IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No. 74 Of 2016

From the judgment and order dated 09.10.2015 passed by the learned Addl. Sessions Judge, Kuchinda in S.T. Case No.37 of 2012.

Madhusudan Naik ..... Appellant

-Versus-

State of Orissa ..... Respondent

For Appellant: - Mr. Ajit Kumar Sahoo
(Amicus curie)

For State: - Mr. Sibani Sankar Pradhan
Addl. Govt. Advocate

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 15.07.2021

S.K. SAHOO, J. The appellant Madhusudan Naik faced trial in the Court of the Addl. Sessions Judge, Kuchinda in S.T. Case No.37 of 2012 for commission of offence punishable under section 376 of the Indian Penal Code and vide impugned judgment and order dated 09.10.2015, he was found guilty of the offence charged and sentenced to undergo R.I. for seven years and to pay a fine

of Rs.10,000/- (rupees ten thousand), in default, to undergo R.I. for one year.

2. The prosecution case, in short, is that on 12.07.2012 at about 2.30 p.m. the victim (P.W.1) had been to attend the call of nature to a nearby Nala of her village Jurapali, Gorposh under Govindpur police station in the district of Sambalpur and while she was attending the call of nature, the appellant came from her back side, caught hold of her and forcibly committed sexual intercourse. On hearing hullah of the victim, his brother Manohar Naik (P.W.2) and other persons grazing cattle nearby came there to rescue the victim and seeing them, the appellant fled away from the spot.

On the same day, the victim lodged F.I.R. before the A.S.I. of Garposh Outpost and it was drafted by P.W.2 as per the instruction of the victim and the report was sent to Govindpur police station and accordingly, Govindpur P.S. Case No.49 dated 12.07.2012 under section 376 of the Indian Penal Code was registered against the appellant.

3. P.W.13 Keshab Chandra Behera, I.I.C. of Govindpur police station after registration of the case, took up investigation of the case and during course of investigation, he examined the victim and other witnesses, arrested the appellant on

13.07.2012, sent requisition for medical examination of the appellant as well as the victim (P.W.1) and he also seized the wearing apparels of the appellant under seizure list (Ext.4) and forwarded him to Court. He also seized vaginal swab and pubic hair of the victim collected by the Medical Officer. He also seized blood sample of the appellant, pubic hair of the appellant, his nail clippings, semen of the appellant etc. which were collected by the Medical Officer during his medical examination. On the same day, he also seized the wearing apparels of the victim such as a synthetic saree, one maroon colour petty coat and one orange colour blouse on production by the victim at Govindpur police station and prepared the seizure list marked as Ext.2. He also visited the spot and prepared the spot map marked as Ext.10 and made a prayer to the learned S.D.J.M., Kuchinda to send the exhibits to R.F.S.L., Sambalpur for chemical examination and on completion of investigation, charge sheet was submitted by the I.O. on 17.08.2012 against the appellant under section 376 of the Indian Penal Code.

4. During course of trial, in order to prove its case, the prosecution examined thirteen witnesses, out of which the relevant witnesses are P.W.1, the informant who is also the victim, P.W.2, Manohar Naik, the younger brother of the victim

who is the scribe of the F.I.R., P.W.12 Hari Sankar Dehury, the doctor who examined both the appellant as well as the victim and P.W.13, Keshab Chandra Behera, the Investigating Officer.

The prosecution exhibited eleven documents. Ext.1 is the written F.I.R., Ext.2 is the seizure list of clothes of the victim, Ext.3 is the sketch map, Exts.4 and 5 are the seizure lists, Ext.6 is the report of P.W.12 regarding blood group, Ext.7 is the opinion of P.W.12, Ext.8 is the medical requisition of the victim, Ext.9 is the medical requisition of the appellant, Ext.10 is the spot map and Ext.11 is the forwarding report on M.O. and C.E.

The prosecution also proved seven material objects. M.O.I is the synthetic saree, M.O.II is the petty coat, M.O.III is the blouse, M.O.IV is the Chadi, M.O.V is the vial containing vaginal swab, M.O.VI is the vial containing blood sample, M.O.VII is the vial containing semen.

5. The defence plea of the appellant is one of denial and it is stated that due to previous enmity, he has been falsely implicated in this case.

6. The learned trial Court, relying on the evidence of P.W.1 which is corroborated by the evidence of P.W.2 and the medical evidence of P.W.12 found the appellant guilty of the offence under section 376 of the Indian Penal Code.

7. Since Mr. Priyabrata Sinha, learned counsel engaged by the Legal Aid was not present when the matter was called for hearing, Mr. Ajit Kumar Sahu, Advocate who is having twenty years of practice in the criminal side, was appointed as Amicus Curiae. He was supplied with the paper book and given time to prepare the case. He placed the evidence of the witnesses and also the impugned judgment. While assailing the impugned judgment and order of conviction, he contended that the evidence of the victim is full of contradictions and the independent witnesses who were named in the F.I.R. i.e. P.W.4 Kashimir Kulu and P.W.5 is Kishore Kulu have not supported the prosecution case and therefore, it would not be proper to accept the evidence of the victim and convict the appellant for commission of offence under section 376 of the Indian Penal Code.

Mr. Sibani Sankar Pradhan, learned Addl. Govt. Advocate appearing for the State on the other hand placed the F.I.R., the evidence of the witnesses as well as the impugned judgment and contended that the evidence of the victim (P.W.1) is getting corroboration from none else than P.W.2, who is her brother and also medical evidence adduced by P.W.12. He argued that even though the independent witnesses have not

supported the prosecution case, but the same cannot be a ground to disbelieve the version of the prosecutrix and since there is no infirmity in the impugned judgment, the appeal should be dismissed.

