



IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No.81 of 2018

An appeal from judgment and order dated 26.10.2017 passed by the Sessions Judge, Jharsuguda in S.T. Case No.93 of 2016.

Muna @ Jagabandhu Bhoi Appellant

-Versus-

State of Odisha Respondent

For Appellant: - Mr. S.K. Baral
Amicus Curiae
For Respondent: - Mr. Rajesh Tripathy
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 10.04.2024

S.K. SAHOO, J. The appellant Muna @ Jagabandhu Bhoi faced trial in the Court of learned Sessions Judge, Jharsuguda in S.T. Case No.93 of 2016 for commission of offences punishable under sections 454/376(2)(j)(l)/323 of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation that on 29.07.2016 at about 11.00 a.m., at village Kisanpada, Kurebaga, he committed



lurking house trespass by entering into the house of Surendra Kisan (P.W.4) in order to commit rape on the victim, the sister of P.W.4, who was incapable of giving consent and suffering from mental and physical disability and he voluntarily caused hurt to the victim by giving her push.

The learned trial Court vide impugned judgment and order dated 26.10.2017 found the appellant guilty of the offences charged and sentenced him to undergo R.I. for a period of two years and to pay a fine of Rs.1,000/- (rupees one thousand), in default, to undergo R.I. for a further period of one month for the offence under section 454 of I.P.C., to undergo R.I. for a period of fourteen years and to pay a fine of Rs.30,000/- (rupees thirty thousand), in default, to undergo R.I. for a period of six months for the offence under section 376(2)(j)(l) of the I.P.C. and sentenced to undergo S.I. for three months for the offence under section 323 of the I.P.C. and all the substantive sentences were directed to run concurrently.

Prosecution Case:

2. The prosecution case, as per the first information report (hereinafter 'F.I.R.') (Ext.3) lodged by P.W.4 Surendra Kisan before P.W.26 Bijaya Kumar Back, S.I. of police attached to Badmal police station on 29.07.2016, in short, is that on that



day, the mother of the victim had been to her field to work at about 8.00 a.m. and at about 9.00 a.m., the wife of P.W.4, namely, Sanjkuta Kisan (P.W.12) fed rice to the victim, who was present in the house and was unable to talk and even walk. After feeding her, P.W.4 and his wife came to their land to work there. The victim went to sleep and P.W.12 locked the door of the house from outside while going to work in the land. After finishing her work, P.W.12 returned from the land to her house at about 1.30 p.m. The uncle of P.W.4, namely, Sankar Kisan came to P.W.4 where he was working and intimated him that the appellant had committed rape on the victim and while he was trying to run away, he had been detained by the co-villagers. On receiving such intimation from Sankar Kisan, P.W.4 rushed to his house and came to know that on that day at about 11.00 a.m., while the victim was alone in the house, the appellant scaled over the boundary wall of the house and committed rape on the victim and while he was trying to flee away, he was caught hold of by the co-villagers. When P.W.4 made an enquiry from the victim, she stated by giving signs that the appellant committed rape on her and also pointed towards the appellant. It is further stated in the F.I.R. that while the appellant was trying to enter into the house of P.W.4 by scaling over the boundary wall, he



was seen by Bhabagrahi Kisan (P.W.10) and one Bhagirathi Kisan and they prevented him not to enter into the house. On receipt of such report from the informant (P.W.4), in the absence of I.I.C., P.W.26 registered Badmal P.S. Case No.104 dated 29.07.2016 under sections 454/376(2)(j)(l) of the I.P.C. against the appellant and he himself took up the investigation of the case.

During the course of investigation, P.W.26 visited the spot, examined the informant and other witnesses including the victim and sent the victim for medical examination. The appellant was arrested on 29.07.2016 and his wearing apparels were seized as per seizure list Ext.7/1. The wearing apparels of the appellant were seized after conducting the medical examination as per seizure list Ext.6. The biological samples of the appellant and command certificate, on being produced by the constable, were seized as per seizure list Ext.2. Similarly, the biological samples of the victim and command certificate were seized as per seizure list Ext.1. The disability certificate of the victim was seized on being produced by the Block Social Security Officer, Jharsuguda as per seizure list Ext.8. The spot map was prepared and the I.O. made a prayer to the Court to send the exhibits to R.F.S.L., Sambalpur and even though no chemical



examination report was received, but on completion of investigation, he submitted charge sheet against the appellant under sections 454/376(2)(j)(l)/323 of I.P.C.

