

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.R.A No.124 of 1995

This is an Appeal under Section 374(2) of the code of Cr.P.C.

Dullabha Paltia

....

Appellant

-versus-

State of Orissa

....

Respondent

Appeared in this case by Hybrid Arrangement

(Virtual/Physical Mode):

For Appellant - Mr. D.P. Dhal, Sr. Advocate along
with Mr. A. Roy, Advocate.

For Respondent - सत्यमेव Mr. T.K. Praharaj,
Standing Counsel.

CORAM:

MR. JUSTICE A.C.BEHERA

Date of Hearing :03.10.2023 :: Date of Judgment :10.11.2023

1. The appellant, by preferring the appeal has called in question to the Judgment of conviction and order of sentence dated 13.04.1995 passed by the Sessions Judge-cum-Special Judge, Balangir-Sonepur, Balangir in Sessions Case No.88 of 1994 arising out of G.R. Case No.147 of 1993.

The appellant (accused) has been convicted for the offence under Section 3 (1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989.

For the above conviction, he (Appellant/accused) has been sentenced to undergo R.I. for a period of 3 (three) years and to pay a fine of Rs.500/- in default to undergo R.I. for six months for the offence under Section 3 (1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989.

Prosecution Case

2. The case of the prosecution basing upon the story narrated in the F.I.R. vide (Ext.6) during trial before the trial court was that, the victim (P.W.5) belongs to Tiara by caste, which is a scheduled caste. The accused belongs to Dumal by caste, which is not a scheduled caste or scheduled tribe. The accused and the victim both being the persons of same village, they were well-known to each other from their respective childhoods. After reaching their respective age of adolescence, whenever the victim was going to fetch water from the village Chuan, the accused was meeting her and was expressing before her (victim) that, he (accused) is interested to marry her. When the accused promised to marry the victim, then, she (victim) allowed the accused to have sex with her. Accordingly, the accused and the victim were indulged with sexual

intercourse in many occasions. So, due to such frequent sexual intercourse between them, the victim conceived. While the victim was carrying two months of her pregnancy, she (victim) disclosed about the same before the accused, but the accused advised her (victim) not to go before any doctor for termination of her pregnancy, because he (accused) will accept her (victim) as his wife.

Subsequent thereto, when, he (accused) took the victim to his house to keep her as his wife, the father of the accused did not allow her (victim), rather bolted the door from inside in order to prevent the victim from entering into his house. So, without getting any way, the victim sat on the verandah of the accused and cried. For which, many persons gathered there. At night, there was a Panch, wherein she (victim) narrated the entire episode. Though the accused attended that Panch, but denied all the allegations alleged by the victim against him. So, on its next day, the victim came to the police station with her father along with one Sankar Meher and lodged the F.I.R. (vide Ext.6) before the O.I.C. Binika P.S. (P.W.10) against the accused.

3. Basing upon such F.I.R. vide Ext.6, the O.I.C. Binika P.S. registered Binika P.S. Case No.43 of 26.08.1993 and he (O.I.C. Binika P.S.) himself took up the investigation of the case.

During investigation, he (I.O.) examined the victim, recorded her statements, examined her father along with other witnesses, sent the victim through requisition for her medical examination and accordingly, victim was medically examined. He (I.O.) visited the spot, examined other witnesses, arrested the accused and sent him through requisition for his medical examination and accordingly, the accused was medically examined and then forwarded him (accused) to the court. He (I.O.) seized one admission register of Sarguna Government U.P. School (Ext.11) and received the medical examination report of the accused and the victim. He (I.O.) made a prayer before the S.D.J.M. Sonepur for recording of the statements of the victim U/s 164 of the Cr.P.C. and accordingly, her statements U/s 164 of the Cr.P.C. were recorded.

On completion of the investigation, he (I.O) submitted final form placing the accused for trial U/s 376 of the IPC, 1860 and Section 3 (1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989.

Accordingly, the accused faced trial before the court of learned Sessions Judge-cum-Special Judge, Balangir-Sonepur, Balangir in Sessions Case No.88 of 1994 having been charged under Section 376 of the IPC, 1860 and under Section 3 (1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989.

