Orissa High Court
Batakrushna Sethy vs State Of Orissa on 25 November, 2021

IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No. 4 Of 2010

From the judgment and order dated 20.10.2009 passed by the
Asst. Sessions Judge -cum- Chief Judicial Magistrate, Nayagarh
in S.T. Case No.5/199 of 2008/2007.

Batakrushna Sethy ..... Appellant

-Versus-

State of Orissa ..... Respondent

For Appellant: - Mr. Pratyush Ranj
(Amicus curiae)

For State: - Mr. Jyoti Prakash
Addl. Standing Co

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 25.11.2021

S.K. SAHOO, J.

"Sochanti Jamayo Yatra Vinasyatyasu Tat Kulam Na Sochanti Tu Yatraita Vardhate Tad Hi Sarvada"

-Manusmriti Verse 3.57 The meaning of this Sanskrit Shloka is that the family in which the women folks live in grief, that family perishes very // 2 // soon, but the family where they are not unhappy is always prosperous.

It is said that fathers are role models for the daughters and they lay a foundation of security, trust and love for the daughters. In early stages of life, a father helps the daughter in her emotional and mental development. A girl develops confidence and self-esteem, if she has a good bond with her father. The girls have a better career and become more successful in life because of the early influence of their fathers. Daughters tend to judge all the other men who come into their lives later based on the example their fathers set for them. In every stage of her life, a loving father makes his

daughter feel good about her as he helps her to grow into a good woman. The absence of a father creates a void in the daughter's life and sets her a feeling of anxiety and trouble in trusting men in general.

Hon'ble Mr. Justice H.K. Sema of Supreme Court of India speaking for the Bench in the case of State of Himachal Pradesh -Vrs.- Asha Ram reported in (2005) 13 Supreme Court Cases 766 observed as follows:

> "There can never be more graver and heinous crime than the father being charged of raping his own daughter. He not only delicts the law but it is a betrayal of trust. The father is the // 3 // fortress and refuge of his daughter in whom the daughter trusts. Charged of raping his own daughter under his refuge and fortress is worse than the gamekeeper becoming a poacher and treasury guard becoming a robber."

2. The appellant Batakrushna Sethi faced trial in the Court of the Assistant Sessions Judge -cum- Chief Judicial Magistrate, Nayagarh in S.T. Case No.5/199 of 2008/2007 for commission of offences punishable under sections 341, 376 and 506 of the Indian Penal Code and vide impugned judgment and order dated 20.10.2009, though the learned trial Court acquitted him of the charge under section 506 of the Indian Penal Code but found him guilty of the offences under sections 341 and 376 of the Indian Penal Code and sentenced to undergo R.I. for ten years and to pay a fine of Rs.20,000/- (rupees twenty thousand), in default, to undergo R.I. for a further period of two years under section 376(1) of the Indian Penal Code and to undergo S.I. for a period of one month under section 341 of the Indian Penal Code and the substantive sentences were directed to run concurrently.

3. The prosecution case, in short, is that the victim, who was aged about fourteen years at the time of occurrence, lodged a written report (Ext.1) before the A.S.I. of Police of // 4 // Chandapur Outpost under Ranpur police station in the district of Nayagarh on 27.08.2007 stating therein that on 24.08.20007 at about 11 p.m., when she was sleeping with her paternal grandmother, the appellant who is her father insisted his mother to leave her with him so that she would rise early and prosecute her studies at dawn. When the victim's grandmother expressed her reluctance, the appellant kicked the door of the room as the same was closed from inside and as per the insistence of the appellant, his mother had to leave the victim to go with him to another room where the mother and younger sister of the victim were sleeping. When the victim slept beside her mother, the appellant forcibly slept in between her and her mother. Thereafter, the appellant started squeezing the breasts of the victim and inserted his hands inside her Punjabi. When the mother of the victim objected to such indecent act of the appellant, he kicked her threatening to kill her if she would ever protest. The appellant then made the victim naked by unfastening her 'Churidar'. When the victim protested, the appellant intimidated her to assault her if she would cry. After taking off the 'Churidar' and the panty of the victim and rolling up her 'Semiz' upto her neck, the appellant started squeezing her breast and inserted his penis inside her vagina lifting her thighs up. The appellant committed rape on the victim for four to // 5 // five times at half an hour intervals in that night. It is further stated by the victim in her written report that the appellant also committed rape on her on 25.08.2007 and 26.08.2007 night by intimidating her and also threatened her not to disclose about

it to anyone.

