

Rabinarayan Das Vs. State

Rabinarayan Das Vs. State

SooperKanoon Citation : sooperkanoon.com/533359

Court : Orissa

Decided On : Jul-31-1991

Reported in : 1992CriLJ269; 1991(II)OLR381

Judge : A. Pasayat, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 362 and 375

Appeal No. : Criminal Revision No. 180 of 1990

Appellant : Rabinarayan Das

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : Y.A. Rahim, R.Ch. Behera and B.P. Panda

Judgement :

A. Pasayat, J.

1. Blinded by lust, the petitioner committed rape on a blind girl. That is the allegation. The accusation was accepted by the learned Assistant Sessions judge-cum-Additional Chief Judicial Magistrate, Bhubaneswar, who convicted the petitioner Under Section 376 of the Indian Penal Code, 1800 (in short 'IPC') and sentenced him to rigorous imprisonment for seven years. Additionally, he found

that the petitioner was guilty under Secs. 366 and 342, IPC and awarded sentences of two years and three months rigorous imprisonment respectively. The sentences were directed to run concurrently. In appeal, the learned Additional Sessions Judge, Bhubaneswar upheld the convictions and sentences.

2. Shorn of unnecessary details, the factual backdrop as depicted by the prosecution is that the prosecutrix, a blind girl (PW 1) used to go to Bhubaneswar for trainings in music. On 6-3-1987, she was travelling from Cuttack to Bhubaneswar by bus. The petitioner was a co-passenger and when the prosecutrix got down at Bhubaneswar and took a rickshaw to go to her destination, the petitioner sat by her side and travelled with her. Instead of dropping her at her destination, she was taken to the Orissa Secretariat where she was raped.

The rickshaw puller was examined as PW 2. Several other witnesses were examined to show that the petitioner had taken the prosecutrix inside the Secretariat and when he came down after the heinous act, he was apprehended, taken to the police station and both petitioner and prosecutrix were examined medically. After completion of investigation charge sheet was submitted against the petitioner. Medical evidence and the opinion of the doctors PWs. 4, 5, 13 and 20 fully corroborate the evidence of the prosecutrix as do opinions of the chemical examiner and serologist and findings recorded by them. The petitioner was identified in the Test- Identification Parade by the rickshaw puller (PW 2) and the sentries PWs. 9 and 10. The place of occurrence is a paper cutting room, otherwise known as Press cutting room of the Information and Public Relations Department of the State of Orissa. Blood patches were found on the steps to the spot room as detected by the Scientific Officer (PW 6) and PW 21.

3. The petitioner's plea was one of denial.

4. As many as twenty seven witnesses were examined to further the prosecution case. Two witnesses were examined by the petitioner. Prosecution apart from the evidence of the prosecutrix relied on the evidence of several witnesses to further its case. As indicated above, PW 2 is the rickshaw puller, PW 17 had seen both petitioner and prosecutrix in a rickshaw between the place where the prosecutrix got down from the bus and the main gate of the Secretariat compound. PWs. y

and 10 are the sentries at the entry point of the Secretariat. PWs 11 and 12 are two other sentries who detained the petitioner and the prosecutrix while they were coming back after the former's wanton act. PWs 15, 16, and 22 are the Principal and students of the school before whom the prosecutrix described about the commission of offence immediately after they were detained at the gate by PWs 11 and 12.

5. Main plank of the petitioner's argument assailing the convictions and sentences is that the materials on record do not establish the offences as alleged. Even if it is accepted that there was sexual intercourse, as alleged, the circumstances clearly established consent on the part of the prosecutrix and therefore, no offence Under Section 376 is made out. Further, the ingredients of offences under Secs. 366 and 342 are singularly lacking in the case. In order to establish its case of consent, it is highlighted that the prosecutrix without any demur travelled a long distance with the petitioner.

Even when they were detained at the entry point of the Secretariat, she did not raise any objection. There were no injuries on her person as found by the doctors, which clearly rules out any forcible intercourse. It is also submitted that there is no corroboration to the evidence of the prosecutrix, who admittedly could not see the petitioner. The evidence of the so-called corroborating witnesses is so discrepant and unbelievable that they warrant outright rejection. It is also submitted on behalf of the petitioner that the petitioner has been languishing in jail for more than four years, has lost his job and there has been sufficient agony by unwarranted publicity the case received in the news media. The social castigation has irretrievably wrecked his family life, and therefore, even if the convictions are maintained a liberal sentence should be awarded.

The learned counsellor the State, however, submits that the prosecution has established its case beyond a shadow of doubt and considering the nature of the crime no leniency is warranted; and on the other hand there is scope for enhancement of the sentence , awarded.

