

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, BANPUR

PRESENT:

Sri Satya Ranjan Pradhan  
Asst. Sessions Judge, Banpur

**S.T. Case No. 54/05/87 of 2014/2011/2010**

(Arising out of G.R. Case No. 440/2009 corresponding  
to Banpur P.S. Case No. 285 of 2009 )

State. ... Prosecution.

- Versus-

Mitu Naik, aged about 26 years,  
S/o Ainthi Naik. Vill: Kulei,  
P.S: Banpur, Dist: Khurda.

... Accused.

Date of Argument : 27.05.2014  
Date of Judgment : 31.05.2014

For the Prosecution : Sri S.Mishra, Addl. P.P.  
For the Defence : Sri G.S.Ram & Associates,  
Advocates.

Offence U/s 493/417/376 I.P.C.

**JUDGMENT**

The above named accused stands charged for the offence U/s 493/417/376 of the I.P.C. for committing the offence of cohabitation caused by him deceitfully inducing a belief of lawful marriage, for cheating and for committing the offence of rape.

2. The brief fact of the prosecution case is that:-

The informant is the mother of the victim. she alleged in the F.I.R that on 23.11.2009 at about 4 AM she found her daughter missing from her house, so all the family

members went in search of her. During search they found the prosecutrix sitting at the backyard of one Ainth Naik and crying. On being asked she stated that on 10.09.2009 when she was sleeping in the house of her aunt Kanaka Naik the accused Mitu Naik had forcibly raped her which was seen by Kabu Naik. When she cried the accused promised her to marry. On giving the false promise of marriage the accused had again raped her 4 to 5 times. On that day the accused had brought her to his house but his family members did not accept her rather assaulted and threatened her with dire consequence. After knowing about the alleged occurrence the informant and her husband had called for a meeting in the village of the accused but the family members of the accused did not obey the decision of the village meeting rather threatened the informant and her family members to do away with their lives. So the informant came to the P.S and lodged a written report before I.I.C Banpur P.S. on 29.11.2009, which was registered as Banpur P.S. Case No.285 dated 29.11.2009 U/s 493/417/376/294/ 323/506/34 I.P.C. against the accused Mitu Naik and his family members. However after completion of investigation C.S was submitted by the I.O against the accused Mitu Naik only U/s 493/417/376 of the I.P.C.

3. The plea of the accused is one of complete denial and false allegation made by the informant and her family members. The reason for the false implication was disclosed by the accused during his examination U/s 313 Cr.P.C. Where in it was stated by the accused that the father of the victim used to take money from him. On one occasion he had taken a sum of Rs.5000/- and promised to repay the same within two months but did not repay. When the accused demanded his money this case was foisted against him.

4. The points for determination in this case are :-

- (i) Whether the accused co-habited with the victim deceitfully inducing her a belief of lawful marriage between them?
- (ii) Whether the accused cheated the victim by not keeping his promise of marriage?
- (iii) Whether the accused had committed the offence of rape with the victim?

5. To substantiate its case, prosecution had examined as many as sixteen witnesses in his favour. Out of which P.W.15 is the informant, P.W.14 is the victim, P.Ws.11 & 12 are the doctors, P.W.16 is the I.O and rest witnesses are the independent witnesses. On the other hand defence had examined none.

6. For better appreciation of evidence the evidence of the informant is taken into account first. Describing a different story to the facts mentioned in the F.I.R. as well as to the statement made before the I.O. the informant deposed before the court that her daughter was staying in the house of her aunt Kanaka Naik and was cooking food for them. The victim, her aunt Kanaka and uncle Idika used to sleep in one room. Apart from these three persons the accused Mitu Naik was also sleeping in that room. So far as the alleged occurrence is concerned it was stated by the informant that on the alleged date of occurrence in the night the accused forcibly committed rape on her daughter. when she objected the accused assured her to marry. On the next day the victim went to the house of accused to reside there as his wife but his family members assaulted and drove her out of the house. so she sat in the backyard of the house. After getting information from Kanaka Naik they went to the spot and there, from the victim they came to know about the alleged occurrence. Thereafter they called three persons from their village as well as some gentries from the village of the accused. A meeting was called for in presence of those gentries but the family members of the accused did not attend the said meeting. So on the next day they went to the Nachuni O.P. Being advised by Nachuni police they went to Banpur P.S and lodged the F.I.R. which is marked as Ext.3. This statement of the informant is quite different to her statement made before the police as well as the facts mentioned in the FIR. Because in the FIR as well as during the statement made before the I.O she had stated that on 23.11.09 they found their daughter missing from their house and after search they found her sitting and crying at the backyard of the accused's house. From her they came to know that on 10.10.2009 the accused had raped her. Subsequently also the accused had raped her 4 to 5 times giving false assurance of marriage. Thereafter the victim had moved to her house situated in village Gambharimunda and from her village in the night of 23.11.2009 she had come to the house