4. On receipt of the written report, the A.S.I. of Chandapur Outpost made S.D. entry, sent the written report to the officer in charge, Ranpur police station for registration of the case and accordingly, Ranpur P.S. Case No.183 dated 27.08.2007 was registered under sections 376 and 506 of the Indian Penal Code against the appellant.

The officer in charge of Ranpur police station then handed over the charge of investigation to A.S.I. of Police, Chandapur Outpost namely Sangram Keshari Paikarai (P.W.8) who during course of investigation, examined the victim and other witnesses, arrested the appellant on 27.08.2007, sent requisition for medical examination of the appellant as well as the victim (P.W.3), seized the seminal fluid of the appellant and the vaginal swab of the victim along with pubic hair of the appellant collected by the Medical Officer, seized the wearing apparels of the appellant as well as the victim under seizure list (Exts. 4 & 5) and sent all the exhibits to S.F.S.L., Rasulgarh for // 6 // chemical examination and forwarded the appellant to Court. He also visited the spot and prepared the spot map marked as Ext.6 and on completion of investigation, charge sheet was submitted on 17.10.2007 against the appellant under sections 376, 341 and 506 of the Indian Penal Code.

5. During course of trial, in order to prove its case, the prosecution examined eight witnesses.

P.W.1 Ahalya Sethi is the mother of the victim, P.W.2 Radhamani Sethi is the mother of the appellant, P.W.3 is the victim, who is also the informant in the case, P.W.4 Nrusingha Sethi is the father of the appellant, P.W.5 Dr. Sadananda Mishra medically examined the appellant on police requisition and submitted the report vide Ext.2, P.W.6 Dr. Govinda Chandra Panigrahi medially examined the victim on police requisition and submitted his report vide Ext.3, P.W.7 Bapi Sethi is the younger brother of the appellant and P.W.8 Sangram Keshari Panigrahi was the then A.S.I. of Chandapur Outpost who is the Investigating Officer of the case. Out of the eight witnesses, P.W.1, P.W.2, P.W.4 and P.W.7 did not support the prosecution case for which they were declared hostile.

The prosecution exhibited ten documents. Ext.1 is the written F.I.R. lodged by P.W.3, Ext.2 is the medical report of // 7 // the doctor (P.W.5) in respect of the appellant, Ext.3 is the medial report of the doctor (P.W.6) in respect of the victim, Exts.4, 5, 7 and 8 are the seizure lists, Ext.6 is the spot map, Ext.9 is the forwarding report of the material objects and Ext.10 is the chemical examination report.

6. The defence plea of the appellant is one of denial and it is stated, inter alia, that being persuaded by his co-villager Nakula Pradhan, he has been falsely implicated in this case.

7. The learned trial Court assessing the oral as well as documentary evidence on record, has been pleased to hold that there was no reason to disbelieve the sole testimony of the prosecutrix as no daughter would ever lie on a vital issue of this nature against her own father. It was further held that in the night of 25.08.2007 and 26.07.2007, the appellant wrongfully restrained the victim, committed incestual acts i.e rape on her in presence of her mother. It was further held that P.W.1 had resorted to fake and concocted story to get her husband (appellant) escape from criminal

liability and thereby sacrificing the cause of her own daughter (victim). However, the learned trial Court did not find any material relating to criminal intimidation and acquitted the appellant of the charge under section 506 of the Indian Penal Code. The learned trial Court did // 8 // not give any importance to the defence contention regarding delay in lodging of the first information report and held the appellant guilty under sections 341 and 376 of the Indian Penal Code.

