

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.187 of 2024

(An application U/S. 374(2) of the Code of Criminal Procedure, 1973 against the order dated 18.01.2024 passed by Sri S.K. Nayak, Ad-hoc Addl. District & Sessions Judge, Fast Track Special Court under POCSO Act, Mayurbhanj, Baripada in C.T. Case No.106 of 2018 arising out of Jashipur P.S. Case No.89 of 2018).

Biswanath Chhattar ***Appellant***

-versus-

State of Orissa ***Respondent***

For Appellant : ***Mr. D.R. Mishra, Advocate***

For Respondent : ***Mr. R.B. Mishra, Addl.PP***

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING : 05.03.2025

DATE OF JUDGMENT: 10.03.2025

G. Satapathy, J.

1. The convict, having faced the trial being charged for commission of offences punishable U/Ss. 376(3)(2)(n)/506 of IPC r/w. Section 6 of the POCSO Act by way of this appeal seeks to challenge the impugned judgment dated 18.01.2024 passed by the learned Ad-hoc Addl. Sessions Judge, Fast Track Special Court under POCSO Act, Mayurbhanj at



Baripada in C.T. Case No. 106 of 2018 convicting him for offence U/S. 376 of IPC and sentencing him to undergo Rigorous Imprisonment (RI) for 10 years with a fine of Rs.10,000/-(Rupees Ten Thousand) only, in default whereof, to undergo RI for a further period of three months with benefit of set off of the pre-trial detention against the substantive sentence.

2. The prosecution case as recapitulated from the record in precise is that on 27.08.2018 at about 4.00 P.M., the victim, who was residing in her uncle's house for last 5 to 6 months thence had been to the village, but she did not return till evening. On the next day on 28.08.2018 at about 7.00 to 8.00 A.M., the victim returned to home, but did not inform anything. However, when blood stains were noticed on her scarf and was repeatedly asked about her absence during the night, she informed that the convict on the assurance to leave her in the house took her to a jungle and committed rape on her there and also, subsequently committed rape on her in the house of one person by confining in such house.



2.1. On this incident on the same day 28.08.2018, PW.3 lodged an FIR before the IIC, Jashipur P.S.-cum-PW.13, who registered P.S. Case No. 89 of 2018 and took up the investigation of the case by examining the victim and other witnesses making seizure of wearing apparels of the victim and the accused and sending them for medical examination. The accused was in fact detained by the local public and he was brought by SI- Satish Kumar. Further, the accused was forwarded to the Court. On completion of investigation, PW.13 submitted charge sheet against the convict.

2.2. On finding prima facie case, cognizance was taken. Accordingly, the convict faced the trial being charged with offences punishable U/Ss. 376(3)(2)(n)/506 of IPC and Section 6 of the POCSO Act, when he pleads not guilty to the charge. In support of its case, the prosecution examined altogether 18 witnesses and relied upon documents under Exts.1 to 11 as against no evidence whatsoever by the defence. The plea of the convict in



the course of trial was denial simplicitor and false implication.

3. After analyzing the evidence on record upon hearing the learned counsel for the parties, the learned trial Court passed the impugned judgment convicting the appellant for commission of offence punishable U/S. 376 of the IPC and sentencing him to the punishment indicated in the first paragraph while acquitting him of the charges for offences U/Ss. 376(3)(2)(n)/506 and Section 6 of the POCSO Act.

4. In assailing the impugned judgment of conviction and order of sentence, Mr. Dipak Ranjan Mishra, learned counsel for the appellant has submitted that unless the evidence of the victim inspires confidence of the Court, it should not be relied upon, but ignoring such principle, the learned trial Court in this case has relied upon the evidence of the victim to convict the appellant. It is further submitted by Mr. Mishra that it is alleged against the convict for committing rape upon the victim, but no injury was found on the private part of the victim and



thereby, such theory of rape being remotely possible against the victim, the appellant should not have been convicted. It is alternatively submitted by Mr. Mishra that the convict has already undergone incarceration for a period of six and half years out of the awarded sentence of 10 years and he having a dependent family in village, some leniency may kindly be extended to the appellant in case the conviction of the appellant is confirmed and, thereby, the sentence of the appellant be modified to the period already undergone. Accordingly, Mr.Mishra has prayed to allow the appeal.

4.1. On the other hand, Mr. R.B. Mishra, learned Addl. Public Prosecutor, however, has vehemently argued to contend that not only the evidence of the victim is consistent, but also it inspires confidence of the Court and therefore, the learned trial Court has not committed any illegality in appreciating the evidence of the victim and since the convict having been rightly sentenced to undergo minimum punishment, there is no scope for any



interference in the sentence of the appellant. Mr. Mishra has accordingly prayed to dismiss the appeal.

5. After having considered the rival submissions upon perusal of record, since the appellant has been convicted for offences U/S. 376 of the IPC, the evidence of the victim is not only important, but also requires predominant consideration because the victim is the only witness to the occurrence and the sexual offence being ordinarily committed in seclusion, it is the victim who can narrate about the incident, but at the same time it should be remembered that the evidence of victim deserves acceptance like a injured witness, unless her evidence is tainted or unworthy of credence and not free from infirmities. This Court is equally in agreement that the degree of proof in a criminal case of this nature must be of a high standard and the prosecution has to adduce cogent and convincing evidence to prove the offence and a person cannot be convicted on mere surmises or conjectures. Judging the conviction of the appellant on the face of the



evidence of the victim, it transpires that the victim has reiterated as to how she was suddenly taken away towards the jungle by the convict and forcibly committed rape upon her despite her protest. When the testimony of the victim was put to scrutiny in cross-examination, it was further found by way of an explanation that the convict committed rape on her four times in the jungle and three times at his relative's house and she had sustained injury above the knee of right leg of thigh as the convict forcibly pressed her on the ground while committing the offence.

6. On considering the evidence of the victim together with that of the doctor, who had examined her, it transpires that the doctor had found sign and symptom of recent sexual intercourse on the victim as tears were present on the posterior commisure, which were red in colour with inflamed margin and such age of the tears was within 72 hours from the time of her(Doctor) examination. The Doctor in her cross-examination has also admitted that in forcible



rape, the victim might have sustained bodily injury. One of the important aspects in this case is that the evidence of the victim with regard to commission of rape upon her by the convict has not at all being demolished in any manner, rather the evidence of the victim with regard to commission of rape is corroborated by the medical evidence as discussed. From a cumulative discussion made hereinabove and carefully examining the evidence on record, more particularly the evidence of the victim and medical evidence, this Court does not find anything or material evidence to differ with the findings of the learned trial Court and, therefore, the conviction of the appellant for offence U/S.376 of IPC does not call for any interference. However, the learned counsel for the appellant has alternatively prayed for reduction of the sentence, but since the appellant has been sentenced to minimum punishment prescribed for the offence, there is hardly any scope to interfere in the sentence of the appellant.



7. In the result, the criminal appeal being devoid of any merit, stands dismissed on contest, but there is no order as to costs. Consequently, the impugned judgment of conviction and sentence passed by the Ad-hoc Addl. Sessions Judge, Fast Track Special Court under POCSO Act, Mayurbhanj at Baripada in C.T. Case No. 106 of 2018 are hereby confirmed.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 10th day of March, 2025/S.Sasmal*