Framing of Charges:

3. After submission of charge sheet, the case was committed to the Court of Session where the learned trial Court framed charges against the appellant on 15.12.2016 as aforesaid and since the appellant refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute him and establish his guilt.

Prosecution Witnesses, Exhibits & Material Objects:

4. In order to prove its case, the prosecution has examined as many as twenty six witnesses.

P.W.1 Binoy Patel and P.W.3 Sanyasi Sahu, who were the constables attached to Badmal police station, are the witnesses to the seizure of biological materials of the victim collected from the Medical Officer and the command certificate as per seizure list marked as Ext.1.

P.W.2 Ujjal Kumar Dey, who was the constable attached to Badmal police station, is a witness to the seizure of biological materials of the appellant collected from the Medical



officer and the command certificate as per seizure list marked as Ext.2.

P.W.4 Surendra Kisan is the informant and brother of the victim. He supported the prosecution case. He also stated that his uncle Sankar Kisan caught hold of the appellant, who was running away and tied him in a tree.

P.W.5 Smt. Ratani Kisan is the mother of the informant and the victim and she supported the prosecution case. She also stated that on her production, police seized the wearing apparels of the victim as per seizure list marked as Ext.6.

P.W.6 Benudhar Bagh is the nephew of the informant and the victim. He stated that he accompanied the informant to Badmal police station as the appellant committed rape on the victim and he also found bleeding injury on the head of the victim, which was wrapped with a cloth.

P.W.7 is the victim. She is an abnormal girl and her evidence was recorded with the help of her mother (P.W.5) and her brother (P.W.4). She stated that the appellant made sexual abuse against her when she was in the house.



P.W.8 Bikram Kisan and P.W.9 Misra Bag are the co-villagers of the informant and also the witnesses to the seizure of rope as per seizure list marked as Ext.7/1.

P.W.10 Bhabagrahi Kisan is a co-villager of the informant. He stated that on the date of occurrence, he along with his brother Bhagirathi caught hold of the appellant and tied him. He further stated that the victim was fully naked and received bleeding injuries on her head and the victim is a handicapped girl unable to talk since her childhood.

P.W.11 Mahadev Kisan is the brother-in-law of the informant. He stated that P.W.4 informed him over phone about the commission of rape on the victim by the appellant and he went to the house of P.W.4. He is also a witness to the seizure of wearing apparels of the victim as per seizure list marked as Ext.6.

P.W.12 Sanjukta Kisan is the wife of the informant. She supported the prosecution case.

P.W.13 Prasanta Naik, who was the Home Guard attached to Badmal police station, is a witness to the seizure of vials and command certificate as per seizure list marked as Ext.2.



P.W.14 Sudesh Kumar Patel, who was the Home Guard attached to Badmal police station, is a witness to the seizure of disability certificate of the victim as per seizure list marked as Ext.8.

P.W.15 Parakhita Naik and P.W.22 Jogindra Bag are the co-villagers of the informant and also the witnesses to the seizure of I.D. card of the victim as per seizure list marked as Ext.9.

P.W.16 Nakula Oram is a co-villager of the informant and also a witness to the seizure of clothes as per seizure list marked as Ext.10. He stated that he heard about the commission of rape on the victim by the appellant.

P.W.17 Sankar Bag is a co-villager of the informant. He stated that he heard that the appellant committed rape on the victim and he went to the house of the informant and found clothes were lying on the floor of the house and floor was stained with blood.

P.W.18 Sundar Oram and P.W.19 Gobinda Bag are the co-villagers of the informant and also the witnesses to the seizure of cot as per seizure list marked as Ext.11.