8. Mr. Pratyush Ranjan, learned Amicus Curiae appearing for the appellant contended that the victim herself is the informant in this case and she wrote the first information report in her own hand where she stated that rape was committed on her by the appellant in the night on three days i.e. on 24.08.2007, 25.08.2007 and 26.08.2007, but strangely in her evidence, she has stated that the occurrence took place only on two days. It is further argued that the surrounding circumstances under which the appellant stated to have committed rape on the victim appears to be an improbable feature inasmuch as the mother of the victim and other children of the appellant were very much present in the room where rape was allegedly committed and even the mother of the victim was awake and she stated to have protested against the incestuous activity of the appellant. It is argued that three of the family members of the victim being examined as P.W.1, P.W.2 and P.W.4, who are the mother, grandmother and grandfather of the victim respectively, have not supported the prosecution case for which // 9 // they were declared hostile. Even the doctor (P.W.6), who examined the victim on 27.08.2007 found no external injury on her person and stated that the victim was not capable of being subjected to intercourse as even the tip of the index finger was found not admissible into her vaginal opening without causing pain and there was no injury on her private part. The appellant was also examined on the very day by the doctor (P.W.5), who noticed no injury on the private part or any portion of the body and therefore, the rape on the victim is not acceptable. There is also delay in lodging F.I.R. and as such the impugned judgment and order of conviction is not sustainable in the eye of law and benefit of doubt should be extended in favour of the appellant.

Mr. Jyoti Prakash Patra, learned Addl. Standing Counsel appearing for the State, on the other hand, supported the impugned judgment and submitted that there was no earthly reason on the part of a daughter to implicate her father in a case of rape. The evidence of the victim is very clear, cogent, clinching and trustworthy and even though other family members have not supported the prosecution case for obvious reasons to save the appellant, but that cannot be a ground to discard the evidence of the victim. It is argued that the medical evidence in a case of rape is not always a decisive factor to believe or disbelieve the victim of rape particularly where the // 10 // victim's evidence has remained unshaken. He further argued that the defence has put forth different pleas for false implication of the appellant in the case, which is inconsistent. It is argued that the victim was constantly pressurised by her family members not to lodge F.I.R. against the appellant and therefore, delay in lodging F.I.R. is inconsequential and as such, no weight has to be attached to such plea and the impugned judgment and order of conviction should not be interfered with.

9. Adverting to the contentions raised by the learned counsel for the respective parties, it is not disputed that the appellant is the father of the victim and they were residing together under one roof and other family members who are the witnesses in the case like P.W.1, P.W.2 and P.W.4 were also residing with them. The occurrence stated to have taken place in the night inside the bed room and therefore, there is no chance of any other outsider deposing about the same.

Now, it is to be seen how far the prosecution has succeeded in establishing its case.

Law is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the Courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the // 11 // accused. No doubt, her testimony has to inspire confidence. The deposition of the victim has to be taken as a whole and since she is not an accomplice and her evidence stands at a higher pedestal than an injured witness, seeking corroboration to her statement is not always necessary. Wherever the Court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. The evidence of the victim of rape should not be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion. (Ref: (2003) 8 Supreme Court Cases 551, Bhupinder Sharma -Vrs.- State of Himachal Pradesh).

The victim (P.W.3) was a minor girl at the time of occurrence. When she deposed in Court on 05.01.2009, she stated her age to be fifteen years. P.W.1, P.W.2 and P.W.4 have also stated that the victim was minor at the time of occurrence. There is no challenge to the age of the victim by the defence. Even the doctor (P.W.6), who examined her, has stated that he calculated the age of the victim to be sixteen years on the basis of her dental examination and he referred the victim to D.H.H., Nayagarh for ossification test, but no ossification test report has been proved in the case.

