

SANJU PANDA, J.

G.A. NO.22 OF 1997 (Decided on 29.06.2011)

STATE OF ORISSA

.....Appellant.

.Vrs.

GURUDAS MAJHI

....Respondent.

PENAL CODE, 1860 (ACT NO. XLV OF 1860) – S.376.

For Appellant - Addl. Government Advocate
For Respondent - Mrs. Prabhasi Nayak

S. PANDA, J. This Government Appeal is directed against the order of acquittal dated 12th July, 1996 passed by the learned Asst. Sessions Judge-cum-Chief Judicial Magistrate, Nabarangpur in Sessions Case No.4 of 1996 acquitting the respondent of the offence under Section 376 IPC.

2. The facts leading to the prosecution case are that Moti Majhi (P.W.1) is the victim and Kamal Lochan Majhi is her husband. On 3.10.1995 at about midnight both P.Ws.1 and 2 were sleeping in their house. The prosecutrix (P.W.1) came out from the house for urination. Since she did not return for a considerable time, her husband came out of his house and found that the accused was committing sexual intercourse with P.W.1 under a tree. P.W.2 could see the accused and P.W.1 by virtue of moon light. The prosecutrix was trying to escape from the clutches of the accused. P.W.2 assaulted the accused with a stick. At that time one Manmoti Samrat and Punei Majhi (P.W.6) came to the spot and caught hold of P.W.2. Thereafter, the accused fled away from the spot. Next day, a village Panchayat meeting was convened to consider the matter and in accordance with the decision arrived at in the said meeting, the informant (P.W.2) lodged FIR (Ext.1) at the concerned police station. On the basis of Ext.1, investigation was taken up by the investigating agency and on its completion charge sheet was filed against the respondent to face trial.

3. In order to bring home the charge against the respondent, eleven witnesses were examined on behalf of the prosecution. P.W.1 is the victim. P.W.2 is the husband of the victim. P.Ws.3 to 5, 8 and 9 are the witnesses who had attended the Panchayat meeting. P.W.6 reached the spot on hearing Hulla. P.W.7 is the mother of the victim. P.Ws.10 and 11 are the I.Os. Defence neither examined any witness nor exhibited any document.

4. The plea of the defence was one of complete denial.

5. Having considered the prosecution evidence, the trial court acquitted the respondent of the charge on the ground that P.W.1 was a consenting party to the sexual intercourse and the medical evidence did not support the charge. Being aggrieved by the said order of acquittal, the Government has filed this appeal.

6. Learned counsel for the appellant submitted that the evidence of the victim inspired confidence and there is absolutely no reason as to why her evidence was viewed with suspicion by the trial court. The evidence led by the prosecution is consistent. Therefore, the trial court ought to have appreciated the evidence of the prosecutrix as well as the other attending circumstances. The trial court ignored the material document, i.e., injury report submitted by the doctor which is corroborated by the statement of the prosecutrix and the consistent case of the prosecution. As such, the order of acquittal is liable to be interfered with.

7. Mrs. Prabhasi Nayak, learned counsel for the respondent, submitted that there is material discrepancy in the evidence of P.W.2 and the fact stated in the FIR (Ext.1) and also there is discrepancy in the evidence of P.Ws.1 and 2. Therefore, the finding of the trial court is not vitiated and the conclusion arrived at by the trial court should not be interfered with. She further submitted that the prosecutrix in her examination-in-chief stated that she sustained injury on her body as she had been dragged by the accused. However, the injury reports Exts.10 and 11 show that she did not sustain any injury on her body and the finding of the trial court to that effect fully supported the case of the defence with regard to consent. Therefore, the order of acquittal is to be confirmed and the Government Appeal is liable to be dismissed.

8. From the rival submissions of the parties, after going through the records and from the report of the doctor dated 6.10.1995 (Ext.10), it appears that there was a lacerated wound of ½"X1/8"X1/8" size present in front of the left leg of the prosecutrix. However, the said fact was totally ignored by the trial court while recording a finding that the prosecutrix had no injury on her body disbelieving the case of the prosecution and passing the order of acquittal.

9. In the case of Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi) reported in **(2010) 6 SCC 1**, the apex Court has held as follows:

“27. The following principles have to be kept in mind by the Appellate Court while dealing with appeals, particularly against an order of acquittal:

(i) There is no limitation on the part of the Appellate Court to review the evidence upon which the order of acquittal is founded.

(ii) The Appellate Court in an appeal against acquittal can review the entire evidence and come to its own conclusions.

(iii) The Appellate Court can also review the Trial Court's conclusion with respect to both facts and law.

(iv) While dealing with the appeal preferred by the State, it is the duty of the Appellate Court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(v) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(vi) While sitting in judgment over an Acquittal the Appellate Court is first required to seek an answer to the question whether findings of the Trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainably. If the Appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the Appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

(vii) When the Trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the Appellate Court is competent to reverse the decision of the Trial Court depending on the material placed."

10. In the case of Inspector of Police, Tamil Nadu v. John David reported in **(2011) 49 OCR (SC) 468**, the apex Court settled the position of law as to how the Court should deal with an appeal against acquittal and held that, while dealing with such an appeal, the appellate Court has no restriction to review and relook the entire evidence on which the order of acquittal is founded. On such review, the Appellate Court would consider the manner in which the evidence was dealt with by the lower Court. At the same time, if the lower Court's decision is based on erroneous views and against the settled position of law then such an order of acquittal should be set aside.

11. In the present case, the evidence of the prosecutrix is consistent and her statement inspires confidence in the mind of the Court. There is nothing to disbelieve her statement. The accused also in his statement under Section 313 Cr.P.C. had not

taken a plea that prosecutrix was a consenting party to the occurrence. As such, the finding of the trial court that the prosecutrix was a consenting party is set aside.

12. Law is well settled that the evidence of the victim of sexual assault stands at par with the evidence of an injured witness and she is the best witness as she is not likely to exculpate the real offender. As such, her evidence is entitled to great weight.

13. The apex Court in the case of *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, **AIR 1983 SC 753**, has held that the corroboration is not the sine qua non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. In view of these and similar factors, the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated.

14. In view of the above settled position of law and the evidence of the prosecutrix (P.W.1), the findings of the trial court are wholly unreasonable with regard to credibility of the prosecutrix. The essential ingredients of the charge of rape having been well attracted by the prosecution evidence, the order of acquittal is totally erroneous in the eye of law.

15. Hence, this Court sets aside the impugned order dated 12th July, 1996 passed by the learned Asst. Sessions Judge-cum-Chief Judicial Magistrate, Nawarangpur in Sessions Case No.4 of 1996 and convicts the respondent of the offence under Section 376 IPC sentencing him to undergo R.I. for seven years. The period already undergone by the respondent during trial shall be set off.

The Government Appeal is accordingly allowed.

Appeal allowed.