of the accused. But here in the court she described a different story as mentioned earlier. Those facts were suggested by the learned counsel for the defence to the witness during the cross examination. The main witness of the prosecution is the victim P.W.14. Keeping the aforesaid facts in mind it is pertinent to see what the victim has stated about the alleged occurrence. The victim was examined by the prosecution as P.W.14. During her examination in chief she stated that the occurrence took place in the house of her aunt Kanaka Naik. On the alleged date of occurrence in the night her uncle and aunt had slept in the said room. The accused Mitu Naik and one Kabu Naik were sleeping at one corner of the said room while she was sleeping at the opposite corner. After all slept, the accused started misbehaving with her. When she tried to raise shout, the accused covered her mouth and assured her to marry. But she did not stop raising her voice. Her voice was heard by said Kabu who was sleeping in that room. Thereafter she, Kabu and the accused came out of the house. In front of Kabu the accused promised that he will marry her. Thereafter the victim came to the room and slept. But the accused came to her and committed sexual intercourse for which she cried. But the accused assured her saying that he will marry her. Thereafter in the early morning the accused told her to go to his house. So she went to the house of the accused. But the family members of the accused do not keep her rather drove her out from the house, so she sat at the backyard of the house waiting for the accused. But the accused did not come. In the evening her parents reached at the spot and called for a village meeting. But the family members of the accused did not attend the said meeting. So they went to the P.S and lodged a written report.

As revealed from the statement of the victim in the alleged night the accused Mitu Naik had committed rape on her against her will and consent. When she protested she was given a promise of marriage. It further revealed that the alleged occurrence took place in the house of her aunt Kanaka Naik. In the night, in the said room where the alleged rape was committed apart from the accused, her aunt Kanaka Naik, her uncle Idika Naik and Kabu Naik were also sleeping. But when she raised voice only Kabu Naik woke up ( as mentioned in para -2 of examination in chief). So it is very much pertinent to go through the statement of Kabu

Naik to find out the truth. The said Kabu Naik was examined by the prosecution as P.W.6. Although he was said to be a witness to the alleged occurrence, surprisingly enough he denied his knowledge about the alleged occurrence. He was put to question by the learned Addl. P.P U/s 154 Evidence Act. But nothing much of importance was elicited from his mouth regarding the alleged occurrence. Similarly the uncle and aunt of the victim denied their knowledge about the alleged occurrence while being examined as prosecution witnesses Nos.4 and 5. Like P.W.6 these witnesses were examined by the learned Addl. P.P U/s 154 Evidence Act. Still then no material was brought out which could have supported the case of the prosecution. Not only these three witnesses i.e. P.Ws 4, 5 and 6 denied their knowledge about the alleged rape but also denied the fact of holding of any meeting in their village. What is more surprising is that during the cross examination of P.Ws 4 and 5 it was elicited from their mouth that in their house only one room is there and the victim used to sleep with them, which was also stated by the victim herself. It was also stated by those witnesses in their cross examination that in the said room they also used to cook. The size of room is 9' X 9' which is not sufficient enough to accommodate their family. So the question of the accused or Kabu coming to their house to sleep does not arise. The victim had been to their house for 7 to 8 days only as P.W.5 was ill and the victim was cooking food for them. After the said days are over she was left in her parent's house. She had never come to their house again. Going one step ahead they have categorically stated that they have never heard the accused committing any sexual act with the victim at any point of time. Although these witnesses are vital witnesses to the prosecution their denial about the alleged occurrence is a fatal blow to the case of the prosecution. It is more so because P.Ws 4 and 5 are none other than the aunt and uncle of the victim and were sleeping in that room itself where the alleged rape had taken place but could not hear the shout of the victim. At this point I wonder as to why these witnesses at all make a statement totally conflicting with the case of the prosecution. The prosecutrix being their niece there is no reason for them to spin a different story and let her down. These witnesses have no hostility with the family of the informant and still has good relation with them as revealed from the statement of P.W.15 the informant which is made in para -11 of her cross examination.

