

**Manmath Biswal Vs. State of Orissa**

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**Court :** Orissa

**Decided On :** Jul-21-1997

**Reported in :** 1997(II)OLR198

**Judge :** P.K. Misra, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 366, 376 and 377

**Appeal No. :** Criminal Appeal No. 164 of 1991

**Appellant :** Manmath Biswal

**Respondent :** State of Orissa

**Advocate for Def. :** Government Adv.

**Advocate for Pet/Ap. :** A.K. Acharya and N. Jena, Adv.

**Judgement :**

**P.K. Misra, J.**

1. The appellant has been convicted under Section 376, Indian Penal Code, and sentenced to undergo R. I. for seven years and to pay a fine of Rs. 2,000/- in default, to undergo R. I. for six months; under Section 366, Indian Penal Code, and sentenced to undergo R.I. for three years and to pay a fine of Rs, 500/- in default, to under go R.I: for three months; and under Section 377, Indian Penal

Code, and sentenced to undergo R.I. for three years and to pay a fine of Rs. 500/- in default, to undergo R.I. for three months. Though he was also convicted under Section 323, Indian Penal Code, no separate sentence was imposed, all the sentences were directed to run concurrently.

2. The prosecution case is as follows : In the night of 20.10.1990, the victim was travelling in a bus. On the way the bus stopped at Ramachandrapur and it was indicated that the bus would not go to Bato, the destination of the victim. The bus stopped near Ramachandrapur I.B. at about 1 A.M. The driver of the bus forcibly took the victim to a nearby place and the Conductor and Cleaner did not come to the rescue of the victim. The accused: gave two or three slaps to the victim and subsequently raped her. He also committed offence under Section 377, Indian Penal Code, by inserting his penis inside the mouth of the victim. The victim after escaping ran towards a lighted house which happened to be the police station., She lodged F.I.R immediately at about 1.30 A.M. in the night of 20.10.1990/ 21.10.199., The victim and the accused were medically examined the next day. After completion of investigation charge sheet was submitted.

3. The plea of the accused is one of denial.

4. The victim was examined as P.W. 5. Relying upon her statement as corroborated by post-occurrence witnesses (P.Ws. 1 and 2), the trial Court convicted the accused.

5. In this appeal, it is contended that in view of the prevaricating evidence of P.W.5, it is difficult to rely upon her evidence to convict the accused, It is further submitted that the doctor who had examined the accused has stated that there was no sign of sexual intercourse so far as the accused was concerned within last twelve hours from the time of examination and in view of each evidence, the benefit of doubt should be extended to the accused.

6. The victim in her examination-in-chief had only stated that the accused driver caught-hold of her hand and dragged her and had not stated anything regarding the alleged offence under Sections 376 and 377. After she was declared hostile and cross-examined by the Public Prosecutors she stated that the accused forcibly

committed rape on her and had inserted his penis in her mouth. She also stated that initially she had avoided to speak the truth as she was ashamed of the incident. Though ordinarily in a case under Section 376, Indian Penal Code, it may not be always necessary to seek for corroboration of the evidence of the victim in the, present case however, in view of the prevaricating statements of the victim it would be prudent to seek for corroboration.

7. The statements of the victim regarding commission of offence under Sections 376 and 377, Indian Penal Code, are corroborated by the F.I.R. which was lodged by the victim herself soon after the occurrence. Apart from the F.I.R. her evidence also receives corroboration to some extent from the evidence of P.W. 2, the police constable at Ramachandrapur police station, who stated that the victim had come to the police station in a naked condition. The doctor (P.W. 6) who had examined the victim the very next day found certain injuries on her private parts as well as on other parts of her body which corroborate the evidence of the victim. The doctor also found dead spermatozoa indicating recent intercourse. In other words, the medical evidence amply corroborates the version of the victim. That apart, P.W. 7, the Scientific Officer, examined the Suya of the victim which contained stains of semen and blood. Similarly semen was also present in the hair of the victim collected from her head. Therefore, all these materials fully corroborate the statement of the victim regarding the commission of offences under Sections 376 and 377, Indian Penal Code, and there is no reason to interfere with the findings of the trial Court on this aspect.

8. So far as the offence under Sections 323 and 366, Indian Penal Code, are concerned, though specific allegations had been made in the F.I.R., in her statement in Court, the victim has not whispered anything about the alleged assault. Similarly, though she had stated that the accused had caught-hold of her hand and dragged her in cross-examination she has stated that she cannot say as to who dragged her as it was a dark night. In such view of the matter, it cannot be said beyond all reasonable doubts that the offence under Sections 323 and 366, Indian Penal Code, had been committed by the present appellant.

9. In view of the above discussion, the appeal is allowed in part. The order of conviction and sentence under Section 323 and 366, Indian Penal Code, is set aside and the order of conviction and sentence under Sections 376 and 377, Indian Penal Code, is confirmed.

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