STATE OF ORISSA

*v.*

DAMBURU NAIKO AND ANR.

MARCH 31, 1992

[KULDIP SINGH AND K. RAMASWAMY, JJ.]

*Indian Penal Code, 1860 :*

*Sections 34, 366 and 376—Kidnapping and gang rape—Corroboration of victim's evidence—Whether necessary, when her evidence inspires confidence to be truthful—Offence committed in broad day light—Victim identifying accused in Identification Parade and medical evidence and First Information Report corroborating injuries on her private parts—Whether High Court justified in rejecting victim's evidence.*

**The two respondents and two others were charged under Sections 366/34 and 376 read with 34 I.P.C. for kidnapping and committing rape on P.W.1. In the Identification Parade, conducted by P.W.13, the Executive Magistrate, P.W.1, the victim, identified the two respondents and one other accused. The trial court accepted her evidence and convicted the two respondents and sentenced them to undergo three years' rigorous imprisonment on each count.**

**The trial court acquitted the other two accused and this became final since there was no appeal against it. The Sessions Court confirmed the sentences of the two respondent.**

**On appeal, the High Court acquitted the two respondents on the grounds that P.W.1. identifying the respondents could not be relied upon, that there was no corroboration to her evidence, and that when there was gang rape there would be several injuries on the person of the victim, which were absent, and therefore, she was a consenting party.**

**Allowing the appeal of the State, this Court,**

**HELD: 1.1 It is not necessary that there should be corroboration to the evidence of the victim of rape. If the evidence inspires confidence to be truthful, that itself would be sufficient to convict the accused. [396D]**

A **1.2 In the instant case, there is no necessity for any corroboration of P.W.1's evidence. She was a simple village girl and she would not leave out her own assaillants and implicate falsely other innocent persons with the allegation that she was raped by them. Though she was a stranger to the accused she is the victim of dastardly offences of kidnapping and gang rape and it was done in broad day time. Therefore, when she was kidnapped into** B **forest by the accused, she had opportunity to see them, though later her eyes were closed with a piece of cloth. When she was made to lie down on the ground at the threat of her life and gang rape was committed, she was absolutely helpless. The medical evidence amply corroborates that she had injuries on her private parts and so there is yet enough resistence put up by** C **her to the gang rape committed one after the another. When it was done at the threat of her life she cannot be expected to go on resisting except to resign to her fate and succumb to their assault. P.W.1 also identified the respondents in the identification parade. She had enough opportunity to identify the persons who committed rape on her. Even if corroboration is** D **necessary, the injuries on her private parts; medical evidence of the doctor and her first information report provide such corroboration. The evidence of P.W.1 has to be accepted as truthful. [396B-E]**

**1.3 It is, therefore, not possible to accept the reasoning of the High Court in rejecting P.W.1's evidence and acquitting the two respondents.** E **Besides, the High Court also did not make any attempt to disbelieve her evidence on its own merits. [396A, F]**

**1.4 In these circumstances, the casual and mechanical approach, without regard to human probabilities, and the consequent acquittal by the High Court resulted in grave miscarriage of justice. The Judgment of** F **the High Court and order of acquittal of respondents is set aside. The judgments and convictions and sentences recorded by the trial court, and affirmed by the Sessions Court, are restored. The respondents should surrender and serve out the sentences. [396F, G]**

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 567 of 1983.

From the Judgment and Order dated 19.4.82 of the Orissa High Court in Crl. Revn. No. 152/81.

H C.S.Sromovasa Rao for the Appellant.