4. The plea of the defence was one of complete denial and false implication of the accused.

The specific plea/case of the defence as per the statements of the accused recorded under Section 313 of the Cr.P.C was that, he (accused) has not committed rape on the victim and he (accused) was not in a dominating position to dominate the will of the victim and he (accused) has not exploited the victim sexually by dominating her will.

In order to substantiate the aforesaid charges against the accused before the trial court, prosecution examined altogether 10 numbers of witnesses, but whereas, the defence examined none on its behalf.

5. Out of the 10 witnesses of the prosecution, P.Ws.1, 2 and 8 are the three Doctors, those had medically examined the victim. P.Ws.3 & 4 are two independent witnesses, those have not supported the case of the prosecution. P.W.9 is a witness to the seizure. P.W.5 is the victim herself and P.W.7 is her father. P.W.6 is the cousin of the victim. P.W.10 is the sole investigating officer of the case *i.e.* O.I.C. Binika Police Station, who has submitted charge sheet against the accused on completion of the investigation.

6. After conclusion of hearing and on perusal of the materials and evidence available in the record, the learned Trial Court found the accused not guilty for the offence under Section 376 of the IPC, 1860 and

acquitted him (accused) from the offence under Section 376 of the IPC, 1860, but whereas found the accused guilty for the offence under Section 3 (1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989 and convicted him (accused) for that offence under Section 3 (1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989 and sentenced him (accused) there under as afore-stated vide judgment dated 13.04.1955 passed in Session Case No.88 of 1994.

7. I have already heard from the learned counsel for the appellant and the learned Standing Counsel for the State.

8. In order to assail the impugned judgment of conviction and order of sentence passed by the Trial Court against the accused, the learned counsel for the accused (appellant) contended that, when the trial court acquitted the accused from the offence under Section 376 of the IPC, 1860, then the trial court should not have convicted the accused for the offence U/s 3(1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989, for which, the judgment of conviction and order of sentence passed by the trial court against the accused for the offence under Section 3 (1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989 cannot be sustainable under law.

According to the learned counsel for the appellant, there is no material in the record to fulfil the essentials of Section 3 (1) (XII) of the

S.C. & S.T. (Prevention of Atrocities) Act, 1989 for penalizing him (accused) under the said offence. Therefore, the impugned Judgment of conviction and order of sentence passed against the accused (appellant) is liable to be interfered through this appeal filed by him (accused).

9. On the contrary, the learned Standing Counsel for the State argued in support of the Judgment of conviction and order of sentence passed against the accused by the trial court and contended that, the well corroborated testimonies of P.Ws.5,6 and 7 is justifying the Judgment of conviction and order of sentence passed against the accused by the trial court for the offence under Section 3 (1) (XII) of the S.C. & S.T. (P.A) Act, 1989, which cannot be interfered with.

10. On perusal of the Judgment of the trial court, it appears that, the accused was facing trial for the offences under Section 376 of the IPC, 1860 and Section 3 (1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989.

The trial court has acquitted the accused from the offence under Section 376 of the IPC, 1860 by giving observations in Para No.7 of the Judgment that, *“as per the materials and documents available in the record, at the time of the incident, the victim (P.W.5) was not below 16 years, for which, the mischief of commission of rape as defined under Section 376 of the IPC, 1860 is not attracted. Therefore, the accused*

cannot be made liable for the offence under Section 376 of the IPC, 1860.”

The trial court has convicted the accused under Section 3 (1) (XII) of the S.C. & S.T. (P.A.) Act, 1989 by giving observations in Para No.9 of the Judgment that, *“the accused and victim (P.W.5) are persons of the same hamlet and they were well-known to each other from their childhood days and as such, they had intimacy and admittedly the accused is elder than the victim. Both of them had reached their adolescence. So, from the above circumstances, there is reason to believe that, the accused was in a position to dominate the will of the victim and used that position by giving her false promise to marry and he (accused) exploited her (victim) sexually, to which she (victim) could not have otherwise agreed. Therefore, mischief of Section 3(1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989 has been attracted against the accused and the accused is liable for the said offence under Section 3 (1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989 and accordingly, he (accused) is found guilty for the offence under Section 3(1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989, though, he (accused) is not found guilty for the offence under Section 376 of the IPC, 1860.”*

11. It is unambiguously clear from the above findings made in Judgment of the trial court that, the victim (P.W.5) was not below 16 years and she (victim) and the accused both had intimacy with each other and they both were adolescent.

