

IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No.33 of 2020

Appeal under section 374 of Cr.P.C. from judgment and order dated 22.01.2020 passed by the Additional Sessions Judge -cum-Special Judge, Malkangiri in T.R. Case No.15 of 2019.

Sukumar Gouda Appellant

-Versus-

State of Odisha Respondent

For Appellant:

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Ms. Manasi Dash
Amicus Curiae

For Respondent:

-
Mr. Priyabrata Tripathy
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 30.08.2023

S.K. SAHOO, J. Today is Raksha Bandhan, 2023 which is a special day to celebrate the bond between the siblings to express love and gratitude for each other. Brothers pledge to protect their sisters, love and cherish them, and shower them with presents while sisters tie 'Rakhi' on their brothers' wrists, place tilak on their foreheads, and pray for their prosperity and long lives. It is

said that "brothers and sisters are as close as hands and feet." A brother for a sister is a protector, confidant and a lifelong friend. They share a unique bond that nothing can replace. A sister is a treasure beyond measure for the brother whereas a brother is a hero in disguise and a role model for the sister. Can anyone forget that beautiful song from Hindi film "**Chhoti Bahen**" (1959) in the voice of Nightingale of India Late Lata Mangeshkar "*Bhaiya Mere Rakhi Ke Bandhan Ko Nibhana, Bhaiya Mere Choti Bahen Ko Na Bhulana*".

It is both shocking as well as ironical to hear this case and render the judgment on 'Raksha Bandhan' day, on which day a brother takes the solemn pledge not only to protect his sister but also to nurture her till his last breath. Here is a case where the accusation has been levelled against an elder brother to have committed rape on her own sister when she was hardly fourteen years of age and to have made her pregnant for which she delivered a girl child at Swadhar Home, Malkangiri.

The appellant Sukumar Gouda faced the trial in the Court of learned Addl. Sessions Judge -cum- Special Judge, Malkangiri in T.R. Case No.15 of 2019 for commission of offences punishable under sections 376(3)/376(2)(n) of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation that in between

01.05.2018 to 10.05.2019 at village Raghuramguda, he committed rape on the minor victim girl, who was under sixteen years of age repeatedly, for the offence under section 506 of the I.P.C. on the accusation that he committed criminal intimidation by threatening the minor victim girl to do away her life and also for the offence under section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO Act') on the accusation that he committed aggravated penetrative sexual assault on the victim girl.

Learned trial Court vide impugned judgment and order dated 22.01.2020 found the appellant guilty and sentenced him to undergo rigorous imprisonment for a period of twenty years and to pay a fine of Rs.40,000/- (rupees forty thousand), in default, to undergo rigorous imprisonment for a further period of two years for the offence under section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of two years for the offence under section 506 of the I.P.C. and the sentences were directed to run concurrently, however no separate sentence was awarded for the offence under sections 376(3)/376(2)(n) of the I.P.C. in view of section 42 of the POCSO Act.

Prosecution Case:

On 13.05.2019, the victim (P.W.6) who was aged about fourteen years, lodged the first information report (Ext.11) before the Inspector in-charge of Malkangiri police station and accordingly, Malkangiri P.S. Case No.105 dated 13.05.2019 was registered under sections 376(3)/376(2)(n)/506 of the I.P.C. and section 6 of the POCSO Act against the appellant.

It is the case of the prosecution as per the F.I.R. that since last one year prior to the lodging of the F.I.R., the appellant who is her elder brother was frequently committing sexual intercourse with her in absence of the other family members by threatening her with dire consequence. Out of fear, the victim could not disclose about the same before anyone. Two months prior to the lodging of the F.I.R., her monthly menstruation was stopped for which she disclosed about the same before her friend Pinki Bhumia (P.W.16) who took her to Anganwadi Didi and the victim was interrogated there and she was asked to come on the next day. On the next day, when the victim again approached the Anganwadi Didi with P.W.16, she asked her about her health condition and the victim disclosed before Didi about the misdeeds of the appellant in committing rape on her repeatedly. The Anganwadi Didi tested her twice

with the medical kits available with her to determine pregnancy and after the tests, it was confirmed that the victim had become pregnant. With the help of Childline member, C.D.P.O., Malkangiri and others, the victim was taken from her home to Swadhar Home, Malkangiri where she stayed.