A.P.Mohanty for the Respondents. A

The Judgment of the Court was delivered by

**K. RAMASWAMY, J.** The two respondent Dambru Naiko (A1) and B. Sankara Rao (A2) and two others were charged in Sessions Case No. 6/78 of Asst. Sessions Judge, Jeypore for offences under section 366/34 and 376 read with s. 34 I.P.C. kidnapping and committing rape of Manguri Bhotruni, PW.1 on October 21, 1978 at about 4.00 p.m. By judgment dated November 26, 1978 the trial court convicted the respondents and sentenced them to undergo rigorous imprisonment for a period of three years on each count and the sentences were directed to run concurrently. He acquitted the other two which became final. On appeal it was confirmed by the Sessions Court. In Crl. Revision No. 152 of 1981 by judgment dated April 19,1982, the High Court acquitted them of the charges. Thus this appeal by special leave. B C

The case of prosecution is that on the fateful day the victim Bhotruni alongwith other girls, PWs. 2 to 4 went to Papadahandi to witness Dasahara festival. At about 4.00 p.m., while they were returning home, PW.1, the victim was ahead of them and when they reached inside the forest, the appellants and two others gagged the mouth of PW.1 and kidnapped into the forest, covered her eyes with a piece of cloth and threatened to kill her if she would raise cries. They made her to lie down on the ground and raped her one after another. PWs. 2 to 4 ran back Papadahandi and reported, to the police on duty in the festival, of the incidence and PW.5, the constable came alongwith them. They found the victim's eyes covered with a piece of cloth and that she was crying. She was taken to Papadahandi. She laid the complaint (Ext. P.1). The accused were arrested on October 31, 1977 and in the identification parade conducted by the Executive Magistrate, PW. 13, PW.1 to 4 identified the accused, PW.1 identified the respondents and one another, PW.2 to 4 identified some as per Ex. P.10 report the details of which are not necessary as it is admitted by them that before the identification parade was conducted PWs.2 to 4 had opportunity to see the accused. So the trial count did not rely upon the evidence of PWs.2 to 4. But it accepted the evidence of PW.1, the victim and convicted the respondents. The High Court acquitted the respondents on the grounds, namely, that PW.1 identifying these respondents would not be relied on and that there is no corroboration to her evidence. When there is a gang rape there could be several injuries on the person of the victim D E F G H

A which are absent. Therefore she was a consenting party. We are at a loss to understand the reasoning of the High Court. The vehement contention of the learned counsel for the respondents that the reasoning given by the High Court is cogent and needs no interference absolutely lacks substance. Though PW.1 was a stranger to the accused is the victim of dastardly offences of kidnapping and gang rape and it was done in broad day time. B Therefore, when she was kidnapped into forest by the accused she had opportunity to see them though later her eyes were closed with a piece of cloth. When she was made to lie down on the ground at the threat of her life and gang rape was committed, she was absolutely helpless. The medical evidence amply corroborates that she had injuries on her private parts and C so there is yet enough resistence put up by her to the gang rape committed one after the another. When it was done at the threat of her life, she cannot be expected to go on resisting except to resign to her fate and succumb to their assault. PW.1 also identified the respondents in the identification parade. Since there is no appeal against the others, we need not go into their acquittal. But suffice to state that she had enough opportunity to D identify the persons who committed rape on her. It is not necessary that there would be corroboration to the evidence of the victim of rape. If her evidence inspires confidence to be truthful that itself would be sufficient to convict the accused. We need not see corroboration to the evidence of PW.1. She was a simple village girl and she will not leave out her own assaillants and implicate falsely other innocent persons with the allegation E that she was raped by them. Even if we seek for corroboration the injuries on her private parts; medical evidence of the doctor and her first information report provide such corroboration. We have carefully scanned her evidence. We wholly accept her evidence as truthful. The High Court also did not make any attempt to disbelieve her evidence on its own merits. In F these circumstances the casual and mechanical approach, without regard to human probabilities, and the consequent acquittal by the High Court resulted in grave miscarriage of justice. The approach adopted by the High Court shall not be allowed to stand for a moment. The appeal is accordingly allowed. The judgment of High Court and the order of acquittal of the respondents is set aside. The judgments and convictions and sentences G recorded by the trial court and affirmed by the Sessions Courts are restored and the respondents should surrender and serve out the sentences.

N.P.V. Appeal allowed.