



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.945 of 2019

In the matter of an application under Section 374(2)
of the Code of Criminal Procedure

.....

Anil Nath

Appellant

....

-versus-

State of Odisha & Others

....

Respondents

For Appellant : M/s. S. Dash, Adv.

For Respondents : M/s. P.K. Panda,
Addl. Standing Counsel

PRESENT:

THE HONBLE MR.JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 13.03.2026 and Date of Judgment:07.04.2026

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement(Virtual/Physical) Mode.

2. This Appeal has been filed by the Appellant-accused challenging the order of conviction and sentence

AFR



passed by the learned Sessions Judge, Angul in C.T.(S) No.09 of 2018 vide judgment dt.10.09.2019. Vide the impugned judgment, Appellant was convicted and sentenced for the offence under Section 376(1) and Section 323 of the Indian Penal Code. The Appellant was convicted and sentenced to undergo R.I for 12 years and pay a fine of Rs.10,000/- , in default, R.I for 1(one) year for the offence under Section 376(1) of the I.P.C and S.I for 1(one) month for the offence under Section 323 of the I.P.C. Both the offences were directed to run concurrently.

3. While assailing the impugned order of conviction and sentence, learned counsel appearing for the Appellant contended that the prosecution was set into motion with lodging of the F.I.R, giving rise to Industrial P.S (Nisha) Case No.111 of 2017. The aforesaid case was registered against the appellant for the offence under Sections 376(2)(m) and Section 307 of the I.P.C.



3.1. Learned counsel appearing for the Appellant contended that the Appellant faced the trial after being charged for the aforesaid offence under Sections 376(2)(m)/323 of the I.P.C. Prosecution story as narrated in the F.I.R reads as follows:

Briefly stated the prosecution story is that the victim is an old woman of 80 years and the accused is a young boy of 25 years and both belong to the same village. The accused is also a married person having his wife. On 11.9.2017 at about 8.30 A.M. in the morning the victim had been to village pond to take bath. While taking bath sitting on a stone, the accused reached there, forcibly committed rape on her and assaulted her by means of stone, as a result of which she sustained injury on her person. Some villagers who were returning from the jungle seeing the condition of the victim gave Intimation to the informant and his family members after which they rushed to the spot, rescued the victim and sent her to the hospital for medical examination. The victim narrated the whole incident before the informant and her other family members. After such incident, the informant went to police station on the same day and lodged the written report at about 11.00 PM. On the basis of the written report of the informant Kutartha Nath, Police registered Industrial P.S (Nisha) case No. 111/2017, u/s.376(2)(m) and 307, IPC against the accused.

3.2. Learned counsel appearing for the Appellant contended that prosecution in order to prove the charges examined 18 nos. of witnesses. While P.W.1 is the Informant, P.W.2 is a co-villager and P.Ws.3 & 4 are the daughter-in-law of the victim. P.W.5 is the victim herself, P.Ws.6 & 7 are the Constables, who took the accused for



medical examination. Similarly, P.W.8 is the Constable, who took the victim for her medical examination. P.Ws.9 & 10 are the independent witnesses/witnesses to the seizure. Similarly, P.Ws.11 & 13 are the Constables/witnesses to the seizure of biological samples of the victim. P.Ws.12 & 18 are the Doctors, who examined the victim and P.W.14 is the Doctor, who examined the accused. P.W.15 is the post-occurrence witness and P.Ws.16 & 17 are the I.Os of the case.

3.3. Learned Counsel appearing for the Appellant vehemently contended that even though the victim by the time the alleged offence took place was 80 years old, but the Doctor who examined the victim, namely; P.W.18 came to a finding that the injury found on the victim was not due to the assault made by the Appellant while committing the offence of rape. P.W.12, who also examined the victim, though came to a finding that there was recent sign and symptom of sexual intercourse, but in view of the medical report so exhibited, such finding of



the P.W.s12 & 18 should not have been relied on by the learned trial Judge.

3.4. It is also contended that by the time the alleged offence took place, since the victim was only 26 years old, it cannot be held that he committed rape on a lady aged about 80 years. Not only that, even though the alleged offence took place in broad day light, but no independent witnesses were examined by the Prosecution in support of the alleged crime, which is fatal.

3.5. It is further contended that since the alleged offence occurred on 11.09.2017 at about 8.30 A.M in a village pond, it is quite improbable that no other person was present at the particular time. It is also contended that because of the allegation made against the appellant, he was arrested and remanded to custody. In the meantime, the Appellant has already undergone more than 8 years out of the substantive sentence of 12 years for the offence under Section 376(1) of the I.P.C. Not only that, taking into account the nature of allegation and the



order of conviction and sentence, this Court allowed the Appellant to go on interim bail on different occasion for different periods.

3.6. Making all these submissions, learned counsel appearing for the Appellant contended that the order of conviction and sentence passed against the Appellant requires interference of this Court.

