

Jayasena Pradhan and ors. Vs. State

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Court : Orissa

Decided On : Jan-03-2001

Reported in : 92(2001)CLT87; 2001CriLJ1953; 2001(I)OLR316

Judge : P.K. Patra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 341, 376(2) and 506; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 164

Appeal No. : Criminal Appeal No. 19 of 1998

Appellant : Jayasena Pradhan and ors.

Respondent : State

Advocate for Def. : S. Pradhan, Addl. Standing Counsel

Advocate for Pet/Ap. : N.N. Mohapatra and ;D.R. Nanda, Advs.

Disposition : Crl. appeal allowed

Judgement :

P.K. Patra, J.

1. The appellants have challenged the judgment dated 20-11-1997 passed by Shri D. K. Sahu, Sessions Judge, Phulbani in Sessions Trial No. 23 of 1997, convicting them under section 376(2)(g) of the Indian Penal Code (for short 'I.P.C.') and

sentencing each of them to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 100/- (Rupees one hundred), in default, to undergo rigorous imprisonment for a further period of seven days.

2. Briefly stated, the prosecution case runs as follows :

The informant (p. w. 2) and his wife, the prosecutrix (p. w. 5) were returning to their village Raipali under G. Udaya-giri police station in the district of Kandhamal from the nearby village-Raikala under the said police station after purchasing rice, in the evening of 14-8-1996 and on the way p. w. 2 asked p.w. 5 to proceed ahead to their house, since he wanted to answer call of nature. It is alleged that while the prosecutrix (p. w. 5) was alone proceeding towards her village, the appellants (hereinafter referred to as 'accused persons'), who are residents of village Raikala, caught hold of her and forcibly committed rape on her one after another without her consent and against her will, in an open field, locally known as 'Gundutnaha', close to the road. The informant after reaching his house found that his wife had not returned and hence he went in search of his wife on the same road with a torchlight in hand. When he heard some persons talking in that field, he focussed his torchlight in that direction and found the four accused persons there; three of them holding his wife and the other committing rape on her. When he entreated them to leave his wife, accused Jayasena threatened him with knife and asked him not to report the matter before the police. Hence he did not report the occurrence immediately to the police out of fear, but after eleven 'days he mustered courage and reported the occurrence on 25-8-1996 before the Officer-in-charge of the G. Udayagiri police station (p. w. 6) who registered the case and took up investigation. During investigation p. w. 6 examined the witnesses, seized the wearing apparels of the victim, viz., a saree, a blouse and an undercloth, sent her for medical examination, seized the wearing apparels of the accused persons along with a knife from accused Nehru, arrested the accused persons, sent them for medical examination and sent the seized wearing apparels for 'chemical examination to the State Forensic Science Laboratory (for short 'the laboratory'). After completion of investigation he submitted charge-sheet under sections 341/376(2)(g)/506, I. P. C. against the accused persons who stood their trial.

3. The defence plea is one of denial and false implication for the purposes of extracting money from the accused persons.
4. Shri N. N. Mohapatra, learned counsel for the appellants and Shri S. Pradhan, learned Additional Standing Counsel were heard at length. While Shri Mohapatra contended that the impugned judgment is unsustainable, for improper appreciation of evidence on record and urged or setting aside the conviction of the accused persons, learned Additional Standing Counsel supported the impugned judgment.
5. In order to bring home the charge against the accused persons, prosecution has examined six witnesses; of whom p.w. 5 is the victim woman and p. w. 2 is her husband who is informant in this case. P. w. 1 is a witness to the seizure of the wearing apparels from the accused persons under the seizufelists (Exts. 1, 2, 3 & 4). P. w. 3 is the Lady Assistant Surgeon who medically examined the prosecutrix on 28-8-1996 and submitted her report (Ext. 6). P. w. 4 is the medical officer who medically examined the accused persons and submitted his reports (Exts. 7, 8, 9 & 10). P. w. 6 is the Investigating Officer. The defence has examined none.
- 6- The learned Sessions Judge placed reliance on the statement of the prosecutrix (p. w. 5) and found corroboration from the statement of p. w. 2 and observed that the absence of injuries on the body or private part of the victim woman was of no consequence. The contention of the learned counsel for the accused persons that there was no proper appreciation of the evidence on record, requires careful consideration.
7. In the present case, prosecutrix (p. w. 5) and her husband (p. w. 2) are the two material witnesses for the prosecution. The medical evidence on record does not practically support the prosecution case inasmuch as the Lady Assistant Surgeon (p. w. 3) who medically examined the prosecutrix on 28-8-1996, found, one abrasion of the size 2' X 2' in the inner aspect of the lower lip and another abrasion of the size 2' X 2' on the front middle part of the chest which were, according to her, probably caused within three days of the examination and she did not find any sign of recent rape on the victim. The victim was a married woman aged about 40 (forty) years, habituated to sexual intercourse and her vagina easily admitted three fingers, as opined by her (p. w. 3). The medical examination of the four accused

