

State of Orissa

Vs

Damburu Naiko and another

Criminal Appeal No. 567 of 1983

(Kuldip Singh, K. Ramaswamy JJ)

31.03.1992

JUDGEMENT

K. RAMASWAMY, J.:-

1. The two respondents Dambaru Naiko (A1) and B.Sankara Rao (A2) and two others were charged -in Sessions Case No. 6/ 78 of Asst. Sessions Judge, Jeypore for offences under Ss. 366/ 34 and 376 read with S. 34, I.P.C. kidnapping and committing rape of Manguri Bhotruni, P.W. 1 on October 21, 1978 at about 4.00 p.m. By Judgment dated November 26, 1978 the trial Court convicted the respondents and sentenced them to undergo rigorous imprisonment for a period of three years on each count and the sentences were directed to run concurrently. He acquitted the other two which became final. On appeal it was confirmed by the Sessions Court. In CrI. Revision No. 152 of 1981 by judgment dated April 19,1982, the High Court acquitted them of the charges. Thus this appeal by special leave.

2. The case of the prosecution is that on the fateful day the victim Bhotruni along with other girls, P.Ws. 2 to 4 went to Papadahandi to witness Dasahara festival. At about 4.00 p.m. while they were returning home, P.W.1, the victim was ahead of them and when they reached inside the forest, the appellants (respondents ?) and two others gagged the mouth of P.W.1 and kidnapped into the forest; covered her eyes with a piece of cloth and threatened to kill her if she would raise cries. They made her to lie down on the ground and raped her one after another. P.Ws. 2 to 4 ran back to Papadahandi and reported, to the police on duty in the festival, of the incidence and P.W. 5, the constable came along with them. They found the victim's eyes covered with a piece of cloth and that she was crying. She was taken to Papadahandi. She laid the complaint (Ext. P. 1). The accused were arrested on October 31, 1977 and in the identification parade conducted by the Executive Magistrate, P. W. 13, P.Ws. 1 to 4 identified the accused, P.W. 1 identified the respondents and one another, P. Ws. 2 to 4 identified some as per Ex. P. 10 report the details of which are not necessary as it is admitted by them that before the identification parade was conducted P.Ws. 2 4 had opportunity to see the accused. So to the trial Court did not rely upon the evidence of P. Ws. 2 to 4. But it accepted the evidence of P.W. 1, the victim and convicted the respondents. The High Court acquitted the respondents on the grounds, namely, that P.W. 1 identifying these respondents would not be relied on and that there is no corroboration to her evidence. When there is a gang rape there could be several injuries on the person of the victim which are absent. Therefore she was a consenting party. We are at a loss to understand the reasoning of the High Court. The vehement contention of the learned counsel for the respondents that the reasoning given by the High Court is cogent and needs no interference absolutely lacks substance. Though P.W. 1 was a stranger to the accused is the victim of dastardly offences of kidnapping and gang rape and it was done in broad day time. Therefore, when she was kidnapped into forest by the accused she had opportunity to see them,

though later her eyes were closed with a piece of cloth. When she was made to lie down on the ground at the threat of her life and gang rape was committed, she was absolutely helpless. The medical evidence amply corroborates that she had injuries on her private parts and so there is yet enough resistance put up by her to the gang rape committed one after the another. When it was done at the threat of her life, she cannot be expected to go on resisting except to resign to her fate and succumb to their assault. P.W. 1 also identified the respondents in the identification parade. Since there is no appeal against the others, we need not go into their acquittal. But suffice to state that she had enough opportunity to identify the persons who committed rape on her. It is not necessary that there would be corroboration to the evidence of the victim of rape. If her evidence inspires confidence to be truthful that itself would be sufficient to convict the accused. We need not see corroboration to the evidence of P.W. 1. She was a simple village girl and she will not leave out her own assailants and implicate falsely other innocent persons with the allegation that she was raped by them. Even if we seek for corroboration the injuries on her private parts; medical evidence of the doctor and her first information report provide such corroboration. We have carefully scanned her evidence. We wholly accept her evidence as truthful. The High Court also did not make any attempt to disbelieve her evidence on its own merits. In these circumstances the casual and mechanical approach, without regard to human probabilities, and the consequent acquittal by the High Court resulted in grave miscarriage of justice. The approach adopted by the High Court shall not be allowed to stand for a moment. The appeal is accordingly allowed. The judgment of the High Court and the order of acquittal of the respondents is set aside. The judgments and convictions and sentences recorded by the trial Court and affirmed by the Sessions Court are restored and the respondents should surrender and serve out the sentences. Appeal allowed.

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