After registration of the case, Inspector in-charge of Malkangiri Police Station directed Santoshi Barik (P.W.26), Sub-Inspector of Police attached to Malkangiri police station to take up investigation of the case and accordingly, P.W.26 examined the informant -cum- victim (P.W.6) and other witnesses, seized the wearing apparels of the victim under seizure list marked as Ext.4, sent her for medical examination to D.H.H., Malkangiri. The appellant was arrested and his wearing apparels were seized under seizure list marked as Ext.7. The I.O. sent the appellant to D.H.H., Malkangiri for examination and opinion. The biological samples of the victim along with command certificate being produced by P.W.2 were seized under seizure list Ext.5. One command certificate along with the biological samples of the appellant was seized on production by P.W.4 under seizure list Ext.8, whereafter the appellant was forwarded to the Court. On 15.05.2019, the I.O. made prayer to the Court to record the statement of the victim under section 164 Cr.P.C. which was

accordingly recorded by the learned J.M.F.C., Malkangiri which is marked as Ext.12. Thereafter she visited the spot i.e. the house of the victim and prepared the spot map (Ext.18). She gave intimation to C.W.C., Malkangiri and D.C.P.O., Malkangiri for welfare and rehabilitation of the victim. She also made prayer to the Secretary, D.L.S.A., Malkangiri for payment of compensation to the victim under Victim Compensation Scheme. She also made prayer to the Court to send the seized wearing apparels of both the victim and the appellant along with their biological samples to Deputy Director, R.F.S.L., Berhampur for chemical examination and opinion. The I.O. received the medical examination reports of the appellant so also the victim from D.H.H., Malkangiri which were marked as Ext.10 and Ext.13 respectively. On 21.06.2019, she seized the school admission register of Mukaguda Govt. Primary School on production by the Headmaster of the school under seizure list Ext.14 where the victim was once prosecuting her studies and the school admission register indicated the date of birth of the victim to be 05.08.2005. The original school admission register was left in the zima of the Headmaster of the school under a zimanama after keeping the Xerox copy of the relevant portion of the register which is marked as Ext.15 and on completion of investigation, on

11.07.2019, the I.O. (P.W.26) submitted the charge sheet against the appellant under section 376(3)/376(2) (n)/506 of the I.P.C. and section 6 of the POCSO Act.

After submission of charge sheet, the learned trial Court framed charges against the appellant 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 and Documents Exhibited by the Prosecution:

In order to prove its case, the prosecution examined twenty seven witnesses.

P.W.1 Mamata Sahu was the constable attached to Malkangiri police station, who is a witness to the seizure of command certificate and receipt of R.F.S.L. under seizure list Ext.1, seizure of wearing apparels of the victim as per seizure list Ext.4 and biological samples of the victim as per seizure list Ext.5.

P.W.2 Seemarani Biswas is a witness to the seizure of wearing apparels of the victim as per seizure list Ext.4 and biological samples of the victim as per seizure list Ext.5.

P.W.3 Binod Kumar Moharana was the constable attached to Malkangiri police station, who is a witness to the seizure of command certificate and receipt of R.F.S.L. as per seizure list Ext.1.

P.W.4 Narasingh Majhi was the constable attached to Malkangiri police station, who is a witness to the seizure of wearing apparels of the appellant as per seizure list Ext.7 and biological samples of the appellant along with one command certificate as per seizure list Ext.8.

P.W.5 Dr. Surama Kumari Behera, O. & G. Specialist, District Headquarters Hospital, Malkangiri, examined the victim on police requisition on 13.05.2019 and found the victim to be capable of sexual intercourse and there were old tears in her hymen and further found the victim to be pregnant about nineteen weeks and six days. She also collected the biological samples of the victim. She proved her report marked as Ext.10.

P.W.6 is the victim, who supported the prosecution case and she also stated about the seizure of her wearing apparels as per seizure list Ext.4.

P.W.7 Sambaru Gouda is the father of the victim as well as the appellant, who stated that victim disclosed before him that the appellant committed rape on her for which she

became pregnant and out of shame, she was not disclosing about the same.

P.W.8 Sambari Bhumia was the mother of Pinki (P.W.16), who was the best friend of the victim and she stated to have detected pregnancy of the victim by touching her belly and further stated that the victim disclosed before her that she became pregnant through the appellant and accordingly, she advised the victim to go to Anganwadi Didi of the village.

P.W.9 Kalidas Sagaria is the scribe of the first information report.

P.W.10 Sani Kope was working as Anganwadi Worker at Raghuramguda Anganwadi Centre and she stated about testing of urine of the victim by pregnancy testing kits, which was found to be positive and she further stated about the disclosure made by the victim regarding forcible sexual intercourse on her by the appellant.

