

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

Present:

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

Dated, Bhubaneswar the 24th Dec. '14.

T.R. Case No.29 of 2014.

(Arising out of Tangi P.S. Case No.119 dated 30.04.2014.)

S T A T E

-V e r s u s-

Dipti Ranjan Palei, aged about 19 years, S/o. Bidyadhara Palei
of Village - Orada, P.S. - Tangi, Dist. - Khurda.

... **Accused.**

Counsel :

For prosecution -- Shri S. Priyadarshi, Special P.P.
For defence -- Shri A.K. Sahoo & Associates.

U/ss.366A/509/376(2)(i)/376(2)(n)/506, I.P.C. & U/ss.6 &
12, Protection of Children From Sexual Offences Act, 2012.

Date of argument : 23.12.2014.

Date of judgment : 24.12.2014.

J U D G M E N T

Accused stands charged under sections
366A/509/376(2)(i)/376(2)(n)/506 of the Indian Penal Code
read with sections 6 & 12 of the Protection of Children From

Sexual Offences Act, 2012 (hereinafter called “the Act”).

2. The factual matrix leading to the case of the prosecution is that the 16-year-old victim girl is the daughter of the informant. It is alleged, inter alia, that on 30.04.2014 at about 7 A.M., the victim girl had gone to her computer class at Chandpur. While she was returning after attending the class, at Badapari chhak, the accused abused her in obscene language and obstructed her. The accused asked her to accompany him to Jatni with an assurance to come back by 11 A.M. When the victim protested, the accused threatened to show her nude photographs and also threatened to kill her parents. Finding no other way, the victim went with the accused to Jatni and then went to other places. While travelling in the train, the accused took her to the latrine and made forcible sexual intercourse with her with the promise to marry her. While they were returning from Puri, the accused took the victim to the latrine and repeated the same act of rape on her. After returning home, the victim girl informed her parents. Thereafter, F.I.R. was lodged. During investigation, witnesses were examined, wearing apparels of victim and accused were seized, statement of the victim was recorded under section 164 of the Cr. P.C. and she was medically examined by doctor on police requisition. The accused was also examined by the doctor on

police requisition. After due investigation, charge-sheet was submitted. Hence the case of the prosecution.

3. Plea of the accused is squarely denial to the charges levelled against him. He pleaded that he has been falsely implicated in this case.

4. The main points for determination are :

(i) Whether the accused induced the victim, a girl under eighteen years of age, to go with you with intent that she will be forced to illicit intercourse with you ?

(ii) Whether the accused, intending to insult the modesty of the victim, threatened to exhibit her sexy photographs at different places ?

(iii) Whether the accused committed rape on the victim, when she was under sixteen years of age ?

(iv) Whether the accused committed repeated rape on the victim ?

(v) Whether the accused committed criminal intimidation by threatening the victim to kill her parents ?

(vi) Whether the accused committed aggravated penetrative sexual assault on the victim ?

(vii) Whether the accused committed sexual harassment upon the victim ?

5. It is well settled law that the evidence of sole witness can be considered to base a conviction provided such evidence is cogent, consistent and above reproach seeking no corroboration. It is well settled law that the evidence has to be

weighed but not to be counted. It is also the cannons of law that the evidence of hostile witnesses cannot be discarded in toto, but should be considered to find out whether the same can be utilized to the extent required. Keeping in mind such salutary principles, let me find out whether the prosecution has been able to prove the occurrence and the charges against the accused.

6. The prosecution, in order to bring home the charges, has examined six witnesses, out of whom P.W.1 is the informant, who is the mother of the victim; P.W.2 is the victim herself; P.W.3 is the father of the victim; P.Ws.4 & 6 are doctors; and P.W.5 is the Investigating Officer. Defence has examined none.