P.W.20 Mitali Rana and P.W.21 Rabindra Badi, who were the Block Social Security Officer and Data Entry Operator,



Panchayat Samiti Office, Jharsuguda respectively, are the witnesses to the seizure of disability person sanction order of the victim as per seizure list marked as Ext.8.

P.W.23 Kudanda Naik is a co-villager of the informant and also a witness to the seizure of wearing apparels of the appellant as per seizure list marked as Ext.10.

P.W.24 Dr. Silwanti Jojo was working as Pathology Specialist at D.H.H., Jharsuguda, who examined the victim on police requisition on 29.07.2016 and proved her report vide Ext.12.

P.W.25 Sankar Prasad Panda was working as ENT Specialist at D.H.H., Jharsuguda, who examined the appellant on police requisition on 29.07.2016 and proved his report vide Ext.13.

P.W.26 Bijaya Kumar Back was working as S.I. of Police attached to Badmal police station and he is the Investigating Officer of the case.

The prosecution exhibited fifteen documents. Ext.1 is the seizure list in respect of biological sample of the victim and command certificate of P.W.1, Ext.2 is the biological samples of the appellant and command certificate of P.W.2, Ext.3 is the F.I.R., Exts.4 &5 are zimanamas, Ext.6 is the seizure list in



respect of wearing apparels of the victim, Ext.7 is the seizure list in respect of one rope, Ext.8 is the seizure list in respect of disability person sanction order of the victim, Ext.9 is the seizure list in respect of I.D. card of the victim, Ext.10 is the seizure list in respect of wearing apparels, Ext.11 is the seizure list in respect of one cot, Ext.12 is the medical examination report of P.W.24, Ext.13 is the medical examination report of P.W.25, Ext.14 is the zimanama and Ext.15 is the spot map.

The prosecution marked one material object. M.O.I is the pension sanction order.

Defence Plea:

5. The defence plea of the appellant is one of complete denial. The appellant neither examined any witness nor proved any document.

Finding of the learned Trial Court:

6. The learned trial Court after assessing the oral as well as documentary evidence on record, came to hold that on the date of occurrence, the appellant entered into the house of the informant and taking into account the evidence of P.W.4, P.W.5, P.W.10 and P.W.12, it was held that the prosecution established the offence under section 454 of the I.P.C. The



learned trial Court also relied upon the evidence of the victim, the doctors and other witnesses to hold that there is total corroboration of the evidence of P.W.7 with that of the medical report submitted by the doctor (P.W.24) as Ext.12. It was held that the victim could understand and comprehend the questions put to her, but unable to speak and she identified the appellant. Thus, the Court held that the evidence adduced by the victim, needs no corroboration from other sources as her evidence is aboveboard and after assessing the evidence on record, the Court found the overwhelming evidence for commission of offences from the mouth of P.W.4, P.W.5, P.W.7 and P.W.12 and accordingly found the appellant guilty of such offences.

Contentions of the Parties:

7. Mr. S.K. Baral, learned counsel, who was engaged as Amicus Curiae as per order dated 29.08.2018, contended that the victim (P.W.7) was not only a dumb girl, but she was found to be abnormal by the learned trial Court as she was answering 'yes' to every questions put to her. Learned counsel submitted that though the defence wanted to put questions in cross-examination but since the Court found the victim to be an abnormal girl and as she was answering 'yes' to every question, she could not be cross-examined and the same has resulted in



causing serious prejudice to the appellant. Learned counsel argued that what questions were put to the victim and what answers have been given by her to the respective questions, have not been recorded by the learned trial Court. Therefore, there is no material on record that the victim was not only understanding the questions put to her, but also has given rational answers to such questions. He further argued that there is nothing in the deposition sheet of the victim that the Court was satisfied that she was a competent witness and therefore, the evidence of the victim is in no way helpful to the prosecution. Learned counsel further argued that though it is the prosecution case that when the appellant was returning from the house of the victim, he was caught hold of by P.W.10 and one Bhagirathi, but the said Bhagirathi has not been examined. Learned counsel further argued that though the biological samples of the victim as well as the appellant were sent for chemical examination, but the prosecution has failed to prove the chemical examination report during trial and therefore, except few circumstances, there is nothing in this case and thus, it is a fit case where benefit of doubt should be extended in favour of the appellant.