P.W.11 Gurubari Singh was the health worker, who also stated like P.W.10 about the pregnancy test of the victim conducted with the testing kits found to be positive and the victim's disclosure about the commission of rape on her by the appellant.

P.W.12 Gurubari Sarabu was working as Asha Karmi of Mukaguda and Raghuramguda and she stated similarly like P.Ws.10 and 11.

P.W.13 Subarna Gouda stated about the disclosure made by the victim regarding commission of rape on her by the appellant on a number of occasions in absence of her father.

P.W.14 Damuni Kope was the Helper in the Anganwadi Centre, Raghuramguda, who stated similarly like P.Ws.10, 11 and 12.

P.W.15 Rupa Bhumia stated about the pregnancy test conducted of the victim which was found to be positive.

P.W.16 Pinki Bhumia was the friend of the victim, who stated about the disclosure made by the victim before her regarding commission of rape on her forcibly by the appellant, which led her to become pregnant. She also disclosed about the pregnancy test of the victim conducted at Anganwadi Centre, which was found to be positive.

P.W.17 Bithika Baidya was the Counselor of Swadhar Home, Malkangiri, who stated that during counseling the victim disclosed about the appellant keeping physical relationship with her and threatening her not to disclose the matter before anyone. She further stated that when the victim was found to be

pregnant after the test was conducted at Anganwadi Centre, Raghuramguda as per the direction of C.W.C., Malkangiri, the victim was kept at Swadhar Home, Malkangiri.

P.W.18 Laxman Majhi was the constable attached to Malkangiri police station, who is a witness to the seizure of biological samples of the victim as per seizure list Ext.5 and biological samples of the appellant and one command certificate as per seizure list Ext.8.

P.W.19 Sudeshana Rout was the Protection Officer, who stated that after the victim was rescued from her village coming to know about her pregnancy by the appellant, she was produced before Child Welfare Committee, Malkangiri and the Chairperson of C.W.C. reported the matter at Malkangiri police station.

P.W.20 Jyotish Kumar Pati was the Coordinator, Child line, who stated about the rescue of the victim from her village and disclosure made by the victim regarding commission of rape on her by the appellant.

P.W.21 Rupendra Nayak was the Team Leader of Sub-Centre Child line, K.Guma also stated about the rescue of the victim from village Raghuramguda and her disclosure made regarding commission of rape on her by the appellant.

P.W.22 Dr. Narayan Prasad Patra was the Medical Officer attached to D.H.H., Malkangiri, who examined the appellant on police requisition on 19.05.2019 and found that he was capable of committing sexual intercourse. He collected biological samples of the appellant and proved his report marked as Ext.13.

P.W.23 Biswanath Betty was the Headmaster of Mukaguda Government Primary School, who proved the school admission register where the victim was prosecuting her studies and the date of birth of the victim mentioned in such register to be 05.08.2005.

P.W.24 Ganga Baka is a witness to the seizure of school admission register of Mukaguda Government Primary School from the Headmaster of that school under seizure list Ext.14.

P.W.25 Laxmi Mathapadia was the teacher of Mukaguda Government Primary School, who also proved the seizure of the school admission register as per seizure list Ext.14 and taking of zima of such register by the Headmaster as per zimanama Ext.15.

P.W.26 Santoshi Barik was the S.I. of Police, Malkangiri police station, who is the investigating officer of the

case and she submitted charge sheet on completion of investigation.

P.W.27 Kailash Chandra Mohanty was the constable attached to Malkangiri police station, who is a witness to seizure list Ext.1, Ext.7 and Ext.8.

The prosecution exhibited twenty five documents. Ext.1, Ext.4, Ext.5, Ext.7, Ext.8 and Ext.14 are the seizure lists, Ext.2, Ext.6 and Ext.9 are the command certificates, Ext.3 is the receipt of R.F.S.L., Ext.10 and Ext.13 are the medical reports, Ext.11 is the first information report, Ext.12 is the statement of the victim under section 164 Cr.P.C., Ext.15 is the zimanama, Ext.16 and Ext.17 are the medical requisitions, Ext.18 is the spot map, Ext.19 is the intimation given to C.W.C., Malkangiri, Ext.20 is the intimation given to D.C.P.O., Malkangiri, Ext.21 is the prayer to the Secretary, D.L.S.A., Malkangiri for victim compensation, Ext.22 is the prayer petition to send the exhibits to Deputy Direction, R.F.S.L., Berhampur, Ext.23 is the requisition to Headmaster, Government Primary School, Mukaguda, Ext.24 is the forwarding letter of sending exhibits to Deputy Director, R.F.S.L., Berhampur and Ext.25 is the original admission register (Vol.II).