She (victim) P.W.5 has deposed in Para No.2 of her examination-in-chief that, *he (accused) had sexual intercourse with her on so many occasions.*

12. The above evidence of the victim itself is going to show that, there was sexual intercourse between them in secret places for several times i.e. on so many occasions for a long duration.

On that aspect, the propositions of law has already been clarified in the ratio of the following decisions:

(i) **2007 (1) Crimes-452-Praveen Kumar Sahu Vs. State of Chhattishgarh-S.C. & S.T. (Prevention of Atrocities) Act, 1989 Section 3(1) (XII).**

“First condition for attracting offence under Section 3(1) (XII) of the S.C. & S.T. Prevention Act, 1989 is that, accused must be in a position to dominate the will of a woman, who belongs to a particular caste or tribe and he used such position to exploit victim sexually, to which, she would not have otherwise agreed

(ii) **2014 (59) OCR Page-207-Anil Kumar Vs. State of U.P.-S.C. & S.T. (Prevention of Atrocities) Act, 1989 Section 3(1) (XIII)**

“The word ‘position’ to dominate-means commanding and controlling position-the position of the accused coupled with the use of such position to exploit the

victim women sexually are the important criteria apart from the caste/tribe factor of the victim/accused.”

(iii) 2012 (3) Crimes-430-Ramnath Vs. State of Chhattisgarh-SC & ST (Prevention of Atrocities) Act, 1989-Section 3(1)(XII)

“If a girl gives consent for repeated sexual intercourse up to a long duration, an offence under Section 3(1) (XII) could not be made out only on the ground that, the girl had happened to be a member of S.T. community

(iv) 2010 (3)-Crimes Page-613-Madrass-Udaiyappan@Chelladurai Vs. State-Indian Penal Code, 1860-Section 417,506,493 and Section 3(1) (xii) SC and ST Act.

“Where sexual intercourse by accused with prosecutrix was not concern through illicit and there was nothing to show that it was on account of prosecutrix belong to Scheduled Caste-conviction under Section 3(1) (XII) of the S.C. & S.T. Prevention Act, 1989 could not be sustained.”

(v) 2008 (3) Crimes Page 456-Madhya Pradesh-Mahesh Jatav Vs. State of M.P. & Others-S.C. & S.T. (Prevention of Atrocities) Act, 1989 Section 3 (1) (XII).

“No material that, act of rape was committed only because the victim was scheduled caste, offences under the Act were not made out.”

13. Here in this case at hand, when it is forthcoming from the above evidence of the victim (P.W.5) that, she being a girl of more than 16 years was indulged in repeated sexual intercourse with the accused in

secret places for a long duration and they both were taking pleasure out of their such sexual intercourses, then at this juncture, by applying the principles of law enunciated in the ratio of the decisions referred to *supra*, it cannot be held that, the accused has sexually exploited the victim by dominating her will.

14. On analysis of the materials on record, as per the decisions and observations made above, it is held that, prosecution has not become able to establish the charge/offence under Section 3 (1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989 against the accused beyond reasonable doubt. For which, the impugned Judgment of conviction and order of sentence passed by the trial court against the accused (Appellant) under Section 3 (1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989 cannot be sustainable. So, there is justification under law for making interference with the same through this appeal filed by the appellant. Therefore, the appeal filed by the appellant must succeed.

15. In the result, the appeal filed by the appellant is allowed.

16. The Judgment of conviction and order of sentence passed on dated 13.04.1995 in Sessions Case No.88 of 1994 under Section 3 (1) (XII) of the S.C. & S.T. (P.A.) Act, 1989 against the accused (appellant) by the Sessions Judge-cum-Special Judge, Balangir-Sonepur, Balangir is set aside.

17. The accused (appellant) is acquitted from the offence/charge under Section 3 (1) (XII) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989.

18. Accordingly, the accused (appellant) is directed to be set at liberty forthwith after being discharged from the bail bonds.

19. Accordingly, the appeal is disposed of finally.

*(A.C. Behera),
Judge.*

Orissa High Court, Cuttack.
10th November, 2023//Rati Ranjan Nayak//
Junior Stenographer

