

Sania Jani Vs. State

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Court : Orissa

Decided On : Apr-02-2003

Reported in : 2004CriLJ226; 2003(I)OLR569

Judge : A.S. Naidu, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 401; [Indian Penal Code \(IPC\), 1860](#) - Sections 376

Appeal No. : Jail Criminal Revn. No. 2 of 2002

Appellant : Sania Jani

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : R.K. Satpathy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A.S. Naidu, J.

1. Heard learned counsel for the petitioner and the learned Addl. Standing Counsel for the opposite party-State.

2. This Criminal Revision has been preferred inter alia challenging the order dated 10-5-2002 passed by the Ad hoc Addl. Sessions Judge, Jeypore in Criminal Appeal No. 132 of 2001 confirming an order dated 25-8-1990 passed by the C.J.M.-cum-Assist-ant Sessions Judge, Jeypore in Sessions Case No. 18 of 1997. convicting the petitioner under Sections 450/376, IPC and sentencing him to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 500.00, in default to undergo simple imprisonment for three months for the offence under Section 376, I.P.C. and to undergo rigorous imprisonment for two years for the offence under Section 450, I.P.C. with direction that both the sentences would run concurrently.

3. Bereft of all unnecessary details, the short facts alleged by the prosecution are that on 29-8-1996 at about 3 p.m. when the prosecutrix was in the kitchen of her house all alone, the petitioner entered there and had sexual intercourse with her against her will and fled away. Immediately after the incident, the prosecutrix reported the matter to her married daughter who was residing in the same village and both of them decided to wait for the husband of the prosecutrix. On the same evening, on the basis of a complaint made by the husband of the prosecutrix, a Panchayati was convened and as the petitioner did not attend the same, no decision could be taken. Thereafter FIR was lodged at the police station.

The defence was one of complete denial and it was further stated that the case had been falsely initiated against the petitioner out of a grudge. It was further submitted that the family of the prosecutrix was in possession of certain lands belonging to the petitioner and as the former was asked to hand over possession thereof to the petitioner, while handing over possession, the husband of the prosecutrix had threatened the petitioner with dire consequences.

4. To substantiate its case, prosecution had examined eight witnesses, of whom P.W. 1 was the prosecutrix, P.W. 2 was her daughter, P.W. 3 was a co-villager, P.W. 4 was the husband of the prosecutrix, P.W. 5 was the doctor who had examined the petitioner, P.W. 6 was the I.O., P.W. 7 was the C.I. of Police who had issued requisition for medical examination of the petitioner by doctor and P.W. 8 was a lady doctor. Prosecution also exhibited six documents.

The defence had examined one witness and has also exhibited three documents.

5. After discussing the evidence adduced, the trial Court found the petitioner guilty and convicted and sentenced him as stated earlier. In appeal, the order of the trial Court was confirmed by the appellate Court. The present Criminal Revision has been preferred by the petitioner from jail. The petitioner has already undergone sentence for two years and nine months.

6. Learned counsel for the petitioner submitted that the allegations made against the petitioner are false and concocted and in order to harass the petitioner owing to previous dispute between him and the family of the prosecutrix, the case has been falsely foisted. According to him, the medical evidence does not support the allegations of P.W. 1 made in the FIR and in her deposition in court. He also contended that there are various discrepancies in the evidence of the prosecution witnesses and it is a fit case where the petitioner should have been acquitted.

7. At the other hand, learned counsel for the State supporting the judgments of the Courts below submitted that both the Courts have scrutinised the evidence, both oral and documentary, and arrived at right conclusions and this Court being the revisional Court should refrain from further scanning the evidence. It is also submitted that there is no error apparent on the face of the record and as such the revision should be dismissed in limine.

8. After hearing the learned counsel for both sides and perusing the materials available on record, I find the following infirmities in the judgments of the Courts below:-

(1) P.W. 8 was the lady doctor who had admittedly examined the prosecutrix and she has categorically stated that the victim was capable of giving resistance and that there was no injury whatsoever on the body of the victim. She has also stated that the victim was a married woman and accustomed to sexual intercourse.

(2) P.W. 5, the doctor who had examined the petitioner has stated not to have found an injury on the private parts of the petitioner. It was further opined by P.W. 5 that the petitioner was a VDRL positive patient and there was a chance of

infection of the female partner in case of cohabitation with the petitioner.

(3) On examination of blood, no infection was found with the victim.

(4) The victim is a Scheduled Caste/Tribe lady and was between 35 to 40 years at the time of the alleged occurrence and she was quite healthy. It was alleged that the petitioner had entered into the house of the victim and forcibly committed rape on her. There is no evidence to show that any resistance was shown by the victim. There was no injury either internal or external on her private part or anywhere on her body.

(5) The spot map Ext. 5 clearly indicates that there were neighbouring houses. In her evidence also P.W. 1 admitted that there were inhabitants in the neighbouring houses and many women were present in their houses at the relevant time. The victim did not raise any shout, nor did she cry for help.

(6) The neighbouring witness P.W. 3 in his deposition has stated that he had no knowledge about the alleged rape; and

(7) Though P.Ws. 1 and 2 knew wherethe husband of P.W. 1 was grazing cattle,they preferred not to send word to him, butto wait till evening when the latter was expected to return home.

9. Though the petitioner was alleged to have trespassed into the house of the prosecutrix and committed rape on her at 3 p.m. on the alleged date of occurrence, it is stated by her husband who had admittedly returned in the evening that he noticed the petitioner running away from his house. This discrepancy went unexplained. It was stated by the prosecutrix that though the petitioner committed rape on her and thereafter went away, again he came in the evening. This statement is highly improbable. No person after committing rape would again come to the victim knowing well that her husband would be in the house at that time.

10. A Court of revision is concerned not only with the legality of the proceeding before the lower Court, but also with the propriety of the order passed under the particular circumstances of the case and in exercise of revisional jurisdiction, Court

can interfere with the findings if the same are contrary to the materials available on record and are otherwise perverse. A reference to the evidence of the lady doctor P.W. 8 stating her opinion in the case, as quoted hereinbelow, would clearly reveal that the findings of the Court below cannot be accepted without a pinch of salt :--

'..(1) She is capable of sexual intercourse;

(ii) as per physical examination, dental examination and by her own version and appearance the age of the victim is about 35 years approximately;

(iii) hymen present as carunaculae triformes;

(iv) the findings are not compatible to recent sexual intercourse, however it cannot be excluded;

(v) No marks of violence present on her private part, breasts, backside or any other part of the body;

(vi) No foreign hair, seminal stains, saliva stains present on the victim;

(vii) Spermatozoa not detected.....'

11. The aforesaid facts and circumstances create suspicion as to the veracity of the prosecution evidence. The defence examined one witness as D.W. 1 who supported its plea and has stated about the prior enmity between the family of the petitioner and that of the prosecutrix. P.Ws. 1 and 4 have also admitted about such prior enmity. Law is well settled that enmity is a double-edged weapon.

12. In view of the aforesaid facts and circumstances, particularly the medical evidence and chemical examination report, I am satisfied that prosecution has not been able to bring home the charge against the petitioner. Accordingly, I have no hesitation to hold that the petitioner is entitled to benefit of doubt.

13. In the result, the Jail Criminal Revision is allowed. The impugned judgments of the Courts below as to conviction and sentence of the petitioner are set aside. The petitioner is acquitted of the charge on benefit of doubt and he being in custody for about two years and nine months, is directed to be released forthwith if his

detention in custody is not required in connection with any other case.

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