Defence Plea and Defence Witness:

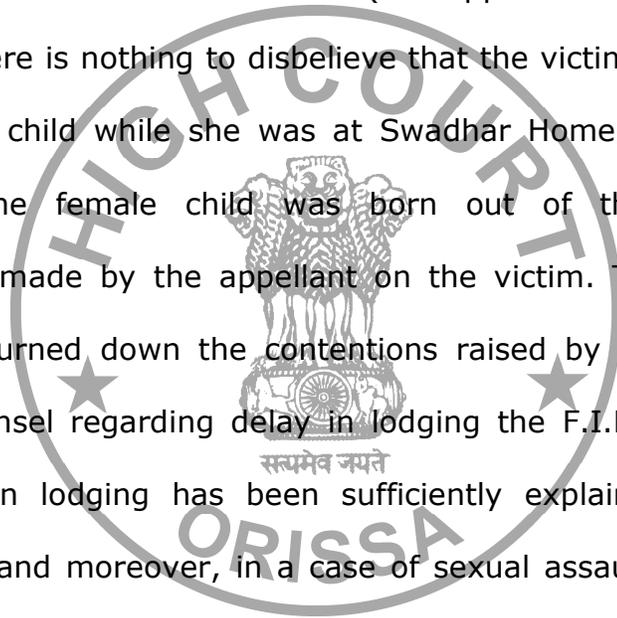
The defence plea of the appellant is one of complete denial and it was suggested to the victim that the appellant had not made any sexual intercourse with her and that she became pregnant through others.

The appellant examined himself as D.W.1 and stated that he had not raped the victim nor threatened her at any point of time.

Findings of the Trial Court:

The learned trial Court, after assessing the oral and documentary evidence on record, has been pleased to hold that the prosecution has not proved the chemical examination report of R.F.S.L., Berhampur, though the same is available in the record. The learned trial Court further held that the evidence of the victim taken together with the evidence of P.W.23, the Headmaster, Mukaguda Govt. Primary School, Medical Officer (P.W.5) and the facts mentioned in Ext.12, 14 and 25, it is proved that during the period of occurrence, the victim was minor aged about fourteen years i.e. below sixteen years. It was further held that the evidence of the victim is corroborated by the evidence of her friend (P.W.16) and the evidence of the victim regarding her pregnancy is corroborated by the medical

evidence. It was further held that the evidence of the victim taken together with her friend Pinki Bhumia (P.W.16) and others also with the medical officers, it is proved that the appellant committed forcible sexual intercourse with the victim time and again with a threatening to kill her in the event the matter was disclosed before anyone and caused her pregnancy and that the victim became the mother of the female child due to the forcible sexual intercourse by the appellant. The learned trial Court disbelieved the evidence of D.W.1 (the appellant himself) and held that there is nothing to disbelieve that the victim gave birth to a female child while she was at Swadhar Home, Malkangiri and that the female child was born out of the physical relationship made by the appellant on the victim. The learned trial Court turned down the contentions raised by the learned defence counsel regarding delay in lodging the F.I.R. and held that delay in lodging has been sufficiently explained by the prosecution and moreover, in a case of sexual assault, delay in lodging of F.I.R. cannot be a ground to reject the accusation of rape. It was further held that non-conducting of D.N.A. test in respect of the new born baby of the victim will not hit at the root of the prosecution case. It was further held that in view of sections 29 and 30 of the POCSO Act, 2012, the Court shall



presume the existence of culpable mental state to draw presumption regarding commission of offence as alleged by the prosecution. While concluding, the learned trial Court observed that the appellant was sexually potent and he has committed rape on the victim who is nonetheless that his own younger sister repeatedly with a threatening to kill her in the event the matter is disclosed before anyone and caused her pregnancy and later on she gave birth to a female child and therefore, it was held that the prosecution has successfully brought home the charge under sections 376(3)/376(2)(n)/506 of the I.P.C. read with section 6 of the POCSO Act.

When the matter was taken up on 16.08.2023, this Court after going through the evidence on record so also the 164 Cr.P.C. statement of the victim asked learned counsel for the State to obtain instruction about the status of the victim, her child so also the marital life of the appellant. It was further directed to obtain instruction whether the victim has been paid any compensation or not and if so, what is the amount of such compensation.