The victim (P.W.3) stated in her evidence that in the night when the first occurrence took place, she was asleep with // 12 // her paternal grandmother (P.W.2) in one of the rooms of her house and at that time, the appellant knocked at the door of the room and insisted that she should sleep with her mother so that she could easily continue her study early in the morning at the dawn. The appellant took her from that room and left her in the room where the victim's mother was asleep. When the victim slept beside her mother in that room, the appellant forcibly slept in between the victim and her mother (P.W.1). The appellant started misbehaving with the victim to which P.W.1 objected but the appellant told to P.W.1 that the victim would be his daughter during the day time and wife during the night and then the appellant forcibly committed rape on her in spite of objection of P.W.1. The victim further stated that at the time of committing rape, the appellant gagged her mouth with his hands. On the next morning, the mother (P.W.1) and grandmother (P.W.2) of the victim advised her not to disclose about the incestuous act of the appellant before anybody, otherwise it would be a shame for the family. The victim further stated that in the next night, again the appellant insisted her to sleep in one room where P.W.1 was sleeping, to which she protested but the appellant prevailed over such objection, for which she had to sleep with her mother and again the appellant committed rape on her in that night for which she came back to the room of her grandmother and slept till the // 13 // morning and she also narrated everything before her grandmother. The victim further stated that in the next morning, her paternal grandfather took her to the house of one Nakula Pradhan of her village and there she narrated the entire incident before Nakula Pradhan who came to their house in the evening and confronted to the appellant about the incident and when the appellant denied the allegation, Nakula Pradhan slapped him and left the house and then on the next day, the victim being accompanied with her mother lodged the first information report. The victim proved her written report, which has been marked as Ext.1. In the cross-examination, the victim has stated that inside the room in which she was raped by the appellant, her sister and two

brothers, who were aged about nine, seven and four years were sleeping on the floor. It has been confronted to the victim and proved through the Investigating Officer (P.W.8) that she had not stated in the first information report that in the first night, the appellant expressed that she would be his daughter in the day time and wife in the night. In my humble view, such minor contradiction no way shatters the evidence of the victim, which appears to be clear, clinching and trustworthy and nothing has been brought out in the cross-examination as to why the victim would tell falsehood against the appellant, who is none else than her father. Undue importance cannot be attached to // 14 // minor discrepancies which are immaterial and of no consequence. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.

P.W.2 stated that in the night of the incident, the victim was sleeping with her and on the next morning, she informed her that the appellant had kept lustful eyes on her. She stated that she herself, P.W.1 and P.W.4 persuaded the victim not to utter allegations against the appellant but the victim defied their suggestions. Thus, it seems right from the beginning, the victim was pressurised not to report the matter in the police station by none else than her own family members.

Even though the evidence of the doctor (P.W.6), who examined the victim is that there was no external injury on the person of the victim and she was found not capable of being subjected to intercourse as even the tip of the index finger was found not admissible into her vaginal opening without causing pain and that no injury was found in her private part, but in my humble view, in the facts and circumstances of the case when the solitary evidence of the victim appears to be trustworthy, unblemished and is of sterling quality and there was no earthly reason on the part of the victim to implicate her own father falsely in a case of rape, merely on the evidence of the doctor, the entire prosecution case cannot be disbelieved.

// 15 // Even though in the very room where the rape was committed, apart from P.W.1, three other children i.e. the sister and two brothers of the victim were sleeping on the floor but in view of the age of those three children, who were just nine years, seven years and four years, it cannot be a ground to disbelieve the prosecution case. P.W.1 being the mother of the victim has also not supported the prosecution case and she was declared hostile and cross-examined by the prosecution. Though P.W.1 has stated that she accompanied the victim to lodge the first information report, but she stated that she requested the victim not to lodge the F.I.R. against the appellant. Even the grandfather and grandmother of the victim have also not supported the prosecution case and they were also declared hostile. Therefore, there was tremendous pressure on the victim not to lodge the F.I.R.

