.w. 6 went inside that room he found her crying inside the room, and accused Methrew sitting by her side holding her arm. p.w. 6 also states that Niranjane told him that she was dragged to that place by accused Methrew. These p.w.s. have given their evidence without any serious contradiction regarding this part of the occurrence, and I can confidently hold that the Petitioner No. 4, Methrew Misalo wrongfully restrained p.w. 3 and dragged her to the house of Jiban against her will, and kept her confined in the said house without her to proceed on her own way, and as such was guilty of an offence of wrongful confinement.

14. The learned Counsel appearing for the Petitioners next contended that it is in evidence of p.w. 3 that both the doors of the room in which she was confined were open, and Kachirjit (p.w. 6) come into that room after seeing her from the road and that she did not attempt to run away from that place till the arrival of p.w. 6. From this the learned Counsel contended that under these circumstances p.w. 3 could have escaped from her confinement, and as she did not avail of an escape, her confinement would not mean wrongful confinement.

15. I am unable to appreciate this contention of the learned Counsel, as it is in evidence that she was forcibly dragged from the bed of the stream to the house of Jiban, and was kept confined in that room althrough guarded by Methrew Misalo, Petitioner No. 4, till the time she was actually rescued from that place by p.w. 6, as I have pointed out earlier, saw Niranjane crying inside the room, and

accused Methrew sitting by her side holding her arm. She was therefore not only physically obstructed from moving out of that room, but also, because of the overt act of Petitioner No. 4, had an impression in her mind that she was not free to extricate herself from the confinement, and any attempt on her part to move out would be forthwith restrained by Methrew Misalo. As such Petitioner No. 4 can be rightly held liable for an offence of wrongful confinement even though there may not be a visible attempt by p.w. 3 to run away from the said confinement. In this respect I would invite attention to a decision reported in K. Joggayya Vs. King, and with great respect I am in perfect agreement with the view expressed by Chief Justice Roy in para 7 of the said judgment.

16. In this view of the matter I cannot accept this contention raised by the learned Counsel for the Petitioners, and would uphold the conviction and sentence of Petitioner No. 4 as just and proper. In view of my above findings the third contention raised by the learned Counsel for the Petitioners does not require any separate consideration. In the result, therefore, I would set aside the conviction and sentence passed against the Petitioners Nos. 1, 2, 3 and 5, and direct that the amount of fine, if realised shall be forthwith refunded to them. The conviction and sentence of Petitioner No. 4, Mathrew Misalo are maintained. Accordingly, the revision petition is allowed with respect to Petitioner Nos. 1, 2, 3 and 5 and is dismissed with respect to Petitioner No. 4.