Today, the learned counsel for the State has produced the written instruction received from the Inspector in-charge of Model P.S., Malkangiri dated 24.08.2023 wherein it is

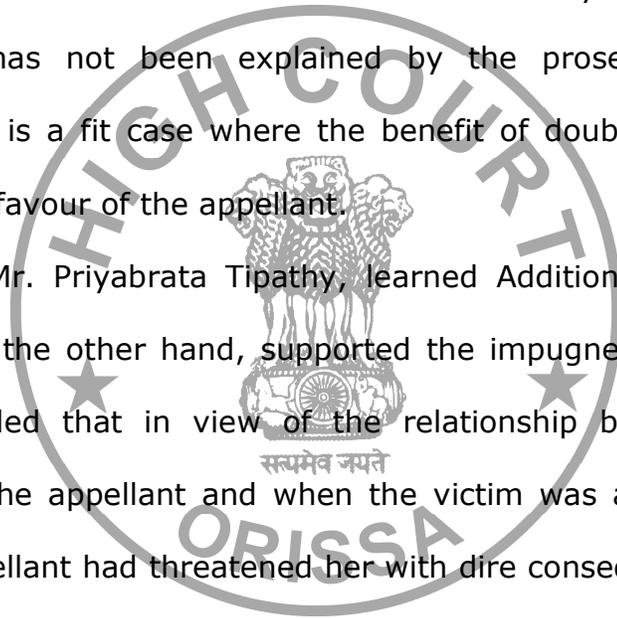
mentioned that the victim had married to a person and staying in the house of the her in-laws and the child of the victim has been produced before Specialized Adoption Agency (S.A.A.), Koraput for care and protection and the victim has received compensation from D.L.S.A., Malkangiri of Rs.4,00,000/- (rupees four lakhs) on 09.07.2020. The written instruction is taken on record.

Contentions of the Parties:

Ms. Manasi Dash, learned counsel who was engaged as advocate for the appellant as per order of this Court dated 07.01.2021 contended that the victim being examined as P.W.6 failed to say about the name of her school where she was prosecuting her studies and no one else has stated about the same and therefore, proving of the school admission register of Mukaguda Govt. Primary School by P.W.23, the Headmaster of the school wherein the date of birth of the victim was mentioned is no way helpful to the prosecution. Learned counsel further submitted that neither the victim (P.W.6) nor her father (P.W.7) has stated about the date of birth of the victim and even though it is the case of the prosecution that on account of the repeated sexual intercourse committed by the appellant on the victim, she became pregnant and gave birth to a female child but no D.N.A.

test has been conducted to determine the paternity aspect. Learned counsel further argued that the victim was working as a maid servant in different houses of her village as stated by her father and therefore, somebody else making her pregnant cannot be ruled out and in order to eliminate the same, the prosecution was duty bound to prove the D.N.A. test report which has not been done. Learned counsel further argued that the victim could not say the date when the appellant kept physical relationship with her for the first time and last. Inordinate delay in lodging of the F.I.R. has not been explained by the prosecution and therefore, it is a fit case where the benefit of doubt should be extended in favour of the appellant.

Mr. Priyabrata Tipathy, learned Additional Standing Counsel, on the other hand, supported the impugned judgment and contended that in view of the relationship between the victim and the appellant and when the victim was a minor girl and the appellant had threatened her with dire consequences not to disclose the matter before anybody, in such a scenario the non-disclosure of commission of rape by the victim on her at the first instance before anybody and the delay in lodging the F.I.R. are not factors to dislodge the prosecution case particularly when the mother of the victim is dead who could have been the first



person before whom disclosure about such heinous offence would have been made. It is argued that the victim has categorically stated as to how since one year prior to the occurrence, the appellant was keeping physical relationship with her forcibly and committing sexual intercourse and threatening her to kill for which she became pregnant which was detected when the tests were conducted at the Anganwadi Centre by using medical kits. It is further argued that the evidence of the victim has remained unshaken in the cross-examination. The evidence of the victim is corroborated by the evidence of her friend (P.W.16), her father (P.W.7) and others before whom she disclosed against the appellant to have committed rape on her repeatedly. The doctor (P.W.5), who examined the victim on 13.05.2019 on police requisition also found that her hymen had old tears and the victim was pregnant about nineteen weeks and six days at that time. The evidence has come on record that the victim was staying in Swadhar Home, Malkangiri after her pregnancy was detected with the help of CDPO, Malkangiri and Child Welfare Committee member of Malkangiri where she delivered a female child. It is further argued that the chance of false implication of the appellant who is none else than the elder brother of the victim is completely ruled out and the defence

plea that since she was working as a maid servant in the village, she was made pregnant by others and the evidence of D.W.1 has been rightly disbelieved by the learned trial Court. The narration made in the first information report by the victim about the occurrence and her statement recorded under section 164 of Cr.P.C. by the learned J.M.F.C., Malkangiri and her evidence in Court is consistent and the learned trial Court has rightly found the appellant guilty of the offences charged and therefore, the Jail Criminal Appeal should be dismissed.