persons by p.w. 4 also does not help the prosecution case inasmuch as he has not stated to have found any injury on them, though he has opined that they were capable of having sexual intercourse, as per his reports (Exts. 7, 8, 9 & 10). The wearing apparels of the victim woman and of the accused persons were sent for chemical examination and as per the report (Ext. 13) no stain of semen could be detected on the same.

In view of the above, the statement of the prosecutrix (p. w. 5) requires careful scrutiny before placing reliance on her to sustain the conviction of the accused persons, specially when her husband (p. w. 2) appears to be an interested witness and his statement cannot be relied upon without thorough scrutiny.

8. In the F. I. R. (Ext. 5) p. w. 2 has stated that when he focussed torchlight, he found three of the accused persons holding the prosecutrix and the fourth committing rape on her and that accused Jayasena threatened him with a knife. He has not specified which of the four accused persons was committing rape-but in his statement in court he has deposed that he found accused Jayasena committing rape on the prosecutrix and when he requested them to leave the prosecutrix, lest she would die accused Jayasena got up; but accused Nehru who was holding a Katari, threatened him and asked him not to divulge the matter to others or to the police and then the accused persons fled away. In the F. I. R. it is stated that the four accused persons again went to his house and threatened him but he has not stated the same in court. The prosecutrix (p. w. 5) has stated that after commission of rape on her by accused Jayasena, accused Nehru committed rape on her and then she lost her consciousness and could not know what happened thereafter and who brought her to her house. She has not stated about the arrival of p. w. 2 at the spot at the time of commission of rape either by accused Jayasena or by accused Nehru and thus she excludes the possibility of p.w. 2 reaching the spot and witnessing commission of rape on her. Further p. w. 2 has stated that he found marks of biting on the breast of p.w. 5 and swelling on her month and he has gone to the extent of further stating that some hair had been removed from the private part of p. w. 5. P. w. 5 has not stated about the same and the medical evidence on record belies the same. According to p. w. 2 the place of rape is about half a kilometer away . from village Raikala and about

hundred feet from the Road. His village Raipalli is not far off from the village Raikala. G. Udaya-giri police station is at a distance of about five to seven kilometers from his village and he was going to G. Udayagiri everyday to sell charcoal and firewood to earn his livelihood. He has stated to have gone to G. Udayagiri for the said purpose after the occurrence but he did not report the occurrence at the police station and eleven days after the occurrence he lodged the written report at the police station. He has not brought the occurrence to the notice of the residents of his village or of village Raikala. It is also found that in his statement under section 164, Cr. P. C. recorded by a Magistrate on 27-11-1996, p. w. 2 has given a different version stating that accused persons Nehru and Jayasena were holding the hands and legs of his wife and accused Bhadrjana standing, while accused Prapeta was committing-rape on his wife. It is suggested to p. w. 2 that he filed a number of cases against young persons of that area to extract money from them and he has denied the same. Explanation for the delay in lodging the F. I. R. is also not plausible.