7. It is revealed from the evidence of P.W.1 that about 4 to 5 months back, her daughter had gone to college, but did not return. While she was searching for the victim, an Advocate came there before whom she narrated the incident. Accordingly, he wrote the F.I.R. and she signed thereon. She proved her signature vide Ext.1. Thus, she has not proved the contents of the F.I.R. She has also not proved the facts alleged in the F.I.R. She has been cross-examined by the prosecution. Denying the suggestion of the prosecution, she deposed to have not stated before the police that the accused kidnapped

her daughter and raped her repeatedly in train compartment and they rescued her. This statement is not confronted to P.W.5, who is the Investigating Officer. So, she cannot be said to have resiled from her earlier statement. Rather, in cross-examination, it has come that they have got enmity with the family of the accused for the last seven to eight years. So, the statement of P.W.1 does not disclose about the occurrence and it is only found that due to previous enmity, she has lodged the F.I.R. prepared by an Advocate, whose name she has not uttered.

8. P.W.2, who is the victim girl, stated that on the date of occurrence, she had gone to college to attend classes. There was some late in coming home while attending the computer class for which her mother being worried lodged the F.I.R. She has not disclosed the occurrence at all. During cross-examination by the prosecution, she denied to have stated before the police that while going to the college, the accused forcibly kidnapped her and took her to Puri by train and while going with him, he sexually assaulted her repeatedly in the bath room of train compartment. As regards her statement recorded under section 164 of the Cr. P.C., she has very cunningly stated that she has deposed before the learned Magistrate being tutored by the police. So, she has also

disowned her statement made before the Magistrate under section 164 of the Cr. P.C. Her statement has not been confronted to the Investigating Officer to find out the truth. So, she has absolutely diluted the case of the prosecution by not narrating the occurrence. In cross-examination, she clearly stated that since ten years, they have got enmity with the accused's family. At the same time, she stated that she has never gone with the accused at any point of time and the accused is her college mate. When in cross-examination she has dissolved the case of the prosecution and did not prove the slightest possibility of the complicity of the accused in the commission of the offences, she is found to have not proved the case of the prosecution. On the other hand, she has proved that there is enmity between their family and the family of the accused.

9. P.W.3, who is the father of the victim, expressed his ignorance about the occurrence. So, his evidence has not improved the case of the prosecution.

10. From the aforesaid discussions, it is found that the prosecution has not proved the occurrence by direct evidence. So, let me find out if at all there is any circumstantial evidence against the accused.

11. The statement of P.W.6, who is the doctor, shows

that on 01.05.2014, he has examined the victim girl and found no external injury on her person; but there was one laceration of size 2 cm at 6 O'clock position over the hymen. The said injury was within 24 hours and might be due to sexual intercourse. He stated that bleeding from vagina was due to menstruation. In cross-examination, he stated that injury of laceration is not possible even if the victim will run or ride bicycle during menstruation period. He has proved his report vide Ext.10. So, the doctor's evidence is clear that due to sexual intercourse, she has sustained injury on her hymen. Thus, the prosecution has proved one circumstantial evidence that on 01.05.2014, the victim had injury on her private part.

12. Similarly, P.W.4, who is another doctor, stated to have examined the accused on 01.05.2014. He simply opined that the accused was capable of undertaking sexual intercourse, but there was absence of smegma on glans penis. Absence of smegma on glans penis of the accused also gives an indication of sexual intercourse made within last 24 hours. Here, the prosecution has also brought circumstantial evidence against the accused as to the absence of smegma on his glans penis and there was injury on the hymen of the victim.

13. The statement of the Investigating Officer does not disclose that he has recovered the victim and the accused

together on 30.04.2014. When there is no evidence of the victim that she was sexually assaulted by the accused and the statement of the Investigating Officer does not disclose that they were living together while the victim was rescued, the statement of the doctor as to finding out signs of sexual intercourse with both the accused and the victim cannot be a link to the chain of circumstances against the accused.

