

State Vs. Ranjan Kumar Das

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Court : Orissa

Decided On : May-09-2008

Reported in : 2008CriLJ4167

Judge : A.S. Naidu, J.

Appellant : State

Respondent : Ranjan Kumar Das

Disposition : Appeal dismissed

Judgement :

A.S. Naidu, J.

1. The judgment dated 30th March, 1994 passed by the Assistant Sessions Judge, Gunupur in Sessions Case No. 21 of 1993 acquitting the respondent of the charge under Sections 376/312 of the Indian Penal Code is assailed in this appeal.

2. The criminal action was set in motion on (motion on) an FIR (Ext. 6) being filed at the Bissam Cuttack Police Station by P.W. 3 Pratima Kumari Mohapatra on 4-6-1993 alleging that the respondent who was a distantly related as her brother was carrying on sexual intercourse with her for quite some time with a promise that he would marry her. As a consequence, she became pregnant in the month of January, 1993. After coming to know the fact of her pregnancy, the respondent

gave her some medicine tablets and a sum of Rs. 200.00 instructing her to get the pregnancy terminated. Accordingly she got the pregnancy terminated at the Bissam Cuttack Christian Hospital. Thereafter when P.W. 3 requested the respondent to marry her, he refused and finding no other way she lodged the aforesaid FIR. The plea of the respondent was complete denial of his complicity in the matter.

3. In order to substantiate the charge, prosecution got ten witnesses examined on its behalf besides exhibiting several documents. On behalf of the respondent, neither any witness was examined nor was any document exhibited. Out of the ten prosecution witnesses, P.W. 3 was the victim girl, P.W. 5 was her mother, P.W. 2 was a Member of the Panchayat Samiti, P.W. 6 was a villager of P.W. 3, P.W. 8 was the Headmaster of the School where P.W. 3 was reading, P.W. 9 was the Investigating Officer and other P.Ws. were the doctors who had examined the victim girl on different dates. After going through the evidence of the prosecution witnesses and the documents exhibited in this case this Court finds that the prosecution had successfully established the fact of respondent carrying on sexual intercourse with the victim P.W. 3. But then, the said act was being carried on with consent of P.W. 3 and not forcibly. In view of such fact, the respondent could be convicted only if it could establish that the victim was a minor at the relevant time. The Sessions Court after vivid discussion of the evidence, more particularly that of the doctors and the medical test reports found that the victim was 15 to 16 years of age at the time of alleged commission of offence, i.e. she had completed 15 years of age and not 16 years. He held that in consonance with the settled position of law two years are added to her age she would have been 17 to 18 years of age. On the basis of such finding the Sessions Court acquitted the respondent.

4. Learned Addl. Govt. Advocate forcefully submitted that the Sessions Court committed an error by adding two years to the age of the victim though the settled position is that two years was to be plus or minus. According to him the oral evidence of the mother of the victim girl as also that of other witnesses coupled with the school certificate of the victim revealed that the victim was a minor at the time of occurrence. Thus the conclusion that she would have been 16 years of age was not correct.

5. The submission of the learned Addl. Govt. Advocate is strongly repudiated by Mr. Panigrahi, the learned Counsel for the respondent. Relying on the decision of this Court in the case of Sribasta Kumari, reported in (1993) 6 OCR 661, and the decision of the Supreme Court in the case of Jayamala v. Home Secretary, Govt. of J.&K.; reported in AIR 1982 SC 1297, Mr. Panigrahi submitted that the Sessions Court rightly added two years to the age of the victim girl as found on ossification test. If two years is added to the age of the victim girl, she would have been 18 years at the time of occurrence and therefore the acquittal of the respondent was justified.

6. This Court heard learned Counsel for the parties and perused the evidence. The evidence of the doctors who had the occasion to examine the victim girl and the ossification test report clearly reveal that the age of the victim girl was 15 to 16 years at the time of occurrence. In other words, she had completed 15 years of age and not 16 years. The Sessions Court had added two years to her age and had arrived at the conclusion that in any event her age would have been more than 16 years at the time of occurrence. Law as laid down by the Supreme Court in the case of State of Goa v. Sanjay Thakur and Anr. reported in : (2007)3SCC755 is that in a case of appeal against order of acquittal the appellate Court can review the evidence and interfere with the order of acquittal only if the approach of the Court below was vitiated by some manifest illegality or the decision was perverse and the said Court committed manifest error of law and ignored the material evidence on record. Merely because two views are possible, the Court of Appeal should not take the view which would upset the judgment delivered by the Court below.

7. Considering the evidence on record, more particularly the evidence of the victim P.W. 3 and that of the doctors and other materials as well as the fact that the alleged occurrence was of the year 1992 and in the meanwhile sixteen years have passed, and this Court being satisfied that the trial Court has not committed any error in appreciating the evidence and further the conclusion arrived at the Court below was just possible, declines to interfere with the impugned judgment of acquittal.

8. Consequently this Court dismisses the Govt. Appeal.

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