6. The offence of rape is committed when a man has sexual intercourse with a woman, who is not his wife, under circumstances falling under any of the five

clauses of Section 375, IPC According to exception to the said section, if wife is under fifteen years of age, sexual intercourse amounts to rape. If there is consent to the act, it does not amount to an offence. A woman can be said to have consented to the act only when she has submitted herself willingly and freely, while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. Consent implies the exercise of a free and untrammelled right to forbid or withhold what is being consented to; it always involves a voluntary act and conscious acceptance of what is proposed to be done by another and concurred in by the former. 'Consent' means 'agreement; community of feeling and opinion; unanimity; to agree not to resist or prevent; to acquiesce in; agree to; permit; to be willing to undertake; agree to do'. Obviously consent involves no denial, no resistance. It cannot be equated to inability to resist out of helplessness. Here we are concerned with a blind girl. As observed by the Supreme Court, absence of violence or stiff resistance may even suggest helpless surrender due to sheer timidity and would not amount to consent. [See (1972) 2 SCC 749): Gurcharan Singh v. State of Haryana]. It cannot be considered as a mitigating circumstance. Much stress has been laid on absence of injuries on either the prosecutrix or the petitioner. It cannot be said that whenever residence is offered there is bound to be injury on the body of the victim or the accused. It is not a case that there was no injury at all, and there was injury on prosecutrix's cheek. Absence of any injury on other parts of prosecutrix's body does not falsify the case of rape by the petitioner. (See AIR 1987 SC 1080: Balwant Singh and Ors. v. State of Punjab), in the said case, prosecutrix was raped by four persons. Absence of injury was held inconsequential. In Krishna Prasad Rajguru Mahapitra v. State of Orissa, (1985) 2 Cr. L. C. 486, it was held that an act done under helpless resignation cannot be an act on consent. Absence of injuries cannot be always the sine qua non of consent. As indicated above, the passive submission may be due to several factors. There is a gulf of difference between consent and submission. While the consent ' involves submission, the contrary is not always there and the mere act of submission does not involve consent. The surrounding circumstances and previous or contemporaneous acts and conduct have to be looked into. Here the prosecutrix is a blind girl. Helplessness is natural on account of her physical deficiency. Therefore, merely because there was no injury except

abrasions on her cheeks, case of consent is not inferable.

7. The report of the Forensic Medicine and Toxicology Department, as per Ext. 15, contains the opinion of the Professor and Head of the Department. The opinion is to the effect that the prosecutrix had been subjected to forced sexual intercourse leading to loss of her virginity and consequent injuries on her person and the petitioner had forced sexual act resulting in bleeding injuries to private part of the prosecutrix. The opinion is further reinforced by the report of the State Forensic Science Laboratory, Rasulgarh, Bhubaneswar as per Ext. 1,

8. So far as corroboration is concerned, lack of the same cannot be ground for throwing out the prosecution case. Conviction can be maintained on the evidence of the prosecutrix herself. In the instant case, the evidence of PWs 2, 9, 10, 11 and 12 clearly show that the accused was seen immediately prior to and after the occurrence. It is not the case of the petitioner that between the time he went inside the Secretariat premises along with the prosecutrix and came back to be detained and immediately thereafter medically examined, there was somebody else committed the offence. There is no link missing and the chain is complete. It is not a case of false accusation by a helpless girl, with all apprehensions of social ridicule and stigma staring at her. All the circumstances point the finger at the petitioner to be guilty, and he has been rightly held to be so. The probabilities factor are so overwhelming that minor discrepancies here and there do not corrode the prosecution case. Corroboration in the form of eye witness account of an independent witness may be forthcoming in physical assault cases, such 'evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would be adding insult to injury to insist on corroboration in cases involving sexual offences Corroboration may be insisted upon where there is likelihood of the prosecutrix having levelled such an accusation as an act of self-preservation As observed by the Supreme Court in AIR 1952 SC 54 : Rameshwar v. State of Rajasthan in the inimitable voice of Vivian Bose, J:

'The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it

safe to dispense with it, must be present to the mind of the Judge.....'

As a rule of caution and practice more than as a requirement of law, corroboration is to be sought for dispensable when it is so. The evidence on record clearly establish the guilty of the petitioner so far as the question of rape is concerned.

9. Coming to the offence of wrongful confinement, I find that the essential ingredients has not been established The essential ingredient of the offence is that the accused should have wrongfully restrained the complainant, and such restraint was to prevent the complainant from proceeding beyond certain circumscribing limits beyond which he or she had a right to proceed. Therefore, the conviction Under Section 342, IPC is set aside.

10. So far as the offence Under Section 366, IPC is concerned, that relates to kidnapping or abducting any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse. In the instant case, allegation is one of abduction.

In terms of Section 362, IPC, 'abduction' means, whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person. The expression 'deceitful means' includes a misleading statement. It is really speaking a matter of intention. The intention of the accused is the basis and the gravamen of the offence. The volition, the intention and the conduct of the woman do not determine the offence. Here the prosecutrix was to go to her school. But the petitioner took her to the Secretariat premises. No evidence is forthcoming that she went out of her own volition without any inducement by the petitioner.

Inducement does not not necessarily involve any force or compulsion. It simply means persuasion, but for abduction it must be by deceitful means. There is nothing to show that the prosecutrix had gone on her own volition. The place where she had been taken was not her destination. Any act on the part of a person to lead a woman astray from the path of rectitude is seduction and if it followed by

intercourse, it will be seduction for illicit intercourse. (See in re : Khalander Sahab : AIR 1955 SC 59). The conviction Under Section 366, IPC is, therefore, maintained; so is the sentence awarded.

11. Coming to the sentence, it may be said that at the threshold that human goodness is limited but human depravity is not. A helpless blind girl has been ravished. Rape is not only physical violation on a woman, it is violation of her dignity, Minimum sentence has been prescribed by the Legislature making seven years' imprisonment a statutory mandate, unless Court records adequate and special reasons for reduction in term of sentence. In my view, no mitigating circumstance exists for such reduction. I, therefore, confirm the conviction and sentence awarded in respect of offence Under Section 376, IPC. The sentences in respect of convictions under Secs. 366 and 376, IPC shall run concurrently.

The revision application is allowed in part to the extent indicated above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com