Mr. Rajesh Tripathy, learned Additional Standing Counsel appearing for the State, on the other hand, supported



the impugned judgment and submitted that the occurrence in question took place on 29.07.2016 and the victim was abnormal at that time, i.e. having physical disabilities. When the other family members of the victim were working in the field, the appellant being a co-villager of the victim took advantage of the absence of the family members in the house, scaled over the boundary wall, but when he was seen by the co-villagers and was prevented, he left that place, but again after some time, he entered into the house of the victim and committed rape on her. Learned counsel further argued that P.W.4, the brother of the victim, P.W.5, mother of the victim, P.W.10, a co-villager of the victim and P.W.12, the sister in-law of the victim saw the victim in a naked condition and there was bleeding injury on her person and the victim pointed out her finger towards the appellant to have sexually abused her. Learned counsel further argued that on the date of occurrence, not only the F.I.R. was lodged, but also the victim was examined by the doctor (P.W.24), who noticed the injuries on the private part of the victim and opined that those were the signs and symptoms of recent sexual intercourse. Learned counsel further argued that apart from the evidence of the victim, the evidence of other witnesses, who had seen the victim in a naked condition having injuries, the medical



examination report and the evidence of the co-villagers, who caught hold of the appellant at the spot while he was trying to escape, are very clinching and those circumstances corroborate the evidence of the victim regarding commission of rape. Further, the doctor (P.W.25) examined the appellant on the very day and noticed the injuries on his person and stated that he was capable of committing sexual intercourse and semen was present over meatus and these factors were taken into account by the learned trial Court while arriving at the conclusion of guilt of the appellant and since there is no infirmity and illegality in the impugned judgment, the JCRLA should be dismissed.

Whether the defence has been prejudiced by deprivation of chance to cross-examine the victim?:

8. Adverting to the contentions raised by the learned counsel for the respective parties, there is no dispute that the victim (P.W.7) was a dumb girl and the learned trial Court has mentioned in the deposition sheet that when she was examined as P.W.7, since she was unable to speak, the help of her brother (P.W.4) was taken for recording her statement as the victim only gave signs about the occurrence. The learned trial Court noted the demeanor of the victim in the deposition sheet itself and mentioned that when the victim saw the appellant standing in



the dock, she became emotional and stated that the appellant made sexual abuse against her when she was in the house. However, the learned trial Court observed that the victim is an abnormal girl and she was unable to stand properly and her evidence was recorded with the help of her mother and brother and to every question, she was answering 'yes' only. The cross-examination of the victim could not be held extensively on that date and when she appeared in Court on recall on 10.08.2017 for further cross-examination, the Court noted that whatever questions are being put, she answered only with 'yes' as she was an abnormal girl.

Section 118 of the Evidence Act deals with competence of a person to testify before the Court and it is stated that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. In the explanation to section 118, it is stated that a lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them. Therefore, if the witness has sufficient



knowledge of which the trial Judge is satisfied after noticing the manners and by resorting to any examination which would tend to disclose his capacity and his understanding, then the Court can hold him to be a competent witness. The Court has to record the questions which are put to the witness and what answers the witness has given, before declaring him as a competent witness. If such questions are recorded in the deposition sheets, then it would be an added advantage for the higher Courts to assess whether the learned trial Court has correctly assessed the witness to be a competent one by examining the questions and answers given thereto by the witness. The object of putting questions to such witness is that the time of the Court would not be wasted if it is found, as a result of preliminary enquiry, that the witness is neither intelligent nor can he give evidence and rational answers. Therefore, the crux of the matter is to understand the intellectual capacity of the witness, his understanding and giving rational account of the questions put to him.

