

Balaram Rout Vs. State

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Court : Orissa

Decided On : Oct-16-1998

Reported in : 1999CriLJ1703

Judge : P.K. Misra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 114, 342, 376 and 392

Appeal No. : Crl. Revn. No. 112 of 1995

Appellant : Balaram Rout

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : S.C. Sahoo, ;S. Nayak and ;S.K. Sahoo, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

P.K. Misra, J.

1. The petitioner challenges the order of conviction and sentence imposed concurrently by the trial Court and the appellate Court convicting the petitioner under Section 376, Indian Penal Code (in short, the 'I.P.C.') and sentencing him to

undergo rigorous imprisonment for four years. The petitioner along with co-accused was prosecuted. The petitioner was charged under Section 376, whereas, the co-accused was charged Under Section 376/114, I.P.C. Both the accused persons were also charged under Sections 342 and 392, I.P.C. The trial Court acquitted both the accused persons of the charges under Sections 342 and 392, I.P.C. However, the petitioner was convicted under Section 376 and the co-accused was convicted under Section 376/114, I.P.C. Both were sentenced to undergo rigorous imprisonment for four years. The present petitioner filed Criminal Appeal No. 156 of 1987, which has been dismissed.

2. As per the prosecution case, while the prosecutrix (P.W.I) had gone to attend call of nature in the night of 18-7-1986, she was forcibly taken to a nearby house by both the accused where she was raped by the present petitioner. While she came out from the said house she met some co-villagers and disclosed about the occurrence in the presence of the elder brother of her husband. It is further alleged that on the next morning while she was going to the house of her sister's husband carrying an attache with her, both the accused persons obstructed her, took her inside the house of the present petitioner and gave her some tablet as a result of which she lost her senses. After getting back her senses, she found that except two sarees all other articles including cash and ornaments had been taken away from her attache. A meeting of the villagers was called, but as no decision could be taken, subsequently, F.I.R. was lodged by the prosecutrix.

3. As already indicated, the trial Court acquitted both the accused persons of the charges under Sections 342 and 392, I.P.C. However, relying upon the evidence of the prosecutrix (P. W. 2) as corroborated by the post-occurrence witnesses, both the Courts below have convicted the petitioner under Section 376 and the co-accused under Section 376/114, I.P.C.

4. The learned counsel appearing for the petitioner in this revision has raised the following contentions :-

(1) The prosecutrix did not know the accused persons before the occurrence and as such she could not have named the accused persons in the F.I.R.;

(2) There was delay in lodging the F.I.R.;

(3) The evidence of the doctor did not support the statement of the prosecutrix; and

(4) Part of the prosecution case relating to offences under Sections 342 and 392, I.P.C. having been discarded and there being serious discrepancies in the evidence of P. W. 1, the conviction cannot be maintained.

5. The prosecutrix in her examination-in-chief had stated that she knew the accused persons and had described the occurrence. Of course, in cross-examination, she stated that she did not know the present petitioner before the occurrence, but had seen him driving the tractor of Banamber in the village. From the aforesaid statement, the learned counsel for the petitioner contends that since the prosecutrix did not know the accused person prior to the occurrence, she could not have named him in the F.I.R. and in the absence of any explanation, the naming of the accused persons in the F.I.R. appears to be suspicious. Law is well settled that the entire evidence of a witness is to be considered as a whole. The prosecutrix had categorically stated in examination-in-chief that she knew both the accused persons and had categorically implicated them not only in her examination in chief but also in the F.I.R. The subsequent answer in cross-examination to the effect that she did not know the petitioner before the occurrence must be taken to be a statement in the context as to whether she had acquaintance with the petitioner and not in the context as to whether she knew the name of the petitioner prior to the occurrence. If the defence wanted to establish that the prosecutrix did not know the name of the accused person prior to the occurrence, it should have put a categorical question to that effect and if at all there was any doubt, it should have been elicited as to how the prosecutrix had named the two accused persons in the F.I.R. Apart from the statement of P.W.I, the post-occurrence witnesses have also stated that soon after the occurrence, the prosecutrix had implicated the two accused persons. Keeping in view the entire evidence on record, it must be taken that the statement in cross-examination was the outcome of a confusing question and from the said stray statement, it cannot be assumed that the prosecutrix did not know the names of the accused persons

prior to lodging of the F.I.R.

6. The learned counsel for the petitioner has contended that there has been delay of about eight days in lodging the F.I.R. The prosecution evidence reveals that after the occurrence, a meeting of the villagers had been called for. This fact has been proved through several witnesses. It is, of course, true that even after the meeting was called for and there was no result in the meeting, there was further delay of two to three days in lodging the F.I.R. However, since the matter was already brought to the notice of the villagers and meeting had been called for, it was quite natural for the prosecutrix and her husband to wait for an outcome. In such a background and particularly keeping in view the fact that both the Courts below have considered this aspect and have believed the prosecution case, I do not see any reason to take a different view in exercise of revisional jurisdiction.

7. The learned counsel for the petitioner contended that the statement of P.W.I to the effect that she had sustained several injuries is not corroborated by the doctor who had examined the prosecutrix. It is further contended that though the Lady Doctor examined the prosecutrix after nine days of the occurrence, yet as per Modi's Medical Jurisprudence bruises and abrasions can be detected even after a period of twelve days. It is not possible to lay down as a matter of proposition of law that in every case injuries in the nature of bruises and abrasions can be detected even after a period of twelve days. Such things would depend upon the seriousness and extent of the injuries. In the present case, admittedly, the prosecutrix was examined about nine days after the occurrence and as such, the injuries might not have been visible at the time of examination.

8. The learned counsel for the petitioner further contended that part of the occurrence having been disbelieved by the trial Court, the other part of the evidence becomes doubtful particularly in view of the various discrepancies in the evidence. The discrepancies pointed out by the learned counsel for the petitioner do not affect the core of the prosecution case so far as it relates to the commission of the offence under Section 376, I.P.C. Both the Courts below have considered the evidence and placed reliance upon the evidence of prosecutrix. Her evidence has received ample corroboration from the evidence of post-occurrence witnesses.

The contention raised by the counsel for the petitioner essentially pertains to the question of appreciation of evidence. Law is well settled that where the Courts below have arrived at a particular conclusion by considering the relevant evidence on record, the revisional Court is not empowered to take a different view of the matter on re-appreciation of the evidence. Since there is no perversity in the approach of the Courts below, I do not consider that this is a fit case where there should be a re-appraisal of the evidence. Accordingly the contention of the counsel for the petitioner cannot be accepted.

9. The learned counsel for the petitioner lastly submitted that in case the order of conviction is sustained, a lenient view should be taken relating to the sentence, particularly in view of the fact that there has been long lapse of time between the date of occurrence and the disposal of the appeal by the appellate Court. The trial Court has imposed a sentence of four years' rigorous imprisonment which has been confirmed by the appellate Court. The sentence itself does not appear to be heavy. However, keeping in view the facts and circumstances of the case, I consider that instead of sentencing the petitioner to four years' rigorous imprisonment, the substantive sentence may be reduced to two years and instead the petitioner may be called upon to pay a fine of Rs. 5,000/- (five thousand), in default, to undergo rigorous imprisonment for two years. Out of the fine amount if realised, a sum of Rs. 4,000/- (four thousand) may be paid to the prosecutrix (P.W. 1) as compensation. Subject to the aforesaid alteration in the sentence, the Criminal Revision is dismissed.