

HIGH COURT OF ORISSA: CUTTACK

JAIL CRIMINAL APPEAL NO.21 OF 2004

From the judgment dated 14.1.2004 passed by Shri K.B.Swain, Ad hoc Addl. Sessions Judge, Fast Track Court, Rourkela in S.T.Case No. 164/31/03.

Basil Lakra	Appellant
Versus		
State of Orissa	Respondent

For Appellant : Mr. S.Chakravarty

For Respondent : Mr.Zaffrulah, Addl.Standing Counsel

P R E S E N T :

**THE HONOURABLE KUMARI JUSTICE S. PANDA
A N D
THE HONOURABLE DR. JUSTICE B.R.SARANGI**

Date of hearing & judgment : 27.06.2013

Dr. B.R.Sarangi, J. This Jail Criminal Appeal has been preferred by the appellant, who has been convicted under section 376(2)(f), I.P.C. and sentenced to imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo R.I. for six months by the Ad hoc Addl. Sessions Judge, Fast Track Court, Rourkela in S.T.Case No. 164/31/03.

2. The prosecution case as revealed from the F.I.R. is that Jasmita Lakra (P.W.3) was playing with her friends on 10.8.2002 at

about 2.00 P.M. in the house of one Sunil. she came crying to her house at about 2.30 P.M. and informed her father Isdor Lakra (P.W.1) and her mother Dorathy Lakra (P.W.5) that while she was playing with the children of Sunil, Basil Lakra (accused-appellant) called her to his house and put her on his cot, removed her under garment and put his private part in her private part. Having suffered pain, when she cried, she was set free. Her parents, P.Ws.1 and 5 also found marks of blood on the undergarment of Jasmita so also in her private part. P.W.1, Isdor Lakra, father of the victim girl reported the incident to the police station on the very same day i.e. on 10.8.2002 by lodging an F.I.R. (Ext.1). On receipt of the same, police registered the case, caused investigation and filed charge-sheet against the accused appellant for commission of offence under Section 376(2)(f), IPC.

3. Plea of the accused-appellant is a complete denial. His further plea is that Jasmita, the victim girl, came to his house and asked him to have sexual intercourse with her, which he declined. Again she came to his house, bolted the door and insisted him to commit sexual intercourse with her, but he denied.

4. To bring home the charge, prosecution has examined six witnesses whereas none has been examined on behalf of the defence.

5. After a thorough scrutiny of the evidence on record, learned Ad hoc Addl. Sessions Judge, Fast Track Court, Rourkela convicted the appellant for the offence punishable under Section

376(2)(f), IPC and sentenced him to imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo R.I. for six months. Being aggrieved by the order of conviction and sentence, the appellant has preferred this appeal from jail before this Court. Entertaining the same, the appeal was admitted on 6.4.2004.

6. Mr. S.Chakravarty, learned counsel appearing for the appellant fairly states that he is not challenging the order of conviction, but questioning the quantum of sentence only. According to him, taking note of various factors including the age of the accused-appellant, who was aged about 45 years at the time of filing of the appeal and by this time, he must have reached above 55 years and his relationship with the victim being of niece and uncle (father's brother) and he being a member of Scheduled Tribe community and staying in the remote corner of the State, awarding of life imprisonment with fine of Rs.10,000/-, in default to undergo R.I. for six months is excessive.

7. To the above contention of the learned counsel for the appellant, learned Addl. Standing Counsel appearing for the State fairly admitted that the Court is free to impose appropriate sentence in terms of Section 376(2)(f), IPC.

8. In view of the limited submission, there is no dispute regarding the findings of the courts below and the conviction under Section 376(2)(f), IPC. The only question to be considered is whether

the sentence of life imprisonment and fine of Rs.10,000/- is reasonable or excessive.

9. Section 376, IPC, which speaks about the punishment for rape. Sub-section (2)(f) makes it clear that whoever commits rape on a women when she is under 12 years of age shall be punished with R.I. for a term which shall not be less than 10 years, but which may be for life and shall also be liable to fine. Proviso appended to sub-section (2) makes it clear that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term not less than 10 years. This clearly states that for the offence of rape on a girl under 12 years of age, punishment shall not be less than 10 years, but which may extend to life and also to fine. It is settled law that the Courts are obliged to respect the legislative mandate in the matter of awarding sentence in all such cases. In absence of any special adequate reasons, recourse to the provisions mentioned above cannot be applied in a casual manner.

10. In order to substantiate the contentions, learned counsel for the appellant has relied upon a decision of the Supreme Court in **Bavo alias Manubhai Ambalal Thakore v. State of Gujarat**, AIR 2012 SC 979. In the said judgment the earlier decision of the apex Court in **Rajendra Datta Zarekar v. State of Goa**, (2007) 14 SCC 560: AIR 2008 SC 572 has been considered for reduction of sentence.

11. Considering the fact that the victim in this case was less than 12 years at the time of occurrence and the accused was aged 45 years and the relationship between the victim and the accused was niece and uncle (father's brother) and in the meantime 10 years have already elapsed, the accused has reached at the age of 55 years and both the accused as well as the victim belong to Scheduled Tribe community and reside in the remote backward area of the State, ignorant about the niceties of law, award of life imprisonment, which is the maximum sentence prescribed, is not warranted.

12. In view of the provisions contained in Section 376(2)(f), IPC, we feel that ends of justice would be met by imposing R.I. for 10 years. Learned counsel for the appellant informed this Court that the appellant has already served imprisonment for a period of more than 10 years.

13. So far as the quantum of fine is concerned, learned trial Judge has imposed Rs.10,000/- in default to undergo R.I. for six months more. Learned counsel for the appellant submitted that the accused-appellant belongs to a poor tribal community and is not in a position to pay such a huge amount as fine, which is not disputed by the State. Apart from the same, it is further submitted that the accused-appellant being the brother of the father of victim girl, they are pulling on well and there is no apprehension of commission of any

further offence. Therefore, taking note of the aforesaid factors, we exempt the appellant from payment of fine.

14. In view of the foregoing discussions, the conviction imposed on the appellant herein is confirmed. However, the sentence of life imprisonment is modified to R.I. for 10 years. Since in the meantime, the appellant has already served the sentence of 10 years, he be set at liberty forthwith, if his detention is not required in connection with any other case.

15. With the aforesaid modification of sentence, the appeal stands disposed of.

.....
Dr.B.R.Sarangi, J.

S.Panda, J. I agree.

.....
S.Panda,J.

Orissa High Court, Cuttack
The 27th June, 2013/**PKSahoo**