

State of Orissa Vs. Satrughna Seth

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Court : Orissa

Decided On : Feb-22-2005

Reported in : 99(2005)CLT496; 2005(I)OLR648

Judge : P.K. Tripathy, J.

Acts : Evidence Act; Indian Penal Code (IPC) - Sections 121A, 122, 354, 376, 399, 400, 401, 402 and 511; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 374 and 378

Appeal No. : Government Appeal No. 14 of 1985

Appellant : State of Orissa

Respondent : Satrughna Seth

Advocate for Def. : A. By. Misra, ;P.N. Mohapatra, ;C.R. Nanda, ;By. Nayak and ;A.K. Misra, Advs.

Advocate for Pet/Ap. : Standing Counsel

Disposition : Appeal dismissed

Judgement :

P.K. Tripathy, J.

1. Learned Standing Counsel is present. Counsel for the Respondent are not present.

2. Heard.

3. The Government Appeal is disposed of in the following manner:

This Government Appeal has been filed against an order of acquittal granted to the accused/respondent by the Learned Assistant Sessions Judge, Cuttack from the charge under Sections 376 and 354 and 511, IPC in S.T. Case No. 126/3 of 1984 arising out of G.R. Case No. 216 of 1983 of the Court of Sub-divisional Judicial Magistrate, Banki.

4. Accusation against the respondent is that on 9.12.983, he allegedly ravished a minor child aged about 7 years in a sugarcane field and that in that process he used Criminal force intending to outrage her modesty. The incident leading to the occurrence, according to the prosecution is that the victim (P.W. 6) was a minor girl aged about 6 to 7 years. On the date of occurrence i.e., on 9.12.1983 in the afternoon hours on the direction of her mother (P.W. No. 4), she came to guard the thrashing floor. At about 3 P.M., on seeing a calf having entered into their horse gram field she went there to drive it out. While returning from that place, she was invited by the accused to the sugarcane field to give a piece of sugarcane. When she went to that sugarcane field accused removed her CHHUDI and removing his lungi, made her to sit on his thighs and put his penis into the vagina of the girl and in that process embarrassed her and also kissed her breast (chest). After seminal discharge which fell on her thigh and frock, the accused wiped the same and gave her a 50 paise coin and asked her not to disclose to anybody about that incident. She returned to the thrashing floor and found her mother present there. Her mother sensed that something had gone wrong with her and accordingly asked P.W. No. 6 and she narrated the incident resulting in a report to the Police followed with routine investigation. In that process, the girl was examined by the lady doctor (P.W. No. 13) on 10.12.1983 and the accused being medically examined by the doctor (P.W. No. 14) on 14.12.1983. The wearing apparels of the accused i.e., the lungi and the gamancha marked M.Os. I and II and the wearing apparel of the girl i.e., the pant and the frock respectively M.Os. III

and IV were seized and sent to the State Forensic Science Laboratory (in short 'S.F.S.L.') at Rasulgarh, Bhubaneswar for chemical analysis and serological test. On completion of the investigation, charge-sheet was submitted for the offences under Sections 376/511 and 354, IPC but as noted above charge was framed against the accused under Sections 376 and 354 and 511, IPC.

5. Accused took the plea of complete denial to the allegations and false implications because of the land dispute with the informant (P.W. No. 1).

6. To substantiate the charge, prosecution examined fifteen witnesses and relied on the documents marked Exts. 1 to 11 and the aforesaid M.Os. I to IV besides the piece of sugarcane (M.O. No. V). Out of such evidence, Ext. 1 is the FIR, Ext. 7 is the medical report of the girl by the doctor, P.W. No. 13. Ext. 8 is the medical report on examination of the accused by the doctor P.W. No. 14. Exts. 10 and 11 are the chemical examination reports and the report of the Serologist and Ext. 9 is the spot map which are the relevant documentary evidence. The victim girl was examined as P.W. No. 6. As noted above, informant is P.W. No. 1 and P.W. No. 4 is the mother of P.W. No. 6 and P.W. No. 5 is an aunt of P.W. No. 6.

7. In support of the plea of denial, accused examined one witness i.e., D.W. No. 1, Bharata Behera to prove the enmity between the accused and P.W. No. 1.

8. Referring to the ratio in the cases of Ullas Mahapatra v. The King, Vol. XVI (1950) CLT 102, and The State of Bihar v. Kapil Singh, AIR 1969 SC 53, regarding the manner in which evidence of a child witness is to be appreciated, the Trial Court assessed the evidence of P.W. No. 6, relating to the alleged indecent act and found that her evidence on the aforesaid accusation against accused is without corroboration from the other circumstantial evidence, such as, the evidence of the doctor P.W. No. 13 regarding absence of injury in her private parts as noted in Ext. 7 and contradictory evidence of P.W. No. 4 and P.W. No. 1 regarding the manner in which the occurrence took place. Therefore, he found that prosecution has not been able to prove the charge against the accused beyond all shadow of doubt. Accordingly, he granted the benefit of doubt and acquitted the accused.

8. While challenging to the aforesaid order of acquittal and after referring to the evidence of PW. No. 6, Ext. 7 and evidence of P.W. No. 13, Learned Standing Counsel concedes that a case of rape punishable under Section 376, IPC is not made out. This Court finds such concession appropriate because of lack of evidence to substantiate the charge of rape.