The victim was medically examined by the doctors on police requisition. P.W.11 the medical officer of Khurda had examined the victim for ascertaining her age and as per the examination report marked as Ext.1 at the time of occurrence her age was in between 18 to 20 years. Victim was also examined by P.W.12. During his examination P.W.12 found one old tear in the hymen of the victim at 7 'O' clock position. Apart from that he found no other injury on the body of the victim. He also clearly stated that there was nothing in the body of the victim to suggest that there was any recent sexual intercourse. Apart from these witnesses prosecution has examined some other witnesses such as P.Ws.1,2,3,7,8,9 and 10 out of them P.Ws 1,2 and 3 denied their knowledge about the alleged occurrence. P.W.7, 8, 9 and 10 are not the witnesses to the occurrence. As per their statement being informed by the parents of the victim they had gone to the village Kulei for holding of a meeting but as the parents of the accused did not attend the said meeting the meeting could not be conveyed so they returned to their respective house.

7. So as revealed from the aforesaid discussion we are left with the evidence of the informant and the victim herself who had supported the case of the prosecution regarding the alleged occurrence apart from those witnesses who are the witnesses to the meeting. P.W.15 the mother of the victim is not a witness to the occurrence .so we are left with the evidence of the prosecutrix only. Now the question is whether the conviction can be made on the sole testimony of the prosecutrix? And the answer is yes. It is now a settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement. The courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable

than that of an injured witness. Even minor contradictions of insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. The other requisites for accepting and acting upon the sole testimony of the prosecutrix is that the evidence must be reliable, cogent and trustworthy. At the same time it must be free from all blemishes. To sum up it can be said that evidence of the victim must be of such nature that she can be called as a "sterling witness". In a decision reported as Rai Sandeep @ Deepu –versus-State of NCT of Delhi- (2012)53 OCR (SC)-286 it was held by the honb'le Apex court that" 'sterling witness' should be a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain

intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged”.

8. So as discussed earlier we have to find out (i) whether there is consistency in the statement of the prosecutrix from the starting point till the end (ii) whether she withstood to her statement made in her examination in chief during the cross examination regarding the accused as well as the sequence of the occurrence (iii) whether her statement have correlation with each and every other supporting material such as recoveries made, the manner in which the offence is committed, the scientific evidence and expert opinion(iv)whether it matches with in the version of other witnesses (v) and lastly whether there is compelling reason to seek for corroboration.

Answering the aforesaid points it can be said that the statement of the prosecutrix failed on each of the aforesaid requisites. There is no consistency in the statement of P.W.14 from the starting point till the end. That means the version of the prosecutrix in the court is different from the statement what she made before the I.O. Similarly it has no co-relation with the statement of any other witnesses, the expert opinion and most importantly the factum of occurrence. To start with it, it is worthy to mention here that the prosecutrix had alleged that while she had been to the house of her aunt the accused had misbehaved with her. In one night while she was sleeping in the room the accused started misbehaving with her. In the said room apart from her and the accused other persons such as her uncle, aunt and one Kabu Naik were also sleeping. When the accused started misbehaving with her she tried to raise shout but the accused covered her face and promised to marry. In spite of that she raised voice which was heard by Kabu Naik(P.W.6). The said Kabu Naik hearing the sound wake up and thereafter all of them came out of the room. Accused in front of Kabu promised the informant that he will marry her. Thereafter the victim came back to the room and slept but the accused again came to her and committed sexual intercourse. Due to the aforesaid act of the accused she cried but the accused again promised her to marry. In addition to this she