In the case in hand, since the victim was found to be a dumb girl, the learned trial Court has rightly taken the assistance of her mother (P.W.5) and brother (P.W.4) for recording her evidence as they are the best available persons



who are acquainted with the signs given by the victim, but the learned Court has not mentioned whether the brother and mother of the victim were administered oath before their assistance was sought for to interpret her signs. Further, they being interested witnesses, it would have been appropriate had an independent interpreter been appointed by the learned trial Court. In this context, it is beneficial to reproduce the following excerpt from the judgment of the Hon'ble Supreme Court in the case of **State of Rajasthan -Vrs.- Darshan Singh reported in (2012) 5 Supreme Court Cases 789:**

"To sum up, a deaf and dumb person is a competent witness. If in the opinion of the court, oath can be administered to him/her, it should be so done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have interest in the case and he should be administered oath."

[Emphasis supplied]



In the instant case, when the victim stated about commission of sexual abuse on her by the appellant in the examination-in-chief by way of signs, the Court noticed that the victim was an abnormal girl and she was answering 'yes' to every question put to her and that is the reason why the defence could not cross-examine the victim on that day and when the victim appeared for further cross-examination on another date i.e. 10.08.2017, same thing happened and she only answered 'yes' to every question and the Court found her to be an 'abnormal girl'. Therefore, the contention of the learned Amicus Curiae that the defence has been seriously prejudiced because of deprivation of cross-examination has sufficient force. However, it is to be seen as to whether other materials available on record are sufficient in itself to uphold the conviction of the appellant or not.

Whether evidence of other witnesses points out the guilt of the appellant?:

9. P.W.10 has stated that that on the date of occurrence, he noticed the appellant scaling over the wall of the informant (P.W.4) and upon seeing such, he along with his brother asked the appellant not to scale the wall for which the appellant left the place. However, after some time, the appellant



came back and entered into the house of the victim and while the appellant was returning by concealing himself, P.W.10 and his brother Bhagirathi caught hold of him, tied him and called his father. He further stated that the villagers assembled there and then the family members of victim were called and it was found that the victim was fully naked and she had received bleeding injury on her head. Nothing has been elicited in the cross-examination. Only suggestion has been given to P.W.10 that he and his brother Bhagirathi had inimical terms with the appellant and they were taking liquor and due to their previous enmity, P.W.10 was deposing falsehood against the appellant. But P.W.10 has out rightly denied all such suggestions.

The evidence of family members of the victim is very relevant in this case. P.W.5, the mother of the victim has stated that she left for her paddy field in the morning at about 8.00 a.m. and upon returning home at about 3.00 p.m., she noticed that there was no cloth on the person of the victim and there was bleeding injury on her head and when she asked the victim, she gave sign by pointing finger towards the appellant that he committed rape on her. P.W.5 stated that the victim was an abnormal girl, she was unable to speak properly and was in the house when the incident took place. The learned defence counsel



has not put any question to the witness on the first date and when she was called for further cross-examination, she stated that prior to the occurrence, the appellant knew the victim and she denied the suggestion that they were having previous enmity with the appellant for which they have foisted the case against the appellant by planting the victim. Therefore, the evidence of P.W.5 has remained unchallenged.

P.W.4, the informant in the case, is the younger brother of victim who has stated that on the date of occurrence, he along with his wife Sanjukta (P.W.12) had left for paddy field at about 09.00 a.m. The victim was alone in the house and when they returned at about 1.30 p.m., he came to know that the appellant was caught hold of by his uncle while he was trying to run away and he has been tied up in a tree. P.W.4 also noticed the victim to be fully naked and having injuries on the head and on being asked, the victim pointed towards the appellant to have committed rape on her. In the cross-examination, he has stated that when he enquired from the victim about the occurrence, she informed him about rape by giving signals by her hands. He further stated that the victim was abnormal and unable to speak properly.



P.W.12, who is the sister-in-law of the victim, has stated that leaving the victim alone in the house, she along with her husband (P.W.4) and mother-in-law (P.W.5) left for paddy field and when they returned home, they found the victim fully naked, having bleeding injuries on the head and the appellant has been apprehended by the villagers and the victim pointed out fingers towards the appellant to have sexually abused her. In the cross-examination, P.W.12 has stated that the appellant was tied up by the villagers and kept outside of the house and she denied the suggestion that since the victim was her own sister-in-law, she deposed falsehood against the appellant.