The reasons given by the defence either by way of suggestions to the victim or by way of bringing about the same through the evidence of P.W.1 or taking the plea in the accused statement, it appears to be inconsistent. The victim has been suggested by the defence that she used to go regularly to the house of Nakula Pradhan to see T.V. programme prior to the occurrence and the appellant was opposing her frequent visit to the house of Nakula Pradhan and since the appellant had // 16 // stopped her visiting the house of Nakula Pradhan, there was hot exchange of words between the appellant and Nakula Pradhan for which being persuaded by Nakula Pradhan, a false case has been foisted. The victim has denied such suggestion. P.W.1 has stated that the victim was playing truant

while going to school from the house every day and mixing with boys and when the appellant had chastised her for the same and even did not allow her to go to her school, the case has been instituted. In the 313 Cr.P.C. statement, the appellant however stated that once the victim was talking with a boy in Ramachandi temple secretly and after she returned home, he slapped her for which she has foisted the case. Therefore, the defence plea is inconsistent.

So far as the delay in lodging the first information report (Ext.1) is concerned, I find that the evidence of the victim in Court is that the occurrence took place in the night on two consecutive dates i.e. on 24.08.2007 and 25.08.2007 and on 26.08.2007 after the matter was reported to Nakula Pradhan, he came to the house of the appellant in the evening hours, confronted him about the occurrence and slapped him and on the next day i.e. on 27.08.2007, the first information report was lodged. Of course, Nakula Pradhan has not been examined to substantiate the same. In the first information report, the victim has stated that on 26.08.2007 night also she was raped by the // 17 // appellant, which of course she has not stated in her evidence but in my humble view, this discrepancy cannot be a ground to disbelieve her evidence. In a case of this nature, the family members used to take time to decide as to whether to lodge the first information report or not for the sake of prestige of family. In the case in hand, when the appellant is none else than the father of the victim and there was continuous pressure on the victim by her own family members not to lodge the F.I.R., in my humble view, delay in lodging the first information report can be said to have been satisfactorily explained by the prosecution.

The crime committed by the appellant has a deleterious effect on the civilized society. The perpetrator of the crime being the father against his own daughter, it warrants a strong deterrent judicial hand. Rape is a crime which is more heinous than murder as it destroys the very soul of hapless woman. The victim carries an indelible social stigma on her head and deathless shame as long as she lives.

In view of the foregoing discussions, I find no infirmity or illegality in the impugned judgment and order of conviction passed by the learned trial Court and I am of the humble view that the appellant has been rightly convicted under sections 341 and 376 of the Indian Penal Code. In the factual // 18 // scenario, the sentence awarded by the learned trial Court cannot be said to be excessive under any circumstances.

The appellant was taken into judicial custody in connection with this case on 27.08.2007. Neither was he released on bail during trial nor during pendency of the appeal. Therefore, the appellant has already undergone the substantive sentence as well as the default sentence that has been imposed on him for non-payment of fine. Thus, the appellant shall be released from custody forthwith, if his detention is not required in any other case.

In view of the enactment of the Odisha Victim Compensation Scheme, 2017 and the nature and gravity of the offence committed and the family background of the victim, I feel it necessary to recommend the case of the victim to District Legal Services Authority, Nayagarh to examine the case of the victim after conducting the necessary enquiry in accordance with law for grant of compensation. Let a copy of the judgment be sent to the District Legal Services Authority, Nayagarh

for compliance.

Trial Court record with a copy of this judgment be communicated to the concerned Court forthwith for information and necessary action.

// 19 // Accordingly, the Jail Criminal Appeal stands dismissed.

Before parting with the case, I would like to put on record my appreciation to Mr. Pratyush Ranjan, the learned Amicus Curiae for rendering his valuable help and assistance towards arriving at the decision above mentioned. The learned Amicus Curiae shall be entitled to his professional fees which is fixed at Rs.7,500/- (rupees seven thousand five hundred only).

.....

S.K. Sahoo, J.

Orissa High Court, Cuttack The 25th November 2021/PKSahoo/RKM