

**IN THE COURT OF THE SESSIONS JUDGE, KHURDA  
AT BHUBANESWAR.**

Present:

**Dr. D.P. Choudhury,**  
Sessions Judge, Khurda  
at Bhubaneswar.

*Dated, Bhubaneswar the 29<sup>th</sup> Oct. '14.*

**T.R. Case No.65 of 2013.**

(Arising out of Mahila P.S. Case No.245, dated 14.09.2013.)

**S T A T E**

***-V e r s u s-***

Chibini Digi, aged about 19 years, S/o. Sanatan Digi of Village  
- Gorulatu, P.S. - Roruan, Dist. - Mayurbhanj.

... **Accused.**

**Counsel :**

For prosecution -- Spl. Public Prosecutor.

For defence -- Shri P.K. Mohanty & Associates.

U/s.363/366A/342/376/506, I.P.C. &  
U/s.4, Protection of Children From Sexual Offences Act,  
2012.

Date of argument : 27.10.2014.

Date of judgment : 29.10.2014.

**J U D G M E N T**

Accused stands charged under sections

363/366A/342/376/506 of the Indian Penal Code and under section 4 of the Protection of Children from Sexual Offences Act, 2012.

2. The factual matrix leading to the case of the prosecution is that the informant has got a minor daughter, who was studying in school. It is alleged, inter alia, that on 13.09.2013 at about 9.30 A.M., while the victim was going to school, the accused kidnapped her in an auto-rickshaw. A school mate of the victim informed about the same to the informant. Then, F.I.R. was lodged and statements of witnesses were recorded under section 161 of the Cr. P.C. Police rescued the victim girl. During course of investigation, it was found that the accused made sexual intercourse with the victim against her consent. Police also seized the School Admission Register of the victim girl and other documents during investigation. The Investigating Officer made spot visit. Statement of the victim was recorded under section 164 of the Cr. P.C. After completion of investigation, charge-sheet was submitted. Hence the prosecution.

3. Plea of the accused is squarely denial to the charges levelled against him.

4. The main points for determination are :

(i) Whether the accused kidnapped the victim under

the age of eighteen from the lawful guardianship of her mother ?

- (ii) Whether the accused forced the victim under eighteen years of age to illicit intercourse with him ?
- (iii) Whether the accd. wrongfully confined the victim ?
- (iv) Whether the accused committed rape on the victim ?
- (v) Whether the accused committed criminal intimidation by threatening the victim to cause her death and her parents ?
- (vi) Whether the accused committed penetrative sexual assault on the victim, who was under the age of 18 years ?

5. Prosecution in order to prove the charges has altogether examined six witnesses, out of whom P.W.1 is the victim girl; P.W.2 is the informant, who is the mother of P.W.1; P.W.3 is the father of P.W.1; P.Ws.4 & 5 are Investigating Officers; and P.W.6 is the doctor.

6. It is well settled law that conviction can be maintained basing on the sole testimony of a single witness if it is cogent, clear, consistent and above reproach. The Court should weigh the evidence but not count the same. Bearing in mind these principles, let me find out if at all prosecution has been able to bring home the charges against the accused beyond all shadow of doubts.

7. P.W.1, the victim, stated that on the festive day of Ganesh Puja, she met the accused while she had gone to witness Ganesh idol. According to her, she and accused went to Dhenkanal and then reached the house of the accused there, but the accused had not made sexual intercourse with her. She has been cross-examined by prosecution. During cross-examination, she denied to have stated before police and Magistrate that the accused made sexual intercourse with her and threatened her with dire consequences. It appears that prosecution has not confronted such statement of the victim to the Investigating Officer. So, the evidence of the victim cannot be said to have contradicted her earlier statement made before the Investigating Officer. In cross-examination by defence, she categorically stated that she had gone voluntarily with the accused to Dhenkanal. It is well settled law that the evidence of a hostile witness cannot be rejected in toto, but the same should only be appreciated to the extent it can be relied upon either by prosecution or defence. In this case, I find that P.W.1 has never supported the prosecution and in the absence of contradiction, she cannot be said to have spoken lies. On the whole, it is found that she has not proved the occurrence of kidnapping and rape when she has gone with the accused voluntarily and did not disclose about rape being committed by

the accused on her.

8. P.W.2, who is the mother of the victim, has not disclosed about the occurrence. It is only stated by P.W.2, the informant, that P.W.1 had gone voluntarily to see Ganesh idol. According to P.W.2, her daughter had gone to the market, but did not return. About lodging of F.I.R., she explained that as her daughter did not return, she filed F.I.R. She proved the F.I.R. vide Ext.2 and her signature vide Ext.2/1. Although she has exhibited the F.I.R., but did not prove the contents thereof by deposing about the occurrence. There was no cross-examination to this witness by prosecution. When there is no cross-examination to this witness, it is not possible to indicate her to be a hostile witness. Rather, it is found from her cross-examination that P.W.1 had gone voluntarily to see Ganesh idol. She also denied her knowledge about the accused. On the other hand, she has not supported the prosecution to prove kidnapping and rape by the accused on her daughter. Mere exhibiting the F.I.R. will enough to prove the facts stated therein inasmuch as F.I.R. is not an encyclopedia and it is not a substantive piece of evidence. Be that as it may, P.W.2 has not proved the case of prosecution.