Therefore, the evidence of all the aforesaid witnesses, i.e. P.W.4, P.W.5, P.W.10 and P.W.12 indicates that the victim was found in a naked condition in the house and she had sustained injury and the appellant was tied in a tree and detained by the villagers and when the family members made an enquiry to the victim, she pointed out towards the appellant to have committed rape on her. Thus, a collective reading of the testimony of these witnesses projects consistent and uncontradicted evidence against the appellant.



Whether the medical evidence corroborates the evidence of witnesses?:

10. The F.I.R. was lodged on the very day of occurrence at about 3 o' clock in the afternoon and on the same day, the doctor (P.W.24) also examined the victim at D.H.H., Jharsuguda and noticed one lacerated wound with bleeding at occipital right side of head and the age of the injury was opined to be within six to eight hours. On examination of the genital, the doctor further noticed two abrasions, 5/6 O'clock position of size 3 mm X 2 mm and 3 mm X 3 mm and hymen was not intact. She further opined that there was mild bleeding on the abrasions site, the age of the injury was opined to be within six to twelve hours. She handed over the vaginal swab and pubic hair to the police and gave her opinion that there was sign and symptom of recent sexual intercourse. The medical report of the victim has been proved as Ext.12. Questions have been put in the cross-examination to the doctor that the abrasion injuries available in the genital can be self-inflicted to which she denied. She opined that the injuries found on the genital of the victim cannot be caused except with rape. She further denied the suggestions that she had not examined the victim and that her report vide Ext.12 has been fabricated at the instance of the police.



Therefore, the evidence of the prosecution witnesses that the victim indicated by way of signs that the appellant committed rape on her is getting corroboration from the medical evidence of P.W.24.

The appellant was also medically examined on the very day and P.W.25, the doctor attached to D.H.H., Jharsuguda examined him and found one bruise present over back of his right shoulder, scratch mark on upper part of lateral boarder of right thigh, bruise over right shoulder meatus and no injury was found on genital part. The medical examination report has been marked as Ext.13.

Therefore, the prosecution case that on the date of occurrence, the appellant committed house trespass into the house of P.W.4 and committed rape on the victim girl and also voluntarily caused hurt to the victim has been proved through the oral evidence of P.W.4, P.W.5, P.W.10 and P.W.12 as well as the medical evidence adduced by P.W.24 and P.W.25.

Non-production of chemical examination report & effect thereof:

11. I would like to advert to one disturbing feature noted in this case is that even though the biological samples of both the victim and appellant so also the wearing apparels seized



during the course of investigation were sent for chemical examination through the learned S.D.J.M., Jharsuguda to the Deputy Director, R.F.S.L., Sambalpur on 08.08.2016, but no chemical examination report has been obtained and filed with the charge sheet dated 24.11.2016. In this type of cases, the chemical examination report is a vital document and crucial piece of evidence and it is the duty of the prosecution to produce it in time and prove it in accordance with law. It is the duty of the Magistrate to supply the chemical examination report to the accused along with police papers at the time of commitment of the case to the Court of Session in view of section 207 of Cr.P.C. and Rule 50 of the G.R.C.O. (Criminal) of High Court of Judicature, Orissa if the same is available on record. If the chemical examination report is not submitted along with the charge sheet and not supplied to the accused before commitment, it is the duty of the Prosecutor as well as the trial Court to see that the chemical examination report is made available before the charges are framed and copy of such report is furnished to the accused. The trial Court has also a duty and responsibility to send reminder to the Director/Dy. Director of the Forensic Science Laboratory to send the chemical examination report and in spite of such reminder, if no report is