Analysis of Evidence:

Adverting to the contentions of the learned counsel for the respective parties, it is not disputed that the appellant Sukumar Gouda is the elder brother of the victim which is established not only through the evidence of the victim herself, who examined as P.W.6, by her father (P.W.7). The appellant being examined as D.W.1 has also admitted that the victim is his own younger sister.

Age of the Victim:

Coming to the age of the victim, the victim has stated in her cross-examination that she was reading in the village school and has read up to Class-V but could not say about the name of her school. No suggestion has been given to the

victim in the cross-examination that she had never gone to any school for study purpose. The Headmaster of Mukaguda Government Primary School being examined as P.W.23 has stated that P.W.26, the S.I. of Malkangiri police station seized the school admission register as per seizure list Ext.14 and gave the same in zima as per zimanama Ext.15 and he further stated that he knew the victim who was admitted in the school on 18.04.2011 and as per the school admission register, her date of birth was 05.08.2005. The original school admission register wherein the date of birth and date of admission was mentioned has been marked as Ext.25. Nothing has been brought out in the cross-examination of P.W.23. Therefore, the combined reading of the evidence of P.W.6, the victim and P.W.23, the Headmaster, there is nothing to doubt that the victim was prosecuting her studies in Mukaguda Government Primary School where her date of birth was mentioned in the school admission register as 05.08.2005 and that she left her studies in Class-V.

Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which deals with presumption and determination of age of a person by the Committee or Board, states that in the process of such age determination, the date of birth certificate from the school or the matriculation or

equivalent certificate from the concerned examination Board, if available, is to be first taken into account and in absence thereof, the birth certificate given by the corporation or a municipal authority or a panchayat is to be considered and in absence of any of such documents, the age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board. In view of the settled principle of law for determination of age of the victim also, the same principle is to be adopted. Therefore, if the date of birth of the victim as mentioned in the school admission register of the Mukaguda Government Primary School is taken as 05.08.2005, then as on the date of occurrence, the victim was aged about 14 years and therefore, the learned trial Court has rightly held that the prosecution has proved that on the date of incident, the victim was minor and aged about 14 years i.e., below 16 years.

Analysis of victim's evidence:

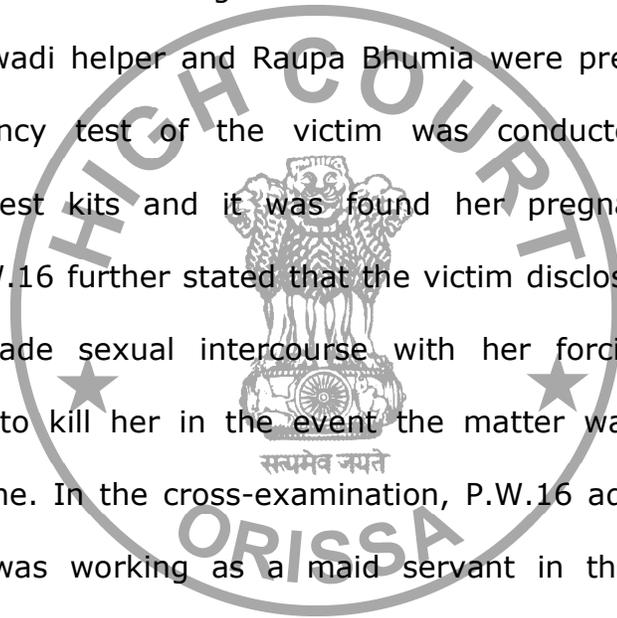
The victim being examined as P.W.6 has stated her age to be fourteen years on the date of her deposition which was recorded on 14.10.2019. The learned trial Court put some questions to her and recorded the answers and from the questions put and answers given, the learned trial Court was of