In view of the above infirmities and improbabilities and inconsistencies in the statement of p. w. 2, he cannot be relied upon as a truthful witness and his statement ought to have been discarded from consideration. Hence the finding of the trial court that the statement of p. w. 2 is reliable and unimpeachable, is erroneous and cannot be sustained. After discarding the statement of p. w. 2, the sole testimony of the prosecutrix (p. w. 5) which remains uncorroborated, is to be subjected to thorough scrutiny before placing reliance on her to sustain the conviction of the accused persons.

9. It is well settled in law that conviction can be based on the sole testimony of the prosecutrix if her evidence does not suffer from infirmities or is not improbable and is found to be trustworthy and reliable and that corroboration is not necessary unless there are compelling reasons for seeking corroboration and that corroboration is not a required rule and may be dispensed with whenever the court is satisfied that it is safe to do so and that the rule is not that the corroboration is essential before there can be a conviction, but there is necessity to corroboration as a matter of prudence. It is also well settled in law that absence of injury on the private part of the victim or stains of semen or spermatozoa is of no consequence

and could not negative the offence of rape. It is also the settled principle of law that when the medical evidence was to the effect that there are no signs of recent intercourse or injury on the girl's private part and where it is clear that the prosecutrix is not a reliable witness or is a willing party to sexual intercourse, it would not be safe to convict the accused on her uncorroborated testimony.

10. Keeping in view the aforesaid principles of law it is to be considered whether the uncorroborated testimony of the prosecutrix (p. w. 5) is credible and reliable. The prosecutrix (p. w. 5) has stated that while she was alone returning, accused Bhadrjana caught hold of her and thereafter accused persons Prapeta and Nehru also caught hold of her and the fourth accused Jayasena gagged her mouth with her wearing cloth and dragged her to the field and laid her down and committed sexual intercourse on her and after him accused Nehru committed sexual intercourse on her when she lost her consciousness and could not know what happened thereafter. She regained her sense in her house. In her statement in cross-examination she has stated that she had been to G. Udayagiri hospital on the next day morning. But she has not stated to have gone to the police station to report the occurrence. She has stated to have been examined by police after about five days of the occurrence whereas the occurrence was reported at the police station after eleven days, She also could not state when p. w, 2 went to the police station. She has not stated before the I. O. (p. w. 6) that she lost her consciousness after the rape by accused Nehru and that accused Jayasena gagged her mouth. But she has stated before the I. O, that all the accused persons except Bhadrjana gagged her mouth. It is found that in her statement under section 164, Cr. P. C. recorded By the Magistrate, she has stated that all the four accused persons restrained her and put her saree into her mouth and committed sexual intercourse one after the other. She did not raise any hulla or did not try to escape and run away shouting for help. Had the accused persons actually restrained her near the field, she could have run back to her husband who had stayed back for answering call of nature or she could have fled away to the nearby village raising hulla for help. She did not resist the accused persons. She did not sustain any injury on any part of her body or on her private part as per the medical evidence on record (Ext. 4). Two abrasions found on her lip and chest were probably caused within three days of her medical examination. There is no

allegation that her bangles were broken. Her wearing saree, saya or blouse as also the wearing apparels of the accused persons did not contain any stains of semen or blood as per the chemical examination report (Ext. 13). Thus the statement of the prosecutrix (p. w. 5) is found to be bristling with infirmities and improbabilities and she cannot be believed to be a truthful witness and hence reliance cannot be placed on her to sustain the conviction of the accused persons. The finding of the trial court that the testimony of the prosecutrix (p. w. 5) is trustworthy and reliable, is erroneous and cannot be sustained. Consequently the accused persons cannot be convicted and they will be entitled to an acquittal. The impugned judgment is liable to be set aside.

11. In the result, the judgment dated 20-11-97 passed by the learned Sessions Judge, Phulbani in S. T. No. 23 of 1997 convicting the accused persons of the charge under section 376(2)(g), I. P. C. and sentencing each of them to undergo rigorous imprisonment for ten years and, to pay a fine of Rs. 100/- in default, to undergo rigorous imprisonment for a further period of seven days, is set aside. The accused persons are found not guilty and are acquitted of the charge. They be set at liberty forthwith if their detention is not required in any other case.

12. Crl. appeal allowed.