

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,  
BHUBANESWAR.

Present:-

Shri M. K. Mishra, LL. B,  
Addl. Sessions Judge, Bhubaneswar.

T.R.Case NO. 109 OF 2014

(Arising out of Bhubaneswar Jatni  
PS Case No. 302/2013, corresponding  
to GR Case No-835 of 2013, committed  
by the SDJM, Bhubaneswar)

Date of argument- 22.12.2014

Date of Judgment- 23.12.2014

S t a t e -

Jharia @ Krushna Chandra Pahadsingh, aged about 44  
years, S/o: Lt. Kailash Chandra Pahadsingh of village:  
Khudupur, P.S. Jatni, Dist: Khurda.

....Accused.

Advocate for the prosecution :Shri Asok Kumar Pattnyak,  
Addl.P. P

Advocate for Accused :Shri C.R.Das and others, ADVs.

Offence Under Sections : 376(D)/376(2)(n)/323/506 of of  
Indian Penal Code r/w.Section 3(i)(xi)(2) (v) SC/ST PA Act.

J U D G M E N T

The aforesaid accused namely: Jharia @  
Krushna Chandra Pahadsingh has faced his trial being  
charged U/s.376(D)/376(2)(n)/323/506 of Indian Penal  
Code ( hereinafter referred as 'I.P.C.') r/w. Section 3(i)(xi)  
(2) (v) of SC/ST PA Act.

2. The case of the prosecution in short is that: the  
victim lady had lodged a written FIR before the IIC, Jatni  
P.S on dtd.14.12.2013 wherein it was alleged that on  
12.12.2013 at about 11 AM, while she had gone to a  
nearby village in order to collect fire-wood, at that time the

accused namely: Jharia Pahadsingh of village: Khudpur alongwith his companion namely: one Samal had arrived there. Thereafter, the accused had restrained her, abused her in obscene language, and gave her push and pull. He also challenged her saying as to why she had initiated a case against him in the past. The accused had instructed his companion Samal to bring her inside the jungle. Thereafter, the accused as well as his companion Samal had forcibly dragged her inside the cashew jungle, and forcibly torned her wearing apparels, made her naked. Samal had caught hold of her, and accused Jharia had committed rape on her forcibly. After the incident, while the victim lady was returning to her village after putting her wearing apparels, on her way, the accused and his companion Samal chased her by their motor-cycle. Out of fear the victim girl had ran away from the cashew jungle, and in the process she arrived at Jatni-Khurda main road near the boundary wall of Nyser institution. The accused Jharia his companion arrived there and threatened her with dire consequence if the matter would be informed to others. Thereafter, the accused and his companion had caught hold of a branch, and assaulted on her head from her backside, as a result of which, she became unconscious and lied on the ground. After regaining her sense, she found herself at Khurda Hospital. Since, she was under treatment, there was some delay in lodging the FIR. It is further alleged in the FIR that in the past, the accused had committed rape on her for which she had initiated a case, and the accused was arrested by the police. Basing on the allegation, the IIC, Jatni P.S had taken

action, and registered Jatni P.S. Case No-302/2013 u/s.376(D)/376(2)(n)/323/506 of I.P.C, and Section 3(i)(x)SC & ST PA Act and the investigation was taken up. During course of investigation of this case, the IO had arrested the accused, and forwarded him to the court, visited the spot, seized one black coloured bra, one white sky coloured panty of the victim girl and prepared the seizure list and seized one opened condom packet, one sealed injection vial containing public hair of victim, one sealed injection vial containing vaginal swab of the victim, and one brown coloured half brief and one blue coloured T-shirt of the accused, and one sealed injection vial containing public hair, and one sealed injection vial containing semen, and one sealed injection vial containing nail clippings of accused and prepared seizure list. He also sent the seized articles to the SFSL, Bhubaneswar through the order of the court, recorded the statement of the witnesses U/s.161 Cr.P.C including that of the victim lady, and on completion of investigation, he has submitted Chargesheet against the accused U/s. 376(D)/376(2)(n)/323/506 of I.P.C, and Section 3(i)(x)SC & ST PA Act. Charge was framed accordingly for the aforesaid offences in the court.

3. The plea of the defence is that of complete denial of the prosecution story.

4. Points for determination in this case are:

- i) Whether on dtd.12.12.2013 at about 11 AM inside the Cashew jungle located near village: Khudpur, the present accused Jharia Pahadsingh alongwith his companion namely

one Samal had committed gang rape on the victim lady?

ii) Whether the accused had repeated the offence of rape in respect of the victim lady?

iii) Whether on the same date, time and place near the boundary wall of Nyser Institute, the accused had assaulted the victim lady on her head from her backside using a branch causing hurt to her?

iv) Whether during the above noted date, time and place the accused had threatened the victim lady to face dire consequence causing alarm to her mind?

v) Whether the accused had committed atrocity in respect of the victim lady knowing that she was belonged to Schedule caste community?

5. In order to prove it's case, prosecution has examined as many as 11 nos. of witnesses. Out of whom, P.W.1, the P.W.2 are the seizure witnesses, the P.W.3 is an independent witnesses, the P.W.4 is a co-villager of the victim lady, and so also the p.W.5, the P.W.6, and the P.W.7. The P.W.8 is the father of the victim lady. The P.W.9 is the co-villager of the victim lady, the P.W.11 is the mother of the victim lady.