further deposed that the accused took her to his house in the morning. However during her cross examination she disclosed separate thing by stating that in the said night the accused had done the sexual act with her for four times(para-6 of the cross examination), although in the examination in chief she had stated about one sexual act by the accused in that night. Similarly it was stated by her during her examination in chief that while the accused was trying to misbehave with her she raised shout which was heard by Kabu Naik (P.W.6). Thereafter all of them came out of the room. There the accused had promised to marry her. Subsequently she came back to the room and slept but the accused came to her and committed sexual intercourse .But contrary to that in para-7 and 8 of her cross examination she disclosed different thing which raises suspicion over her statement . In the said paragraphs she had disclosed that Kabu could see the sexual act while the accused was doing it for the 3<sup>rd</sup> time. Similarly she further admitted that although the accused had committed sexual intercourse for 4 times he had covered her mouth only two to three times. Categorically she stated that the last time when the accused was doing the sexual intercourse with her he had not covered her mouth. Similarly towards the last part of the para-10 of the cross examination she disclosed that before the sexual act was committed by the accused she was wearing a chadi, which was removed by the accused while doing the sexual act for the first time. Thereafter she herself had worn it. But the accused while doing sex for the second time had torn it . In the morning she herself threw the chadi out of the room through the window. If these statements made by the prosecutrix during her cross examination are believed then the facts which she deposed during her examination in chief well seems to be improbable and not believable. It seems more improbable because P.Ws 4,5, and 6 had categorically denied their knowledge about the alleged occurrence though they were sleeping in the same room. There is also no hostility of these witnesses with the family of the victim. Rather p.w.4 &5 are her relatives. The statement of the prosecutrix vis-à-vis that of p.w.4, 5&6 was already discussed in page 5 of the judgment.

9. So far as the date of occurrence is concerned the prosecution could not establish properly the date on which the alleged occurrence has taken place. In the body of the F.I.R

which is marked as Ext.3 it is mentioned that on 10.10.2009 first time the alleged occurrence has taken place. Subsequent to 10.10.2009 on four to five occasions the accused had ravished the prosecutrix. On 23.10.2009 the accused had asked the prosecutrix to go to her village. But the informant as well as the prosecutrix did not specifically disclose the date of the alleged occurrence during their statement made before the court. The prosecutrix had stated that 3 years and 10 months prior to the date of deposition this occurrence had taken place and it was a Tuesday in the month of Margasira. Similarly the informant had stated that 4 to 5 years back to the date of deposition the occurrence had taken place. After going through the evidence of both the witnesses it reveals that the alleged occurrence had taken place in the preceding night when the informant and her husband met the prosecutrix in the backyard of Ainthana Naik. If the statements of P.Ws 14 & 15 are compared with the F.I.R it will be found out that the accused had taken place in the night of 22/23.11.2009. Because it is specifically mentioned in the F.I.R that on 23.11.2009 they did not find the victim in their house, so they went to search of her. During their search they found the victim sitting at the backyard of Ainthana Naik. On being asked she disclosed before them about the alleged occurrence. Similarly (P.W.14) prosecutrix in para-3 of her examination herself had stated that after the alleged sexual intercourse the accused assured her to go to his house in the morning. So she went but his family members drove her out. So she sat at the backward. These statement her parents had disclosed about the occurrence. So from the contradictory statement made by the victim and the informant along with the facts mentioned in the F.I.R. it is quite difficult to ascertain the exact date of occurrence. Similarly it is not clear as to on which date and after how many days the informant had lodged the F.I.R. If the contents of the F.I.R is believed after knowing about the occurrence on 23.11.2009 they arranged a village meeting. In the said meeting the family members of the accused did not obey the decision of village committee so on 29.11.2009 she had lodged the F.I.R. However in para-2 of her examination in chief the informant had disclosed that after knowing about the occurrence in the morning of the occurrence they had called gentries of both the village but the family members of the accused did not attend the said meeting, so on the next day they informed the police at Nachuni Out Post. The police of Nachuni Out Post had advised them to lodge F.I.R at Banpur P.S so she

came to the Banpur P.S and lodged the F.I.R. and if the statement is believe the F.I.R was lodged on 24.11.2009. The prosecutrix in para-6 of the cross examination specifically mentioned that on Friday i.e. on the third day of the occurrence they went to the P.S, on the contrary in para-10 she disclosed that while she was sitting at the backyard of the house of accused the police came and took her to the P.S. All these statements made by these witnesses are clearly contradictory to each other as well as the facts mentioned in the F.I.R. It is more important to ascertain the date of lodging of the F.I.R because although the F.I.R was lodged on 29.11.2009. The dates mentioned in the body of the F.I.R is not clearly visible and it is also over written. The date of the alleged occurrence and the date of lodging of the F.I.R bears great significance because of the existance of the medical report with suggest that upon the examination of the prosecutrix the M.O. did not find any sign of recent sexual intercourse. Similarly although the F.I.R was lodged on 29.11.2009 the delay of 6 days i.e. from the date of knowledge about the occurrence was not clearly and properly explained. On this point during the course of argument it was submitted by the learned Addl. P.P. that delay in lodging F.I.R in such type of offence is quite normal and will not affect the case of the prosecution. It is no doubt and an admitted fact that generally in this type of offence delay occurs due to many reasons. But it is the duty of the prosecution to explain it or to assign the reason for the delay. So considering the aforesaid statements of the prosecution witnesses in entirety, I am of the opinion that there is no consistency in the statements of the prosecutrix as well as the informant regarding the factum of occurrence from the starting point till the end. Similarly their statements could not pass through the touch stone of the cross examination of the defence and many deviance could be find out in the statements. It is also noticed they have improved upon their earlier statements made before the I.O regarding the alleged occurrence. Considering the said discrepancies, exaggerations and improvements made upon on their earlier statements I am of the opinion that it is not safe to rely upon the uncorroborate statement of the prosecutrix alone considering that to be a gospel truth. In our society it is generally believed that a woman will not depose false hood putting her chastity atstake. But under the given circumstances as mentioned earlier it is very much pertinent to seek corroboration to the statement of the prosecutrix but no corroboration