8. The victim being examined as P.W.1 has stated that on the date of occurrence at about 2.00 p.m., while she had been nearby Nala to attend the call of nature and sitting there, the appellant came there and caught hold her neck and made her lie on the ground and when she shouted for help, the appellant committed rape on her. She sustained injuries on her front throat, right hand and waist. She further stated that her brother (P.W.2) was grazing cattle nearer to the spot and hearing her hulla, he came to the spot and protested but the appellant did not leave her and P.W.2 separated her from the appellant and took her to the house of Gountia of her village, namely Brundaban Naik. The victim further stated that she accompanied P.W.2 to Garposh outpost where P.W.2 drafted the F.I.R. as per her instruction and accordingly, the F.I.R. was presented in the outpost. In the cross-examination of the victim, certain confrontations have been made by the defence counsel with reference to her previous statement before police and it has been proved through the I.O. (P.W.13) that she had not stated

before the I.O. that the appellant pressed her neck and that her younger brother (P.W.2) separated her from the appellant and that she was taken to the house of Brundaban Naik, Gountia of her village and that she sustained injuries on her neck, waist and hand. In my humble view, on the basis of such contradictions, the evidence of the victim cannot be disbelieved.

It is the settled principle of law that an accused can be convicted for an offence of rape basing on the sole testimony of the prosecutrix, if the same is found to be natural and trustworthy and corroborated by the medical evidence and other circumstantial evidence. Even the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. While trying an accused on the charge of rape, the Court must deal with the case with utmost sensitivity by examining the broader probabilities of the case and it should not be swayed by minor contradictions and discrepancies in appreciation of evidence of the victim which are not of a substantial character. The evidence of a victim of sexual assault stands on par with evidence of an injured witness. She is the best witness in the sense that she is least likely to exculpate the real offender. The evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding. Corroboration to the

evidence of the victim cannot be expected always in sex offences in view of the very nature of the offence. No self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. A victim of sex crime would not blame anyone but the real culprit.

The evidence of the victim gets corroboration from the evidence of her younger brother (P.W.2) who has stated that while he was grazing cattle, on hearing hullah of P.W.1, he came to the spot and found the appellant committing rape on the victim inside the Nala and P.W.2 came to her rescue but the appellant did not leave her and P.W.2 separated her by holding her hand and when he asked about the occurrence, the victim disclosed before him how the appellant committed rape on her. P.W.2 further stated that he went to the house of village Gountia namely Brundaban Naik with P.W.1 and as per instruction of P.W.1, he drafted the F.I.R. Nothing has been brought out in the cross-examination either from the mouth of P.W.1 or P.W.2 to discard their evidence.

No doubt, it is mentioned in the F.I.R. that two other persons namely Kashmir Kulu (P.W.4) and Kishore Kulu (P.W.5) arrived at the scene of occurrence along with P.W.2 and those

two witnesses have not supported the prosecution case and they have been declared hostile by the prosecution but when the evidence of the victim (P.W.1) is getting corroboration from the evidence of P.W.2, it would not be proper to discard such evidence merely because P.W.4 and P.W.5 did not support the prosecution case.

The doctor (P.W.12) examined the victim on 13.07.2012 and he stated to have found presence of crescentic nail marks over the front side of the neck on the both side of thyroid cartilage and posterior aspect of left forearm 6" proximal to left wrist joint. The doctor found presence of smegma over the labia majora of the victim. The blood group of the victim was found to be 'B' positive and his report was marked as Ext.6. P.W.12 also examined the appellant and found presence of nail marks on his left thigh and absence of smegma in his glans penis. Thus, the evidence of the victim (P.W.1) and her brother (P.W.2) coupled with the evidence of the doctor, in my humble view, is sufficient to establish the charge under section 376 of the Indian Penal Code against the appellant. In view of the foregoing discussions, I find no illegality or infirmity in the impugned judgment and order of conviction of the appellant under section 376 of the Indian Penal Code passed by the

learned trial Court. Keeping in view the nature and gravity of the accusation and the manner in which the crime was committed on the victim, the punishment which has been imposed on the appellant by the learned trial Court cannot be said to be excessive under any circumstances. Therefore, the impugned judgment and order of conviction and sentence passed by the learned trial Court is upheld.

9. It appears that the appellant was taken into custody in connection with this case since 13.07.2012 and he was forwarded to the Court on the very day and he was never released on bail either during course of trial or during pendency of the appeal before this Court. Therefore, he has already undergone not only the substantive sentence imposed by the learned trial Court but also the default sentence for non-payment of fine as awarded by the learned trial Court. Therefore, if the appellant has not been released from custody in the meantime in connection with this case, he shall be released forthwith if his detention is not otherwise required in any other case.

10. In view of the enactment of the Odisha Victim Compensation Scheme, 2017 and the nature and gravity of the offence committed and the family background of the victim, I feel it necessary to recommend the case of the victim to District

Legal Services Authority, Sambalpur to examine the case of the victim after conducting the necessary enquiry in accordance with law for grant of compensation. Let a copy of the judgment be sent to the District Legal Services Authority, Sambalpur for compliance.

Lower Court's record with a copy of this judgment be communicated to the learned trial Court forthwith for information and necessary action.

Accordingly, the Jail Criminal Appeal stands dismissed.

Before parting with the case, I would like to put on record my appreciation to Mr. Ajit Kumar Sahoo, the learned Amicus Curiae for rendering his valuable help and assistance towards arriving at the decision above mentioned. The learned Amicus Curiae shall be entitled to his professional fees which is fixed at Rs.5,000/- (rupees five thousand only).

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 15th July, 2021/Pravakar