

CRIMINAL REVISION NO.668 OF 2000
AND
CRIMINAL REVISION NO.34 OF 2001

Gouranga Charan Sethy	(CrI. Rev. 668/2000)		
Ganeswar Sethy	(CrI. Rev. 34/2001)	Petitioners
	Versus		
State of Orissa	(in both cases)	Opp. Party

For Petitioners : M/s D.P. Dhal, D.K. Das,
K. Rath, S.K. Gupta,
D.K. Pattanayak,
S.S. Ghosh,
P.K. Routray,
A.R. Mohanty
and S.K. Tripathy
(Crl. Rev. 668/2000)

M/s D. Panda, G.C. Swain,
G.R. Mohanty, A. Panda,
R.K. Samantray
and M. Swain
(CrI. Rev. 34/2001)

For Opp. Party : Mr. S.K. Behera,
Addl. Government Advocate.
(in both cases)

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing & judgment : 31.10.2007

Both the criminal revisions arise out of the judgment and order dated 18.11.2000 passed by the learned Addl. Sessions Judge, Angul in Criminal Appeal No.8 of 1995/219 of 1997. Therefore, they were heard together and are disposed of by this common judgment. By the impugned order, the appellate court has convicted the petitioner Gouranga under Section 354 IPC and petitioner Ganeswar under Section 354/109 IPC and sentenced each of them to pay a fine of Rs.1000/-, in default to undergo R.I. for one month by modifying the judgment and order dated 01.02.1995 passed by the learned C.J.M.-cum-Asst. Sessions Judge, Angul in S.T. Case No.23 of 1993/Trial No.19 of 1994 convicting Gouranga under Sections 376/511 IPC and Ganeswar under Sections 376/511/109 IPC and sentencing each of them to undergo R.I. for three years and six months and pay a fine of Rs.1000/-, in default to undergo further R.I. for one month.

2. Case of the prosecution is that P.W.7 lodged information stating therein that on 31.10.1992 at night while his minor daughter Ranjita was returning home from the quarters of P.W.3 after attending Ekoisa celebration, both the petitioners, who were then working as Constables in the P.T.C., Angul, called her to take Guava. When she refused, they forcibly dragged her, removed her undergarments and ravished her. Final form having been submitted, the petitioners were tried being charged under Sections 376/109 IPC.

3. The plea of the petitioners was of complete denial. Specific plea of petitioner-Ganeswar was that the informant had asked him to depose falsely against accused Gouranga saying that Gouranga raped his younger daughter, but when he refused to oblige him, he has implicated him falsely in this case. Similarly, Gouranga has pleaded that the wife and the elder daughter of the informant were going to learn stitching along with his wife. Subsequently,

however, there was a quarrel between him and the informant, who, out of grudge, has foisted this case against him.

4. In order to prove its case, the prosecution examined as many as 12 witnesses including the victim as P.W.1, her mother as P.W.2 and father as P.W.7, who lodged the FIR, one Banamali Baral as P.W.3 from whose quarter the victim was returning after attending Ekoisa celebration, the doctor (who examined the victim as well as petitioner-Gouranga), as P.W.6 and the I.O. as P.W.12. The petitioners, however, did not choose to adduce any evidence- either oral or documentary.

5. The learned C.J.M.-cum-Asst. Sessions Judge, Angul, who tried the case, by his judgment dated 01.02.1995 convicted and sentenced the petitioners as already stated hereinbefore. The trial court also directed that the fine amount, if realized, be given to the victim. Against that order, the petitioners preferred appeal registered as Criminal Appeal No.8 of 1995/219 of 1997 before the learned Addl. Sessions Judge, Angul, who after hearing the parties partly allowed the appeal by modifying the judgment of conviction and sentence to the extent already indicated.

6. Mr. Panda, learned counsel for the petitioner Ganeswar submits that there is absolutely no material against him and he has been falsely implicated in the case. The appellate court erred in appreciating the evidence of P.W.1 when the trial court has observed that she being a child witness could give rational answers to some of the questions put to her and does not know the implication of the court. This witness has not implicated the petitioner-Ganeswar in any manner, but the learned Sessions Judge has not appreciated the evidence of P.W.1 in a proper manner. Mr. Panda further submits that non-seizure of the torchlight cast serious doubt as to the authenticity of the case as also the involvement of the petitioner Ganeswar in the alleged crime. There was no material before the appellate court to hold that petitioner Ganeswar outraged the modesty

of the victim (P.W.1) and/or abated the other petitioner Gouranga to outrage the modesty of P.W.1.

Mr. Mishra appearing for the petitioner Gouranga submits that there are material contradictions in the evidence of P.Ws.1, 3 and 7. Therefore, the entire prosecution case is highly suspicious.

7. Mr. Behera, learned Addl. Govt. Advocate strenuously urges that the offence in which the petitioners are involved is heinous in nature. The victim was aged about 7 to 8 years at the time of incident. No infirmity or illegality has been committed by the appellate court in passing the impugned order warranting interference by this Court.

8. Perused the LCR including the depositions of P.Ws.1, 3 and 7 and the medical report. Even though there are some contradictions in the evidence of P.Ws.1, 3 and 7, this Court is not inclined to disbelieve their evidence. So far as the offence under Section 354 IPC is concerned, intention to outrage the modesty of the woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. The appellate court has carefully considered these aspects and has rightly passed the impugned order.

9. Now comes the question of sentence. Both the petitioners were serving as Constables. Due to their involvement in the present case, they have been removed from service and in the process have suffered a lot. They are quite young and are first offenders. Taking all these aspects into consideration, this Court feels that ends of justice shall be best served if the petitioners are released after due admonition under the provisions of section 3 of the

Probation of Offenders Act instead of awarding any sentence against them, and this Court directs accordingly.

10. The criminal revisions stand disposed of.

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Pradip Mohanty, J.

Orissa High Court, Cuttack
October 31, 2007/ ***Samal***