
(2008) CriLJ 946

Orissa High Court

Case No: None

State of Orissa

APPELLANT

Vs

Chaitana Rajhansa

RESPONDENT

Date of Decision: Sept. 13, 2007

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376

Citation: (2008) CriLJ 946

Hon'ble Judges: R.N. Biswal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.N. Biswal, J.

This appeal has been preferred by the State against the judgment and order dated 9-8-1991 passed by the Addl. Sessions Judge, Sambalpur in Sessions Trial No. 29/4 of 1991 wherein he acquitted the accused of the offence u/s 376 of I. P. C.

2. The laconic fact of the prosecution case is that on 29-10-1990 at about 12.00 noon while P. W. 3, a young girl of about 14 years was tending her cattle at Pathurikhol jungle, the accused arrived there and asked her to drive away the cattle which were grazing on an arhar field and no sooner she did so, he came from her back side, physically lifted her and carried her on his shoulder to the arhar field, led her down on the ground, squeezed her breasts, undraped her cloth and committed sexual intercourse on her. When the victim raised hullah, he threatened to throttle her unless she kept quiet and accordingly out of fear she remained silent., After satisfying his lust the accused left the victim high and dry and went away. Some time thereafter the victim returned home with the cattle, took bath and during evening time disclosed the incident before her mother, who in turn narrated it to her husband (PW 4). On the next day a village meeting was convened to settle the matter and when the accused was asked to attend the said meeting, at first he refused to attend it, but due to persistent calls of the punch members he came there and

on being asked about the incident flatly denied it. So, on the suggestion of the punch members, on the next day P. W. 4 along with the victim (P. W. 3) went to Krisinda Police Station to lodge a report, but as darkness set in by the time he reached at village Kisinda, he preferred to pass the night in one of his relative's house of that village and on the next day got the F. I. R. scribed by P. W. 5 and lodged it before the O. I. C. of Kisinda Police Station (P. W. 9). As the allegation contained in the F. I. R. revealed a cognizable case he registered it u/s 376 of I. P. C. and took up investigation. In course of investigation, he visited the spot, examined the witnesses, arrested the accused, seized his wearing apparel (M. O. II) and the wearing apparel of the victim (M. O. I), prepared seizure list in respect thereof, sent both the victim and the accused to hospital for medical examination, forwarded the accused to Court, sent M. Os. I and II to the Regional Forensic Science Laboratory, Sambalpur and after completion of investigation, finding a prima facie case u/s 376 of I. P. C. submitted Charge-Sheet against the accused.

3. The plea of the accused is complete denial of the alleged crime. He further took the plea that because of his previous enmity with P. W. 4, father of the alleged victim due to land dispute the case was falsely foisted against him.

4. To bring home the charge u/s 376 of I. P. C. against the accused, prosecution examined nine witnesses in all, of whom P. Ws. 1 and 2 are doctors, P. W. 3 is the alleged victim, P. W. 4 is the father of P. W. 3, P. W. 5 is the scribe of the F. I. R., P. Ws. 6 to 8 are three of the punch members and P. W. 9 is the I. O. The defence did not prefer to adduce any evidence. After assessing the evidence on record the trial Court acquitted the accused of the charge u/s 376 of I. P. C. on the ground that the evidence of P. W. 3 was not corroborated by medical evidence and that her evidence was shaky and not trustworthy. Being aggrieved with the said order of acquittal of the accused (hereinafter referred as "Respondent"), the State has preferred the present appeal as stated earlier.

5. Learned Addl. Government Advocate submits that it transpires from the evidence of P. W. 3, a girl of tender age that she was ravished by the Respondent and described the manner in which she was physically lifted by him to the arhar field and other details and disclosed the incident to her mother soon after she returned home and P. W. 1 corroborated her evidence deposing that P. W. 3 might have been raped, the trial Court ought not have acquitted the Respondent. Per contra learned Counsel appearing for the Respondent with vehemence contends that the judgment and order of acquittal as passed by the trial Court is just and proper.