could be available rather the witnesses who are present in the room itself did not support the versions of the prosecutrix.

10. Here the accused is facing trial for having committed the offence U/s 417/493/376 of the I.P.C. As discussed earlier the prosecution failed to prove the facts of sexual intercourse of the accused with the prosecutrix, giving the promise for marriage or his failure to keep the said promise. Similarly none of the P.Ws including the prosecutrix herself had never disclosed that whether at any point of time the accused had tried to made her believe that she is his lawful married wife. So considering the aforesaid facts, I am of the opinion that, the prosecution failed to prove any of the ingredients of the alleged offence U/S 417/493/376 of the I.P.C. In the result I found the accused not guilty for committing the offence U/s s493/417/376 and he is acquitted u/s. 235(1) Cr.P.C. He be discharged from the bail bond.

Enter this fact as mistake of fact.

The seized articles be destroyed after four months of expiry of the appeal period if no appeal is preferred and in case of any appeal the same shall be dealt with as per the order of the Appellate court.

Asst. Sessions Judge,  
Banpur.

Pronounced the judgment in open court today the 31<sup>st</sup> day of May 2014 under my hand and seal of the court. Transcribed to my dictation and corrected by me.

Asst. Sessions Judge,  
Banpur.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION.

P.W.1.	Laxmidhar Nayak.
P.W.2.	Jaya Nayak.
P.W.3.	Bharat Nayak
P.W.4	Idika Nayak.
P.W.5	Kanak Nayak
P.W.6	Kabu Nayak.
P.W.7	Chaitanya Nayak
P.W.8	Padma Chaan Nayak.

P.W.9	Rosi Nayak
P.W.10	Gouranga Nayak
P.W.11	Dr. Nirmal Chandra Pradhan.
P.W.12	Dr. Minati Pattnaik.
P.W.13	Kesab Nayak
P.W.14	The name of the victim is withheld to preserve anonymity of victim.
P.W.15	Bhanumati Nayak
P.W.16	Subash Chandra Panda.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE.

NONE.

LIST OF EXHIBIT MARKED FOR THE PROSECUTION.

Ext.1.	Report of P.W.11.
Ext.1/1	Signature of P.W.11 on Ext.1.
Ext. 2	Report of P.W.12.
Ext.2/1	Signature of P.W.12 on Ext.2
Ext. 2/2	Requisition of P.W.16.
Ext.2/3	Signature of P.W.16 on Ext.2/2.
Ext.3	F.I.R.
Ext.3/1	Signature of P.W.15 on Ext.3.
Ext.3/2	Endorsement of IIC on Ext.3.
Ext.4	Spot map.
Ext. 4/1	Signature of P.W.6 on Ext.4.
Ext.5	Seizure list.
Ext.5/1	Signature of P.W.16 on Ext.5.
Ext.6	Seizure list.
Ext.6/1	Signature of P.W.16 on Ext.6.
Ext.7	Requisition of P.W.16.
Ext.7/1	Signature of P.W.16 on Ext.7
Ext.7/2	Report .
Ext.8	Seizure list.
Ext.8/1	Signature of P.W.16 on Ext.8.
Ext.9	Seizure list.
Ext.9/1	Signature of P.W.16 on Ext.9

LIST OF EXHIBIT MARKED FOR THE DEFENCE.

NIL.

Asst. Sessions Judge,  
Banpur.

