

Pratap Sahu Vs. State of Orissa

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Court : Orissa

Decided On : May-02-2003

Reported in : 2003(II)OLR47

Judge : L. Mohapatra, J.

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

Appeal No. : Criminal Revision No. 781 of 2001

Appellant : Pratap Sahu

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : R.P. Mohapatra, ;D. Mohapatra and ;B.P. Mishra, Advs.

Disposition : Petition allowed

Judgement :

L. Mohapatra, J.

1. This revision is directed against a judgment and order, passed by both the Courts below convicting the petitioner for commission of offence Under Section 376 of the Indian Penal Code and sentencing him to undergo imprisonment for 7 years and pay fine of Rs. 4,000/-.

2. The case of the prosecution is that on the date prior to the lodging of F.I.R. at about 7 A.M. while the prosecutrix was sweeping the front courtyard of her elder father, Nabei Sahu, the petitioner who is a co-villager came near her. Prior to that date, the petitioner had proposed to marry the prosecutrix on several occasions. On the date of occurrence when the petitioner came near her, she tried to enter inside the house of her elder father out of fear but the petitioner is alleged to have forcibly embraced her and lifted her inside the house of her elder father. It is further alleged that the petitioner made her naked, gagged her mouth by putting his hand undressed himself and forcibly committed rape on her. While trying to go away from the spot after commission of the offence, the prosecutrix followed him to his house and cried there and disclosed about the incident; The petitioner and his father assured her to accept her as petitioner's wife but the mother of the petitioner did not agree and threatened to assault the prosecutrix. Thereafter, she raised hue and cry and hearing the same, the villagers gathered at the spot and the prosecutrix narrated the incident before the villagers. The petitioner is also alleged to have made extra judicial confession of his guilt in presence of the said witnesses. On the same day at about 4 P.M., a meeting was convened. Though the father of the petitioner attended the meeting, the petitioner did not come. The prosecutrix sat in front of the house of the petitioner and decided not to leave the place unless the petitioner marries her. It is alleged that the uncle of the petitioner namely, Kisoru forcibly drove her out of the house and ultimately on 10.5.1997, the incident was reported at Angul Police Station. The case was investigated into and charge sheet was submitted for commission of offence Under Section 376 of the Penal Code and the petitioner faced the trial. The plea of the petitioner is one of complete denial of the occurrence. The further plea of the petitioner is that father of the prosecutrix had given the proposal for marriage of the prosecutrix with the petitioner and when the father of the petitioner did not agree to the proposal, this false case has been started against him.

3. In order to bring home the charge, the prosecution examined 9 witnesses and in order to prove the defence plea, 5 witnesses were examined from the side of the defence. The learned C.J.M.- Curn- Assistant Sessions Judge, found the petitioner guilty of the charge on the following findings.

(a) Referring to a decision of this Court, the learned Asst. Sessions Judge held that in sexual offences, delay cannot be a ground to reject prosecutrix's version on suspicion. Though there was 4 days delay in the present case in lodging the F.I.R. the learned Asst. Sessions Judge held that such delay cannot be taken into consideration in order to disbelieve the entire prosecution case. Though it was contended before the learned Asst. Sessions Judge that P. Ws. 2 to 4 were interested witnesses being relatives of the prosecutrix, it was found that evidence of P.Ws. 2 to 5 cannot be thrown out solely on the ground that they are related to the prosecutrix when the crux of the evidence is found corroborated in the evidence of D.Ws. 2, 3, and 5. The learned Asst. Sessions Judge also held, that non-examination of all the witnesses mentioned in the charge sheet cannot be a ground for disbelieving the prosecution case.

(b) In absence of any evidence from the side of the prosecution that the prosecutrix resisted the accused, that there was struggle between them at the time of commission of the offence and that the accused-petitioner was examined 4 months after the date of occurrence and no injury could be found on his person, cannot be grounds to say that the prosecutrix had consent.

(c) The extra judicial confession alleged to have been made before P. Ws. 2 to 4 is not worthy of belief and the same cannot be taken into consideration to form a basis of conviction.

(d) Since the offence was committed against the consent of the prosecutrix the age of the prosecutrix become immaterial for the purpose of proving the offence.

4. Challenging the order of conviction and sentence the petitioner filed an appeal which was heard by the learned Addl. Sessions Judge, Angul. The appeal was also dismissed on similar findings giving rise to the present revision.

5. Shri Mohapatra, learned counsel appearing for the petitioner challenges the findings and the order of conviction on two grounds.(1) no such occurrence ever took place as alleged by the prosecutrix. (2) Even if the Court comes to a conclusion that such an occurrence has taken place, the same was with consent of the prosecutrix.