6. Now the moot point to be determined is whether on the alleged date and time the Respondent committed rape on P. W. 3. It transpires from the evidence of P. W. 3 that the Respondent forcibly laid her down inside the arhar field, squeezed her breasts, undraped her wearing apparel and committed sexual intercourse causing bleeding injury on her private part. During cross-examination she stated that the injury got healed up after ten days of the occurrence and during that period it was fresh and there was oozing of blood. It is found from the evidence of P. Ws. 6 and 7 that the victim could not attend

the meeting because of severe pain due to sexual assault. Further, it transpires from the evidence of P. W. 6 that the victim specifically stated before him that due to forcible sexual intercourse she sustained bleeding injury on her vagina. The arhar plants were of 3" height at the time of the alleged sexual intercourse as found from the evidence of P. W. 3. If in fact the Respondent forcibly laid the alleged victim down inside the arhar field, then most likely she would have come in contact with the twigs of the arhar plants and in that process would have sustained injuries on her person. As found from the evidence of P. W. 1, the Lady Assistant Surgeon, on police requisition, she examined the alleged victim on 2-11 -1990 and found no injury on or around her private part or any other part of her body. However, she noticed the hymen to have been ruptured and white discharge coming out of the vaginal channel. So she opined that rape might have been committed on the victim. As stated earlier, evidence of P. W. 3 shows that she sustained injury on her vagina due to sexual assault and the injury got healed up after ten days of the occurrence and during that period blood was oozing out from her private part. In other words, the injury was there on her private part and there was also bleeding up to 8-10-1990. As stated earlier P. W. 6 deposed that the alleged victim told before him that due to forcible sexual assault she sustained bleeding injury on her vagina, but P. W. 1 could not notice any injury on her person including on and around her private part. It is the sheet-anchor of the prosecution that as per the evidence of the doctor (P. W. 1), the hymen of the victim was found ruptured. So learned Addl. Government Advocate submits that when the hymen of the victim was ruptured coupled with her evidence that she was ravished by the Respondent, there is no grain of doubt that the Respondent committed sexual intercourse on the latter and accordingly urges for reversal of the trial Court judgment. It transpires from the evidence of P. W. 3 that the private part of the Respondent could not penetrate on her vagina. So the question of rupture of her hymen because of sexual intercourse alleged to have been made by the Respondent cannot be accepted. When P. W. 1 could not notice any injury on the person of P. W. 3, it creates a serious doubt about the authenticity of the evidence of P. W. 3 that on the alleged date of occurrence, she was ravished by the Respondent. Moreover, as found from the evidence of P. W. 2, the doctor who examined the Respondent on 3-11 -1990, there was no sign of commission of recent sexual intercourse by him. He has explained the term "recent" to be within seven days. The alleged occurrence having been taken place on 29-10-1990 the Respondent was examined on 5th day of the occurrence. So if the evidence of P. W. 2 is accepted to be true and there is no reason why a responsible Government Officer like him would depose falsehood, then the Respondent did not commit any sexual intercourse on 29-10-1990. 7. It is the plea of the Respondent that since there was land dispute between him and P. W. 4 relating to School Dhipa Kiari, the latter foisted this case falsely against him. P. W. 4 in his evidence admitted that he has a piece of land namely School Dhipa Kiari, which has been divided into two Kitas (two parcels) and one of the Kitas has been recorded in the name of father of the Respondent. Of course, he denied the suggestion that after the last settlement, which was over three years back, the Respondent claimed ownership of the entire School Dhipa Kiari for which there was dispute between him and the Respondent.

8. It further transpires from the evidence of P.W. 3 that the Respondent was boycotted in his village. In view of the facts and circumstances of the case, as discussed above, the possibility that to feed fat his previous grudge P. W. 4 foisted the case against the Respondent falsely cannot be ruled out. So the finding of the trial Court that prosecution failed to establish beyond all reasonable doubt that the Respondent committed rape on P. W. 3 on the alleged date and time cannot be branded as illegal and perverse.

9. It is the settled principle of law that if the view taken by the trial Court is a plausible one. it should not be reversed even if another view is possible. The view taken by the trial Court, in my considered opinion is a plausible one. Furthermore, the alleged occurrence took place on 29-10-1990 and after conclusion of the trial judgment was delivered on 9-8-1991. So the Respondent faced the ordeal of trial for about one year. This appeal is pending since 1992. In the meantime 15 years has already been elapsed. Therefore, taking all the facts and circumstances of the case into consideration, I am not inclined to reverse the finding of the trial Court and as such, the appeal stands dismissed.