9. Learned Standing Counsel, however, argues that a case of attempt to rape punishable under Sections 376/511, IPC is made out by the prosecution. Under the given facts and evidence available on record, this Court does not find any merit in that argument. Section 511, IPC prescribes for punishment for an attempt to commit a particular offence. It is the settled principle of law that there are four stages in the commission for a crime, viz., intention, preparation, attempt and commission of the offence. Intention to commit a crime has not been made punishable under the Penal Code. Preparation for committing an offence is however punishable under Sections 121(A), 122, 399, 400, 401 and 402, IPC. The present case does not come within the ambit of any of the aforesaid penal provision so as to punish for preparation. Then comes the 'attempt'. Attempt is an intentional act, which a person does in furtherance of commission of a particular offence but fails in its object because of certain circumstances independent of the volition of that person. Therefore, whether certain act amount to an attempt to commit that particular offence is always a question of fact dependant on the particulars of the offence and the steps taken in that behalf in order to commit it. In this case, allegation of the prosecution is of commission of rape and not attempt to commit rape. In her evidence, P.W. No. 6, admitted that she did not raise protest to any of the acts of the accused and abided by the instruction when the alleged indecent behaviour was acted on her. There is no evidence on record whatsoever to prove that the accused attempted a rape and failed because of any circumstance. Evidence of the P.W. No. 13 and the report Ext. 7 clearly indicates that there was no mark of violence found on the body of P.W. No. 6. No seminal stain found on her external genitals and thighs. No dried blood was found on the genital organ or in the neighbour hood. No bruise or laceration was found on the external part of the genital. Hymen was found intact. The Doctor has further stated that she thoroughly examined P.W. No. 6 to found no injury on her body including the private part. Admittedly, except P.W. No. 6, there was none at the spot of

occurrence so as to put a resistance to the act of the accused. As already noted, the girl did not raise any protest but cooperated with him by not creating any noise or shouting out of pain. Therefore, as noted above, this Court does not find that accused attempted a rape and failed. Thus, a case under Section 376 and 511, IPC is not made out.

10. At this juncture, this Court desires to put on record the principle of law in relation to assessment of an order of acquittal at the behest of the prosecution. When Section 374 of the Code of Criminal Procedure (in short 'the Code') provides for appeal against conviction, provision in Section 378 of the Code provides for appeal in case of acquittal. There is no statutory prohibition or prescription to judge such impugned order by adopting different standards. In other words, a Court hearing appeal cannot have a separate standard while assessing an order of conviction and another standard while considering an order of acquittal. In both the type of appeals, the provision of penal law relating to the ingredients of the offences and the provision of Evidence Act, relating to appreciating and accepting the legal evidence has to be same. But in case of acquittal the Appellate Court should give proper weightage and consideration to :

(i) View of the Trial Judge as to the credibility of the witnesses;

(ii) On the evidence on record, whether the view taken by the Trial Court is one of the possible views.

The aforesaid aspect has to be duly considered and the view of the Trial Court is not to be lightly brushed aside inasmuch as the Trial Court has the advantage of looking to the demeanour of the parties and the witnesses from stage to stage in course of the trial. Therefore, unless the Appellate Court finds from the evidence on record that the finding recorded by the Trial Court is illegal or contrary to the evidence on record or otherwise suffers from perversity, then, he should not interfere with an order of acquittal by taking a contrary view of the evidence on record. In the above context, in the case of *State of Punjab v. Parveen Kumar*, 2004 AIR SCW 6897, the Apex Court has propounded that:

9. *** *** ***In the first place, in appeal against acquittal, this Court will not set aside the findings of fact and the order of acquittal recorded by the High Court unless it is satisfied that the findings recorded are wholly unreasonable, perverse, not based on evidence on record, or suffer from serious legal infirmity. The mere fact that on the basis of the same evidence another view is possible is not a ground for setting aside an order of acquittal. We find that the view taken by the High Court is a possible reasonable view on the evidence on record and, therefore, we will not be justified in setting aside the order of acquittal.'

Therefore, this Court reiterates that on the fact and evidence available on record, the case of attempt to rape, has not been made out.

11. Learned Standing Counsel also argues that from the facts and evidence available on record, prosecution has been able to prove the offence under Section 354, IPC. This Court sees on record that charge was not framed for outraging the modesty of P.W. No. 6. On the other hand, charge was framed for attempt to outrage her modesty. In this case, there is no proof of assault in the process of alleged attempt to commit outrage of her modesty. Evidence of the lady doctor, P.W. No. 13 and the reports Ext. 7 make it doubtful that accused applied Criminal force on the victim girl in the alleged manner. She did not find any injury on her thigh and private parts or on the chest (breast) of the girl. P.W. No. 6, the girl being the victim and sole witness to the occurrence was found by the Trial Court not reliable. On the self same evidence when the State concedes that offence under Section 376, IPC is not made out, it is difficult to rely on such shaky evidence to warrant a conviction under Section 354, IPC.

12. This Court finds no illegality or perversity in the findings recorded by the Trial Court. Therefore, a benefit which has been granted to the accused from the doubtful circumstance should not be curtailed on the basis of hypothesis. No other point is raised by the State while challenging to the impugned order of acquittal. Thus, for the reasons indicated above, this Court finds no merit in the Government Appeal and the same is accordingly dismissed.