

Panchu Parida Vs. State of Orissa

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Court : Orissa

Decided On : Aug-19-1992

Reported in : 1993CriLJ953

Judge : A. Pasayat, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 341 and 354; Code of Criminal Procedure (CrPC) , 1974 - Sections 360

Appeal No. : Criminal Revision No. 625 of 1989

Appellant : Panchu Parida

Respondent : State of Orissa

Advocate for Def. : G.K. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : Deepak Misra, Adv.

Judgement :

ORDER

A. Pasayat, J.

1. Judgment of conviction under Section 354 of the Indian Penal Code, 1860 (in short, the 'IPC') and sentence of one year rigorous imprisonment as awarded by learned Judicial Magistrate First Class, Khandapara (in short, the 'JMFC') and

affirmation thereof in appeal by learned Sessions Judge, Puri, from the subject-matter of challenge in this revision application.

2. The petitioner stood charged for commission of offences punishable u/Sections 341 / 354/323, IPC. The prosecution case is that on 23-9-1984 morning the petitioner outraged the modesty of one Bhaskar Dei (P.W. 3) in the vegetable field of Banamali Pradhan, the informant. Bhaskar Dei is claimed to be the sole witness to the occurrence being the victim herself. According to her, while she was plucking vegetables, the petitioner came from her back side and squeezed her breast and attempted to commit rape on her. She protested and tried to free herself from the clutches of the petitioner who was trying to take her towards the jungle, and in the process she sustained bleeding injuries. When she raised alarm, the accused-petitioner left her. It is alleged that the petitioner made her naked by dragging her saree. After P.W. 3 returned to her house, she narrated the incident to some co-villagers and also to her husband. The matter was reported to the village committee and a meeting was convened on 23-9-1984 itself. Though accused indirectly admitted his guilt, he did not come forward to settle the matter. The villagers asked the informant and the victim to wait for some time, so that the matter could be settled. Since there was no progress, the FIR was lodged and investigation was undertaken. After completion of investigation, charge-sheet was submitted and the petitioner faced trial.

3. The petitioner denied the allegations. His plea was that because of animosity, he has been falsely implicated. On evaluation of evidence of the victim and certain corroborating factors like convening of meeting as deposed by the witnesses, the courts below found the petitioner guilty under Section 354, IPC. He was acquitted of the other charges.

4. In appeal, several points have been raised in support of the revision application. Firstly, it is submitted that there has been unexplained delay in lodging the FIR. Though the occurrence allegedly took place on 23-9-1984, the FIR was lodged on 26-9-1984. Secondly, it is urged that evidence of victim herself is not credible and that courts below erred in accepting it as credible. Additionally, it is pleaded that sentence as awarded is extremely harsh and the petitioner should have been

extended to the benefits of probation as provided under Section 360 of the Code of Criminal Procedure, 1973 (in short, the 'Code'). Learned counsel for State however, submitted that the case involves an offence against dignity of a woman and therefore, there is no scope for interference, particularly while exercising revisional jurisdiction.

5. So far as the delay in lodging the FIR is concerned, I find that the explanation offered is cogent and plausible. It has been explained that a meeting was convened in the village to amicably settle the matter and when no progress was made, the FIR was lodged. It is not unnatural that an attempt was made to protect the dignity of a woman and not to bring the incident to limelight. In a tradition bound orthodox society, it would not be normal for a rustic woman shedding her inhibitions to come to Court to falsely implicate a co-villager against whom she has even no remote animosity. That would put her dignity at stake. A victim of molestation and indignation is in the same position as an injured witness and her evidence should receive the same weight. So far as the evidence of the victim is concerned, I find that the same is cogent and suffers from no infirmity so as to be thrown out as impeached. Therefore, the conviction as made is maintained.

6. Coming to the question of sentence, it is true that presently streas is on reformation. Probation is a part of the reformatory process. Many offenders are not criminals, but have surrendered to temptation or through misfortune have been brought within operation of judicial system. By resigning this type of offender to the charge of Probation Officer, the Court encourages its own sense of responsibility for the future of the accused and saves him from stigma and possible development of criminal propensities. Such a practice not only assists the offender but also is a stage in the reformation of an accused. Section 360 of the Code is in tune with the reformatory trend of modern criminal justice to rehabilitate young offenders as useful citizens. It is a social persuasive defence to extend whenever possible the key note of modern penology viz. reformation of the delinquent.

7. But while dealing with a case where honour and dignity of a woman is concerned, the Court would be slow if not leathe to extend the benefit of the provisions of Section 360 of the Code. If such beneficial provisions are extended

to offenders like one punishable under Section 354, IPC or similar such offences, it would not only encourage further escalation of the crime, but also would become difficult to check or arrest the perpetration of those crimes and imperil the modesty of many innocent girls. The Court in such circumstances has to be circumspect in extending beneficial provisions of probation to offences committed on women.

8. Taking note of the fact that the accused was a young person at the time of commission of the crime, and nearly eight years, have elapsed in the meantime, it would not be desirable to send him back to jail where he would be amidst hardened criminals. Therefore, in order not only to have a deterrent effect on the petitioner so that he shall not be encouraged to repeat the crime, but also as an act of antidote upon persons having similar propensity with the crime to desist therefrom, the petitioner is sentenced to undergo sentence of five continuous working days (i.e. from Monday to Friday) by sitting during the entire working hours in the Court of JMFC, Khandapara so that he shall be exposed to the public gaze. Such a therapy of sentencing technic requires to be evolved to meet the complex demands of a changing society. A somewhat similar approach was made by the Andhra Pradesh High Court. (See Ippili Trinadha Rao v. State of Andhra Pradesh, 1984 Cr LJ 1254.

9. In the ultimate result, conviction under Section 354, IPC is maintained but the sentence of imprisonment is modified as indicated above.

The revision is dismissed with the aforesaid modification of sentence.

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