the opinion that the victim was giving rational answers and therefore, she was held to be competent to give evidence and accordingly, her evidence was recorded. The victim (P.W.6) stated that the appellant is her elder brother and one year prior to the occurrence, the appellant was keeping physical relationship with her forcibly and further stated that on the date of occurrence, the appellant committed sexual intercourse with her forcibly and when she told the appellant to disclose the matter before her father, the appellant threatened her to kill in the event the matter got disclosed before her father and out of fear, she remained silent. She further stated that due to physical relationship, she became pregnant for two months and she disclosed the matter before her friend Pinki Bhumia (P.W.16) and then P.W.16 took her near her elder mother and disclosed about her pregnancy. Then P.W.16 took her to the Anganwadi Didi, who tested twice with pregnancy testing kit and found her pregnancy positive. She further stated that the Anganwadi Didi informed the matter to C.D.P.O., Malkangiri and Child Welfare Committee members of Malkangiri, who took her to the Swadhar Home, Malkangiri and at Swadhar Home, she gave birth to a female child. She further stated that her statement was recorded under section 164 of the Cr.P.C. which she proved as Ext.12 and

she also proved the seizure of her wearing apparels as per seizure list Ext.4 and also the F.I.R. marked as Ext.11. In the cross-examination, the victim (P.W.6) stated that the appellant was a driver and he used to stay outside the village, but he used to come to visit to his house and he was a married person and her sister-in-law, the wife of the appellant was residing in her parental house situated in village Lamtaguda. She further stated that the appellant used to take liquor and he did not maintain the family whereas her father was maintaining the family. Of course, she stated that she could say about the dates, when the appellant kept physical relationship with her for the first time and last time, but in my humble view, the same cannot be a factor to disbelieve her evidence. On going through 164 of the Cr.P.C. statement of the victim also, it appears that her statement is consistent with what she had deposed in the Court during trial. She specifically denied the suggestion given by the learned defence counsel that the appellant had not made any sexual intercourse with her and that she became pregnant through others. The victim stated that Pinki Bhumia (P.W.16) was her best friend.

P.W.16 has stated that the victim disclosed before her that her menstruation had stopped and coming to know

about the same, she along with the victim went near a DURANI, who is a person knew about pregnancy, and belonged to their village and that DURANI by touching the belly of the victim could come know that the victim was pregnant. Then the victim disclosed that the appellant made sexual intercourse with her forcibly for which she became pregnant. She further stated that the DURANI advised her to go to the Anganwadi centre to take tablet for abortion of her pregnancy. Accordingly, she along with the victim came to the Anganwadi Centre where the Anganwadi Didi, Anganwadi helper and Raupa Bhumia were present there. The pregnancy test of the victim was conducted through pregnancy test kits and it was found her pregnancy to be positive. P.W.16 further stated that the victim disclosed that the appellant made sexual intercourse with her forcibly with a threatening to kill her in the event the matter was disclosed before anyone. In the cross-examination, P.W.16 admitted that the victim was working as a maid servant in the house of different persons after leaving study. She denied the suggestion that the victim became pregnant through other persons than the appellant. Nothing has been brought in the cross-examination of P.W.16 to disbelieve her evidence. Therefore, the evidence of the



victim (P.W.6) gets corroboration from the evidence of her friend (P.W.16).

P.W.7 is none else than the father of appellant as well as the victim and he came about know the pregnancy of the victim from the victim herself and he stated that the victim was not disclosing about the matter out of shame. Therefore, the evidence of P.W.7 also corroborates the evidence of the victim (P.W.6) and P.W.16.

The Anganwadi Worker being examined as P.W.10, Health Worker being examined as P.W.11, Asha Karmi being examined as P.W.12 have also stated that the pregnancy test of the victim was conducted with the medical kits and it was found to be positive and that they came to know from the victim that the appellant kept physical relationship with the victim forcibly against her will for which she became pregnant.

The doctor (P.W.5), who examined the victim on police requisition has also stated about the detecting the pregnancy of the victim to be 19 months and 6 weeks at the time of examination on 13.05.2019.

All these evidence clearly indicate that on account of repeated forcible sexual intercourse by the appellant, the victim (P.W.6) became pregnant and she did not disclose the matter

earlier because of threat given by the appellant and when the pregnancy aspect was detected after due examination in the Anganwadi Centre, the victim disclosed before others and she was taken to Swadhar Home, Malkanagiri where she gave birth to a female child. The age of the victim has also been proved to be fourteen years.

The contention of delay in lodging the first information report in a case of this nature particularly in view of the relationship between the parties has been rightly turned down by the learned trial Court as it is very natural keeping in view the victim's future and the prestige of the family, the family members take time to lodge the F.I.R. in such type of cases.

