Khara Kamidi Vs. State

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SooperKanoon Citation : sooperkanoon.com/535595

Court : Orissa

Decided On : Mar-16-2000

Reported in : 90(2000)CLT132; 2000CriLJ3558

Judge : B.N. Agrawal, C.J.

Acts : Indian Penal Code (IPC), 1860 - Sections 342, 366, 376 and 452

Appeal No. : Jail Criminal Appeal No. 333 of 1995

Appellant : Khara Kamidi

Respondent : State

Advocate for Def. : S.C. Satpathy, Addl. Standing Counsel

Advocate for Pet/Ap. : Sushil Kumar Patnaik, Legal Aid Counsel

Judgement :

B.N. Agrawal, C.J.

1. The appellant has been convicted by the trial Court under Sections 366 and 376 of the Indian Penal Code, 1860 (in short, 'IPC') and sentenced to undergo rigorous imprisonment for a period of seven years on each count. Further he has been convicted under Sections 452 and 342, I.P.C. and sentenced to undergo rigorous imprisonment for three years and six months respectively. The sentences, however, have been ordered to run concurrently.

2. Prosecution case, in short, is that on 19-9-1993 at about 8.00 p.m. the appellant entered the house of the complainant being armed with a knife and dragged him outside by snatching hold of his hair and threatened to kill him if he shouted. The appellant forcibly took away his wife to his house, bolted the door from inside and committed rape upon her. After commission of rape, the appellant is said to have threatened the victim not to disclose the matter to others failing which she will be killed. The matter was reported by the victim to other villagers namely, Khara Piliku (P.W. 3) and Khara Sadhana (P.W. 13). The husband of the victim went to the house of the Head of the village and reported the matter, but nothing could be decided. So he had no other option than to lodge the F.I.R. at the police station.

3. The police after registering case, took up the investigation and on completion thereof, submitted charge-sheet. On receipt of the charge-sheet, learned Magistrate took cognizance and committed the appellant to the Court of Session to face trial.

4. The defence of the appellant is that he is innocent, was falsely implicated and no occurrence had taken place much less the occurrence alleged.

5. In support of its case, prosecution examined thirteen witnesses in all, out of whom P.W. 1 is the victim lady herself, P.W. 2 is the husband of the victim in whose presence the appellant had dragged his wife and took her to his house and after commission of rape, when she came to the house, narrated the entire incident to him. P.W. 3 is a villager whose name has been stated in the F.I.R. to have witnessed the occurrence. P.W. 4 is a village Naik whereas P.W. 5 is a village panchayat member. P.Ws. 6, 7 and 8 are the seizure witnesses. P.W. 9 is lady doctor who is said to have examined the victim. P.W. 10 is another doctor who was then working as (sic) Specialist, Headquarters Hospital, Koraput and examined the accused-appellant. P.Ws. 12 and 13 are the villagers whose names also appear in the F.I.R. to have seen the alleged occurrence. They have not supported the prosecution case. Upon conclusion of trial, Court below has convicted the appellant. Hence this appeal.

6. P.W. 1 is the victim lady herself and supported the prosecution case in all material particulars. P.W. 2, the husband of the victim lady who supported the

prosecution case stated that when he was in the house along with his wife, the appellant came with a knife and at the point of knife dragged his wife and took her to his house and thereafter, when she came back, narrated the incident to him. This witness has corroborated the statement of P.W. 1 in all material particulars. According to the deposition of P.W. 3, he had not seen the occurrence but stated that P.W. 2, husband of the victim came to him at about 8 p.m. and stated that the accused-appellant took away his wife forcibly and requested him to accompany him to the house of village Naik. P.W. 4, the village Naik in his deposition has not stated that he had seen the occurrence but has stated that on the next morning he sent one Barik, Sitam Khara to the house of the accused-appellant to call him for the panchayat, but the accused-appellant did not accede to the request whereafter this witness accompanied the complainant to the police station for reporting the matter. P.W. 5, who is a panchayat member in his evidence has stated that he had not seen the occurrence but stated that a panchayat was convened in the village in connection with the accused-appellant in which, husband of the victim disclosed that the accused-appellant had committed rape upon his wife and he would go to lodge the F.I.R. The evidence of the complainant and his wife has been corroborated by other witnesses as stated above in all material particulars.

7. Learned counsel appearing on behalf of the appellant submitted that prosecution case is highly improbable, as according to the statement of the witnesses accused persons and the members of the prosecution party were residing in the same campus in different houses and it is highly improbable that the accused-appellant would take away wife of the complainant from his house forcibly and the husband would not object to the same. It is the prosecution case that the accused appeared with a knife and at the knife point, he took away this wife of the complainant after (sic) and, therefore, he might not have been able to put any resistance apprehending danger to his life.

8. Learned counsel appearing on behalf of the appellant next submitted that the victim lady is the mother of several children and the accused being the uncle of husband of the victim, it would be highly improbable that he would commit rape upon her. In my view, in these days, nothing can be said to be improbable. We have come across the cases where the allegations have been made and

substantiated that father has committed rape upon his daughter and father-in-law upon daughter-in-law. Therefore, merely because he was the uncle of husband of the victim that cannot make the prosecution case improbable.

9. Learned counsel appearing on behalf of the appellant further contended that the medical evidence is not in consonance with the prosecution case as the doctor (P.W. 9) has stated that she did not find any recent sign of rape. The age of the victim is 25 years and she was undisputedly married twice and have several children. Therefore, it is not essential that any sign of rape is bound to be found by the doctor.

10. I must express my gratitude towards Shri Sushil Kumar Patnaik, learned counsel appearing as Legal Aid Counsel on behalf of the appellant, who was fully ready with the brief, filed written notes of argument after examining the entire evidence threadbare and placed all his cards very fairly in order to persuade the Court that it was a case of acquittal. But in view of the foregoing discussions, I find myself unable to agree with him and accordingly, have no option but to hold that the prosecution has established its case beyond all reasonable doubts and the trial Court was quite justified in convicting the appellant.

11. Now the question arises as to whether the sentences awarded against the appellant should be reduced or the same should be confirmed. The appellant has been awarded sentence to undergo rigorous imprisonment for a period of seven years and he had already remained in jail custody for a period of about 6 1/2 years. In this manner, he has practically served out the sentence. It may be possible that he might have been released from custody after grant of remission in sentence, if any, but there is nothing on the award to show that he has been released from jail. Taking into consideration the totality of the matter, in my view, ends of justice would be met in case the sentence of imprisonment awarded against the appellant is reduced to the period undergone.

12. In the result, while upholding the conviction, I seduce the entence awarded against the appellant to the period already undergone. The appeal is accordingly dismissed with aforesaid modification in sentence. The appellant, who is in custody, is directed to be released forthwith if not required in connection with any

other case.