On the other hand, no witness is examined on behalf of the defence. Ext.1 to Ext.3 series are marked on behalf of the prosecution which include the FIR, seizure list etc. On the other hand, Ext.A, Ext.B and Ext.C which are affidavits of the victim girl and her mother. No MO is

marked in this case.

The rest prosecution witnesses have been declined considering the evidence of the victim girl and other witnesses. Defence has examined none. The rest of the chargesheet witnesses have been declined by the prosecution considering the evidence of the victim girl, and the other witnesses.

6) The P.W.1, the P.W.2 who are the two seizure witnesses have stated that nothing was seized by the police in their presence. They have simply identified their signatures appearing on the body of the seizure list.

The P.W.3, the P.W.4, the P.W.5, the P.W.6 and the P.W.7 who belong to the village of the informant have all stated to have no knowledge about this case.

The P.W.8 who is the father of the victim lady deposed that the victim lady had compelled the accused to marry her. But the family of the accused did not agree as their respective castes differ with each other. In order to take revenge and to compel the accused to marry her, the informant has created this case by lodging a false FIR. The cross-examination of P.W.9 indicates that the IO of this case has not examined him.

The P.W.9 has deposed to have not known anything about this case.

The P.W.10. is the victim lady, whose evidence carries much importance . According to this witness, since her father was indisposed of, for that, the accused was managing their family, and he was frequently visiting to her house, and she fell in love with him, she revealed her intention to marry him. But the co-villagers, and the family

members did not approve this because of the caste difference. Hence, being annoyed she had consumed some tablets and became ill, and was under treatment at hospital. While she was in the hospital as an indoor patient, police had arrived there, and obtained her signature on a plain paper which was subsequently converted to FIR. Excepting this she has no other knowledge regarding the facts of this case.

The P.W.11 the mother of the victim lady has expressed her ignorance about the facts of this case. She has simply identified her signature appearing in the seizure memo dtd.14.12.2013. The aforesaid witness was subjected to leading questions by the prosecution U/s.154 of the I.E.Act and her earlier statement U/s.161 Cr.P.C was confronted to her. But the evidence of the P.W.11 indicates that she has not supported the case of the prosecution in any manner and denied to have made any such statement before police. Her cross-examination reveals that she was not examined by thy police. She has categorically stated that the accused has never committed rape on the victim lady at any point of time. She has stated that on earlier the victim girl had consumed some tablets for which she became indisposed of for which she was under treatment and during her treatment police had obtained her signature on a blank paper and subsequently managed to lodge a case vide Jatni P.S.Case No-127/2013 corresponding to GR Case No-354/2013 and an affidavit to that effect has already been filed in BLAPL NO-1042/2013 in GR Case No-354/2013.

7) Considering the aforesaid evidence of the informant,

was subjected to put volley of leading questions by the Prosecution U/s.154 of the I.E.Act. But she has not whispered anything if the accused had committed any act of rape at any point of time. The other witnesses are also subjected to put leading questions U/s.154of I.E.Act including the father of the victim lady, and her mother. But they have not stated anything relating to the commission of any such act nor they have whispered that the informant had sustained any injury or assault made by the accused or if the accused had committed rape on her. Apart from this there is evidence coming in the mouth of the informant that the accused was helping her family. There is no iota of evidence against the accused touching any of the offences under the SC & ST (PA) Act.

7) The Ld. Counsel for the accused has submitted that taking into consideration the contents of Ext.A, Ext.B and Ext.C the case against the accused is not believable however, the prosecution has to stand its own leg.

6. In the present case, the informant and any of the witnesses have not stated anything to support the case of the prosecution, nor they have opened their mouth relating to the alleged act of the accused for which the case was lodged. Hence, finding that there is absolutely no oral or documentary evidence supporting the case of the prosecution, I am of the considered opinion that, the accused is entitled for an acquittal. Accordingly, after going through the evidence on record, both oral and documentary, I find that the prosecution has miserably failed to prove its case U/s.376(D)/376(2)(n)/323/506 of I.P.C r/w. Section 3(i)(xi)(2) (v) of SC/ST PA Act beyond all

reasonable doubt, and the accused is found not guilty, and he is acquitted as per provision 235(1), Cr. P. C. He be set at liberty forthwith.

The seized article if any be destroyed after four months of the appeal period is over in case of no appeal, in case of appeal the same be dealt with as per the direction of the appellate court.

Addl. Sessions Judge, Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open Court today this the 23rd day of December, 2014 given under my signature and seal of this Court.

Addl. Sessions Judge, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1	Ranjit Mangaraj
P.W.2	Babula Pahadsingh
P.W.3	Prabhakar Nayak
P.W.4	Ranka Rout
P.W.5	Jogendra Behera
P.W.6	Kalia Nayak
P.W.7	Golak Nayak
P.W.8	Jhulia Nayak
P.W.9	Tulia Nayak
P.W.10	Smt. Mita Nayak
P.W.11	Smt. Golap Nayak

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1	Signature of P.W.1 on seizure list dt.5.6.14
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Ext.1/1      Signature of P.W.2 on the seizure list dtd.5.6.14  
Ext.2        FIR  
Ext.2/1      Signature of P.W.10 on Ext.2  
Ext.3        Signature of P.W.10 on property seizure memo  
                 dt.14.12.13  
Ext.3/1      Signature of P.W.11 on property seizure memo  
                 dt.14.12.2013.

List of Exts. Marked on behalf of the defence

Nil.

List of M.Os marked on behalf of the prosecution

Nil

List of M.Os marked on behalf of the defence

Addl. Sessions Judge, Bhubaneswar.