It is well settled law that if the version of the prosecutrix is believed, basic truth in her evidence is ascertainable and if it is found to be credible and consistent, the same would form the basis of conviction. Corroboration is not a sine qua non for a conviction in a rape case. The evidence of a victim of sexual assault stands at par with the evidence of an injured witness and is entitled to great weight, absence of corroboration notwithstanding. If the evidence of the victim does not suffer from any basic infirmity and the 'probabilities factor' does not render it unworthy of credence, as a general rule, there

is no reason to insist on corroboration, except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming.

On careful analysis of the evidence of the victim, it has created an impression on my mind that she is a reliable and truthful witness. Her testimony suffers from no infirmity or blemish whatsoever. I have no hesitation in acting upon her testimony alone without looking for any 'corroboration', however, in this case there are ample corroboration available on the record to lend further credence to the testimony of the victim.

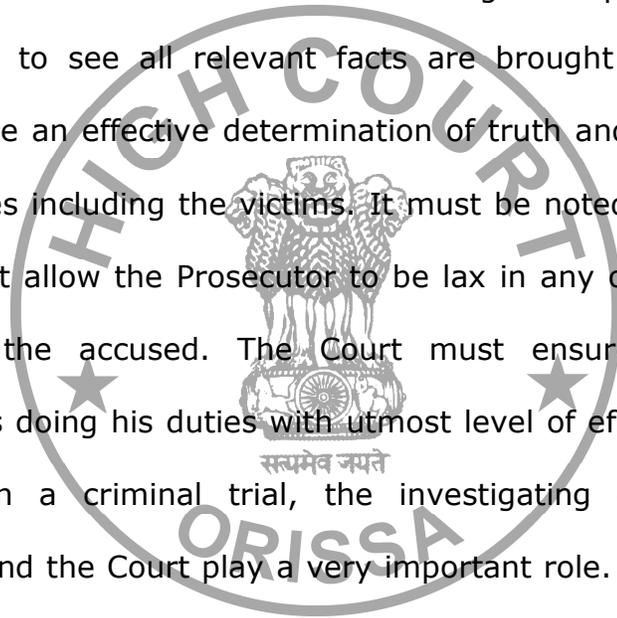
D.N.A. Test Not Sine Qua Non In Rape Cases:

Non-conducting of the D.N.A. test to determine the paternity aspect of the female child which the victim gave birth to, in my humble view, cannot be a ground to disbelieve the evidence of the victim and other prosecution witnesses through which the charges have been established. Conducting D.N.A. test is not a sine qua non in cases of rape as such tests are merely incidental to determine the culpability of an accused for commission of crime.

Chemical Examination Report Not Proved:

It is strange that even though the chemical examination report is available on record, but the same has not

been proved by the prosecution as the learned trial Court has observed in the impugned judgment. The duty of the Presiding Judge of a criminal trial is not to watch the proceedings as a spectator or a recording machine but he has to participate in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth and see that vital documents are not left out to be exhibited. A Public Prosecutor has a wider set of duties than to merely ensure that the accused is punished. The duties include ensuring fair play in the proceedings, to see all relevant facts are brought before the Court to have an effective determination of truth and justice for all the parties including the victims. It must be noted that these duties do not allow the Prosecutor to be lax in any of his duties as against the accused. The Court must ensure that the Prosecutor is doing his duties with utmost level of efficiency and fair play. In a criminal trial, the investigating officer, the Prosecutor and the Court play a very important role. The Court's prime duty is to find out the truth. The investigating officer, the Prosecutor and the Court must work in sync and ensure that the guilty are punished by bringing on record adequate credible legal evidence. The criminal Court must be alert and it must watch the actions of the Public Prosecutor carefully.



Conclusion:

In view of the forgoing discussions, I am of the humble view that the learned trial Court has rightly held that the prosecution has successfully brought home the charges against the appellant under sections 376(3)/376(2)(n)/506 of the I.P.C. read with section 6 of the POCSO Act. The sentence imposed for the offence under section 6 of the POCSO Act is the minimum sentence provided for such offence. The punishment awarded for the offence under section 506 of the IPC cannot be said to be on a higher side under any stretch of imagination as such offence was repeatedly committed whenever rape was committed in giving threat to the victim.

Accordingly, the Jail Criminal Appeal being devoid of merit stands dismissed.

Trial Court records with a copy of this judgment be sent down to the concerned Court forthwith for information.

Before parting with the case, I would like to put on record my appreciation to Ms. Manasi Dash, learned counsel for rendering his valuable help and assistance towards arriving at the decision above mentioned. The learned counsel 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. Priyabrata Tripathy, learned Additional Standing Counsel.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 30th August 2023/Amit/ RKM/Sipun