6. In support of the argument advanced, Shri Mohapatra drew attention of the Court to the evidence of different witnesses examined on behalf of the prosecution as well as on behalf of the defence. The prosecutrix has been examined as P.W. 1. Referring to her deposition in the Court, the learned counsel for the petitioner submitted that the manner in which the prosecutrix has described the offence to have been committed is not probable. It was also contended by Shri Mohapatra that the prosecutrix in her evidence admitted that the petitioner committed rape on her and that was the first sexual intercourse in her life and that she did not have any mark of injury on her private parts. Referring to the Modi's Medical Jurisprudence, the learned counsel submitted that if a young girl aged about 18 to 19 years is put to forcibly sexual assault for the first time there have to be injuries on the private parts and the very fact that the prosecutrix herself admitted in her evidence that the incident was the first sexual intercourse in her life and she had not sustained any injury on her private parts clearly proves that no such incident of rape had ever taken place. Learned counsel also submitted that even for a moment, it is accepted that there was sexual assault on the prosecutrix by the petitioner, the evidence of prosecutrix clearly goes to show that there was absolutely no resistance from her side and the same having been accepted by the Courts below, it should have been held that the prosecutrix was a consenting party to the act alleged. The learned counsel also submitted that the evidence of the prosecutrix is not corroborated by any other evidence and the so called extra judicial confession before P.Ws. 2 to 4 having been discarded by both the Courts below in absence of the medical report supporting such an allegation of rape no conviction could have been based solely on the statement of the prosecutrix.

7. The learned Addl. Standing Counsel on the other hand submitted that a conviction can be passed solely on the evidence of the prosecutrix provided the same is believable. Referring to the evidence of P.W. 1 it was contended that there is nothing in her statement to disbelieve her. There being no dispute that the prosecutrix was examined by the doctor on the 5th day after the date of occurrence, no injury could have been possibly found by the doctor and therefore the evidence of P.W. 1, the prosecutrix being consistent and acceptable, both the Courts below rightly convicted the petitioner for commission of the offence.

8. In order to appreciate the contention of the learned counsel appearing for the petitioner, it is required to look into the evidence of P.W. 1 who is the prosecutrix herself. She in her deposition has stated that on the date of occurrence at about 7 P.M. while she was going to take bath, the accused came near her and she tried to leave the place out of fear. The accused caught hold of her and lifted her forcibly into the house of Nabei Sahu. Thereafter, the accused undressed her and made her flat on the floor. The accused also undressed himself, gagged her mouth with his hand and committed sexual intercourse with her forcibly. After the occurrence she followed the accused crying and disclosed the fact to the father of the accused who promised to accept her as daughter-in-law. But the mother of the accused abused her and threatened to assault. When she cried loudly her father came to the spot along with two brothers before whom she disclosed the incident. It is also alleged by her that on being questioned, the petitioner confessed to have committed rape on her. In cross- examination the prosecutrix has stated that the accused at the time of commission of rape put his hand on her mouth but did not touch her breast. She has also stated that there was discharge of the accused as well as herself in the saree. In paragraph-11 of her deposition she herself has stated that she sustained no mark of injury on her private parts and that was the first sexual intercourse in her life. The suggestion that she had sexual intercourse with the accused on earlier occasions was denied by her. From this evidence, it is clear that as per the version of the prosecutrix, there was complete act of sexual intercourse and it was her first sexual intercourse in life. There is no dispute that the prosecutrix is aged near about 18 years. In Modi's Books of Medical Jurisprudence and Toxicology, the injuries that may be found in a nubile virgin after complete sexual intercourse is described in the following manner :

'In nubile virgins the hymen, as a result of complete sexual intercourse, is usually lacerated, having one or more radiate tears, (more so in posterior half) the edges of which are red, swollen and painful, and bleed on touching, if examined within a day or two after the act. These tears heal within five or six days, and after eight to ten days become shrunken and look like small tags of tissue. Frequent sexual intercourse and parturition completely destroy the hymen, which is represented by several small tags of tissue, which are called carunculae hymenealis or myrtiformes.'

9. Since the prosecutrix who was aged about 18 years and that the incident was her first sexual intercourse in life and it was a complete sexual intercourse, ordinarily the injuries as mentioned above should have been found in her private parts. Though it was strenuously contended by the learned Addl. Standing Counsel that the prosecutrix having been examined on the 5th day of the occurrence, no injury could have been found on her private parts, the said contention goes contrary what has been observed and quoted above. The evidence of the doctor becomes also irrelevant on the face of the admission of the prosecutrix in para-1 1, of her deposition that she had not sustained any kind of injury on her private, parts. She alleges that the incident was the first sexual intercourse in her life and was complete one. I am, therefore, unable to accept the statement of the prosecutrix that though she was sexually assaulted by the petitioner forcibly at that age and it was a complete act of sexual intercourse, she did not sustain any injury at all on her private parts. Therefore, the first contention of the learned counsel appearing for the petitioner appears to be having considerable force. I am, therefore of the view that both the Courts below lost sight of this part of the evidence of the prosecutrix and found the petitioner guilty of the offence. I, accordingly, find that the case of the prosecution with regard to commission of the offence is not believable and the evidence of the prosecutrix with regard to the alleged commission of offence is not corroborated by any evidence and is rather contradicted by herself and accordingly is not acceptable.

10. Since I have already held that the allegation of the prosecutrix that the petitioner committed rape on her is not acceptable in view of the reasons mentioned above, there is no need to examine the second point raised by the learned counsel for the petitioner.

Accordingly, the revision is allowed and the petitioner is acquitted of the charge. If the petitioner is not required in any other case, he be released forthwith.