furnished, the Court can take concrete steps against the erring officials for non-production of such report in the interest of justice. The Director/Deputy Director of the Forensic Science Laboratories should send the chemical examination report to the concerned Court within a reasonable period preferably within two months of the receipt of seized exhibits for analysis. Forensic Science plays a vital role in criminal justice delivery system providing the investigators with scientific based information through analysis of physical evidence. Unfortunately the police and the Prosecutors often fail to obtain results from laboratories quickly enough to determine the accusations against a person. Non-receipt of the chemical examination report or delayed receipt of report creates obstacles in arriving at truth and hamper the course of justice. Nobody has a right to play with the lives of the persons who are facing trial for a serious charge and also to deprive the victims from getting proper justice. The reports of the Government scientific experts can be used as evidence in view of the provisions under section 293 of Cr.P.C. Non-availability of a chemical examination report before the trial Court can have a far reaching consequence in a criminal trial and can cause serious judgmental errors. It is the duty of the State Government to provide sufficient staff and competent officers for



examination of the seized exhibits in the Forensic Science Laboratories for speedy and effective analysis and to furnish accurate forensic reports for the proper dispensation of justice delivery system. The State cannot cock a snook at its duty to provide the required infrastructure and manpower to the forensic laboratories in the interest of justice. The State must realize the negative impacts which potentially ensue if it fails to take the required steps in making the forensic laboratories well-equipped and functional with sufficient manpower, as every omission on its part may jeopardize the rights and liberties of hundreds of accused and victims.

In this case, the trial Court record does not indicate the alertness, promptness on the part of the Public Prosecutor in drawing the attention of the learned trial Judge to the non-availability of the chemical examination report on case records and to cause production from R.F.S.L., Sambalpur and to prove the same in accordance with law. The Director of Public Prosecution is required to instruct all the Public Prosecutors of the State to ensure that appropriate steps are taken promptly to get the chemical examination reports in time which are to be taken on record by the trial Courts, if not submitted along with charge sheet.



The Registry is directed to place the matter before Hon'ble the Chief Justice for considering and circulating the copy of judgment to the learned District and Sessions Judges and to the Director of Public Prosecution for implementing the observations made in this paragraph.

Conclusion:

12. In view of the foregoing discussions, even though the chemical examination report is not proved in this case, I am of the considered view that the learned trial Court has rightly held that the prosecution has successfully established the charges against the appellant.

However, so far as the sentence is concerned, the minimum sentence prescribed for the offence under section 376(2)(j)(I) of the I.P.C. is for ten years, though it may extend to imprisonment for life. Taking into account the factual scenario of the case and the social background of the appellant and the period elapsed since the date of occurrence, I reduce the sentence from R.I. for fourteen years to R.I. for ten years. The sentence of R.I. for a further period of six months for default in payment of fine of Rs.30,000/- (rupees thirty thousand) for the offence under section 376(2)(j)(I) of the I.P.C is also reduced to R.I. for one month, in view of the financial condition of the



appellant. The sentences imposed by the learned trial Court for the other offences remain unaltered so also the order that all the substantive sentences are to run concurrently.

Accordingly, the JCRLA being devoid of merit stands dismissed.

The learned trial Court has only ordered that whatever fine amount is realized shall be given as compensation to the victim girl under section 357A of Cr.P.C., but no compensation has been awarded by the learned trial Court under Odisha Victim Compensation (Amendment) Scheme, 2018. Keeping in view the nature and gravity of the offence committed, the condition of the victim and her family background, I feel it necessary to recommend the case of the victim to the District Legal Services Authority, Jharsuguda. After conducting necessary enquiry in accordance with law for grant of compensation under the aforesaid scheme, the compensation amount is to be assessed by the concerned D.L.S.A., if the same has not yet been done and payment is to be made immediately to the victim within a period of two months from the date of receipt a copy of this judgment.

Let a copy of the judgment be sent to the District Legal Services Authority, Jharsuguda for compliance.



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

Before parting with the case, I would like to put on record my appreciation to Mr. S.K. Baral, the learned Amicus Curiae for rendering his valuable help and assistance towards arriving at the decision above mentioned. He shall be entitled to his professional fees which is fixed at Rs.7,500/- (rupees seven thousand five hundred only). This Court also appreciates the valuable help and assistance provided by Mr. Rajesh Tripathy, learned Additional Standing Counsel.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 10th April 2024/PKSahoo/Sipun