14. P.W.5 stated to have seized the wearing apparels of the victim and the accused vide Exts.2 & 4 respectively. He also stated to have seized the pubic hair and sample semen of the accused collected by the doctor vide Ext.13. It was also stated by him that he seized the vaginal swab and pubic hair of the victim vide Ext.12. He stated to have sent all the properties to the S.F.S.L. for chemical examination. He has proved the report of Chemical Examiner vide Ext.14. The said report does not disclose about any opinion as the materials sent for examination were deteriorated while preserving the same. So, the report of the Chemical Examiner is also clueless to prove any circumstantial evidence against the accused. It is revealed from the evidence of P.W.5 that the School Leaving Certificate of the victim has been seized. It shows that she was below eighteen years at the time of commission of the offences. The minority of the victim girl will not develop the case of the

prosecution. Moreover, there is statement of the victim girl available on record recorded under section 164 of the Cr. P.C. by the learned Magistrate and the same has been exhibited. Before the learned Magistrate, she has elaborately disclosed about her kidnapping and rape committed by the accused. But, such statement cannot be utilised as substantive piece of evidence, since the same has not been corroborated by the victim girl while being examined in the Court. So, the statement of the victim girl made before the Magistrate pointing to the complicity of the accused in the commission of the alleged offences cannot be deemed to be substantive evidence showing any circumstance against the accused.

15. From the aforesaid marathon discussions, I find that the prosecution has not been successful to prove the occurrence, either by direct or circumstantial evidence, so as to hold the accused liable for the commission of the alleged offences. Hence, I hold the accused not guilty of the offences punishable under sections 366A/509/376(2)(i)/376(2)(n)/506 of the Indian Penal Code read with sections 6 & 12 of the Act and he is acquitted thereof under section 235(1), Cr. P.C. He be set at liberty forthwith.

16. 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.**

24.12.2014.

Dictated, corrected by me and pronounced this day the 24th December, 2014.

**Sessions Judge, Khurda
at Bhubaneswar.**

24.12.2014.

List of witnesses examined for prosecution.

P.W.1	--	Sita Dei,
P.W.2	--	Victim girl,
P.W.3	--	Benudhar Moharana,
P.W.4	--	Dr. Chinmaya Mishra,
P.W.5	--	Susil Kumar Mishra &
P.W.6	--	Dr. Sudhansu Sekhar Sarangi.

List of witnesses examined for defence.

Nil.

List of documents admitted in evidence for prosecution.

Ext.1	--	Signature of P.W.1 in F.I.R.,
Ext.2	--	Seizure list,
Ext.2/1	--	Signature of P.W.1 in Ext.2,
Ext.2/2	--	Signature of P.W.2 in Ext.2,
Ext.3	--	Signature of P.W.2 in her statement recorded under section 164, Cr. P.C.,
Ext.2/3	--	Signature of P.W.3 in Ext.2,
Ext.4	--	Signature of P.W.3 in seizure list,
Ext.5	--	Examination report,
Ext.5/1	--	Signature of P.W.4 in Ext.4,
Ext.1/1	--	Endorsement with signature of P.W.5

		in Ext.1,
Ext.6	--	Spot Map,
Ext.6/1	--	Signature of P.W.5 in Ext.6,
Ext.2/4	--	Signature of P.W.5 in Ext.2,
Ext.7	--	Seizure list,
Ext.7/1	--	Signature of P.W.5 in Ext.7,
Ext.8	--	Zimanama,
Ext.8/1	--	Signature of P.W.5 in Ext.8,
Ext.9	--	Requisition for medical examination of victim,
Ext.10	--	Medical report of victim,
Ext.4/1	--	Seizure list,
Ext.4/2	--	Signature of P.W.5 in Ext.4/1,
Ext.11	--	Seizure list,
Ext.11/1	--	Signature of P.W.5 in Ext.11,
Ext.12	--	Seizure list,
Ext.12/1	--	Signature of P.W.5 in Ext.12,
Ext.13	--	Seizure list,
Ext.13/1	--	Signature of P.W.5 in Ext.13,
Ext.3/1	--	Statement of victim under section 164, Cr. P.C.,
Ext.14	--	C.E. Report,
Ext.10/1	--	Signature of P.W.6 in Ext.10.

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.
24.12.2014.**