9. P.W.3, the father of the victim, expressed his ignorance about the occurrence. He has not been cross-

examined by prosecution. So, the evidence of P.W.3 is equally crippled to lend corroboration to the case of prosecution.

10. From the foregoing discussion, there is nothing found from the evidence of ocular witnesses to prove the complicity of the accused with the commission of the alleged crime by direct evidence.

11. The evidence of P.W.6, who is the doctor, reveals that he has examined the victim; but there was no bodily injury suggesting forcible sexual intercourse and vaginal swab did not reveal presence of spermatozoa. There was no signs and symptoms of forcible recent sexual intercourse. He has proved his report vide Ext.9. Thus, the doctor has also not corroborated the prosecution to prove sexual intercourse with the victim.

12. P.W.4 is the Investigating Officer, who stated about seizure of School Admission Register of the victim vide Ext.3. She left the same in zima of School Authority vide Ext.4. On going through Ext.3, it appears that the date of birth of the victim is 14.09.1999. The doctor's report also shows that she was aged about 14 to 15 years. So, prosecution has proved that the victim girl had not completed 18 years by the date of occurrence.

13. P.W.4 proved seizure of semen and pubic hair of

the accused vide Ext.5. She proved the wearing apparels of the accused vide Ext.6. P.W.4 also proved the wearing apparels of the victim vide Ext.1/1. She also proved seizure of pubic hair of the victim collected by doctor vide Ext.7. She stated to have sent all the seized properties for chemical examination. It is not forthcoming from her evidence that those seized properties were examined by Chemical Examiner and if they contained stains of semen or blood. So, seizure of those properties cannot be circumstantial evidence against the accused.

14. According to P.W.4, she got the statement of the victim recorded under section 164 of the Cr. P.C., but such statement has not been exhibited by prosecution. When the victim girl has denied about any occurrence, as alleged against the accused, the statement of the victim girl before the Magistrate will not develop the case of prosecution because statement made under section 164 of the Cr. P.C. is not a substantive piece of evidence, but the same can be used for corroboration or contradiction. In the absence of any such statement being proved in evidence, it will not develop the case of prosecution.

15. According to P.W.5, another Investigating Officer who initially conducted investigation, she examined the

witnesses, including the informant, visited the spot and prepared spot map. She proved the spot map vide Ext.8. It is further stated by her that on 15.09.2013, she rescued the victim from a village at Pallalahara and on the same day, she handed over charge of investigation to the IIC as the case turned to commission of rape and offence under Protection of Children from Sexual Offences Act. In cross-examination, she admitted to have not examined the persons who were residing near the spot.

16. In view of the foregoing analysis, I find that prosecution has not proved any occurrence by direct or circumstantial evidence. Moreover, prosecution has not proved the ingredients of the offences alleged to have been committed by the accused. Thus, I arrive at a conclusion that prosecution has miserably failed to prove the charges levelled against the accused beyond all shadow of doubts.

17. In the result, I hold the accused not guilty of the offences punishable under sections 363/366A/342/376/506 of the Indian Penal Code and under section 4 of the Protection of Children from Sexual Offences Act, 2012 and he is acquitted under section 235(1) of the Code of Criminal Procedure. He be set at liberty forthwith.

18. The seized articles be destroyed and the zimanama



be cancelled four months after expiry of the appeal period if no appeal is preferred; in the event of appeal, the same be disposed of in accordance with the direction of the Appellate Court.

**Sessions Judge, Khurda  
at Bhubaneswar.**

29.10.2014.

Dictated, corrected by me and pronounced this day the 29<sup>th</sup> October, 2014.

**Sessions Judge, Khurda  
at Bhubaneswar.**

29.10.2014.

**List of witnesses examined for prosecution.**

P.W.1	--	Victim,
P.W.2	--	Jhunubala Sahoo,
P.W.3	--	Sudarsan Sahoo,
P.W.4	--	Manoja Panda,
P.W.5	--	Gayatri Mohapatra &
P.W.6	--	Dr. Sanjay Chandra Ray.

**List of witnesses examined for defence.**

Nil.

**List of documents admitted in evidence for prosecution.**

Ext.1	--	Signature of P.W.1 in seizure list,
Ext.2	--	F.I.R.,
Ext.2/1	--	Signature of P.W.2 in Ext.2,
Ext.3	--	Seizure list,
Ext.3/1	--	Signature of P.W.4 in Ext.3,
Ext.4	--	Zimanama,
Ext.4/1	--	Signature of P.W.4 in Ext.4,

Ext.5	--	Seizure list,
Ext.5/1	--	Signature of P.W.4 in Ext.5,
Ext.6	--	Seizure list,
Ext.6/1	--	Signature of P.W.4 in Ext.6,
Ext.1/1	--	Seizure list,
Ext.1/2	--	Signature of P.W.4 in Ext.1/1,
Ext.7	--	Seizure list,
Ext.7/1	--	Signature of P.W.4 in Ext.7,
Ext.2/2	--	Endorsement and signature of Sarojini Nayak, IIC, in Ext.2,
Ext.8	--	Spot map,
Ext.9	--	Injury report, &
Ext.9/1	--	Signature of P.W.6 in Ext.9.

**List of documents admitted in evidence for defence.**

Nil.

**List of M.Os. marked for prosecution & defence as well.**

Nil.

**Sessions Judge, Khurda  
at Bhubaneswar.  
29.10.2014.**