4. Mr. P.K. Panda, learned Addl. Standing Counsel on the other hand while supporting the impugned order of conviction and sentence contended that since the Prosecution has proved the allegation of rape beyond all reasonable doubt and such allegation is well supported by the statement of the victim-P.W.5 and statement of the Doctors-P.Ws.12 & 18, no illegality or irregularity can be found with the impugned judgment. P.W.5 in her statement has held as follows:

1. The informant is my grandson. I know the accused standing inside the dock who is my immediate neighbor. I am the victim of this case.

2. The occurrence took place about one year two months back at Chunaghati Bandha (pond). On the date of occurrence at about 9.00 A.M in the morning I had been to Chunaghati Bandha to take bath. While taking bath sitting



on a stone, the accused - came there, dragged me away to a distance and committed rape on me. After rape, the accused assaulted to my head, face and other parts of my body by means of a stone for which I sustained bleeding injury and lost my sense. I was shifted to hospital where I medically examined.

Cross examination by defence.

3. Nobody was present near Bandha when I had been to that place for taking my bath. The accused holding my neck dragged me away from the Bandha. There was stone and mud on the ridge of the Bandha. I had sustained injury on my leg and buttock. Nobody has witnessed the commission of rape on me. The accused is my nephew.

4. It is not a fact that there was quarrel between the accused and my grandson prior to the occurrence. I do not remember the colour of the saree. After the occurrence I was taken to hospital. I cannot say in which vehicle I was shifted to the hospital as I had lost my sense. I regained my sense in the hospital. I remained in the hospital for about 4 to 5 days for treatment. I cannot say what examination doctor conducted.

5. It is not a fact that the accused did not commit rape on me; that the accused had lodged F.I.R in the P.S. against my grandson and that I have falsely implicated the accused in connivance with my grandson.

4.1. It is also contended that the Doctors who examined the victim namely P.Ws.12 & 18 also came to a definite finding that there was recent sign and symptom of sexual intercourse of the victim. Not only that, the Doctor who examined the victim, also found injuries on the body of the victim. Statement of P.Ws.12 & 18 reads as follows:

Statement of P.W.12



1. On 12.8.17, I was in my present place of posting. On that day, on police requisition I have examined one Surekha Nath, aged about 80 years, W/o. Late Iswar Nath, vill-Bhubanpur, p.s.-Industrial Nisha, Dist-Angul and found the followings.

(a) There were bodily injuries present on her person suggesting forcible sexual intercourse. The injuries are as follows:-

(1) Vagina was very tender, congested with blood oozed out from both side lateral part near the opening of vaginal canal.

Multiple abrasive wounds skin deep with blood dried present over upper part of mid forehead.

(ii) Her clothings etc. has no physical clue of alleged sexual offence.

(iii) There is sign and symptom of recent sexual intercourse and the probable time in within 48 hours of my examination of the genitalia and physical examination.

(iv) The vaginal swab was collected, preserved in normal saline, labeled, sealed and handed over to accompanied police.

(v) Blood group is AB+ve

(vi) The age of the victim is between 70 to 80 years as per ossification test and of physical examination.

(vii) The pubic hair was collected, preserved, labeled, sealed and handed over to accompanied police which was white in colour and mated.

(viii) There was recent sign and symptom of sexual intercourse from the aforesaid examination.

This is my report marked as Ext.4 and Ext.4/1 is my signature on the same.

Cross-Examination by the Defence.

2. I have not done microscopic examination of whitish fluid found in the perineum. It is not a fact that the injuries on the vaginal canal of the victim is possible if the vagina comes in contact with a hard material. It is not a fact that I have not properly examined the victim and my report is perfunctory.



Statement of P.W.18

1. On 11.9.2017 I was working as Sr. Medical Officer at DHH, Angul. On that day, at about 11.20 A.M. on police requisition I examined one Surekha Nath, aged about 80 years, W/o.Late Iswar Nath of village-Bhubanpur, being identified by Pravati Singh Samant, constable No.62 and found the following injuries.-

(i) One abrasion of size $\frac{1}{2}$ " x $\frac{1}{2}$ " over left side of forehead.

(ii) One bruise of size 3" x 3" over right side breast.

Both the injuries were simple in nature being caused by hard and blunt object

2. No visible injury found outside the vaginal canal. Only dried blood found outside the canal.

3. The age of injury was within six hours of my examination. Both the injuries are possible in case of assault by means of stone. The injury no (ii) also may be caused due to assault by hand.

This is my report already marked as Ext.9 and **Ext.9/3** is my signature on the same.

Cross-Examination by the Defence.

4. The injuries can be caused due to fall on the hard and rough surface. There is possibility of bleeding in case of suffering by the victim from any venereal disease. I had not made any query from the victim regarding the cause of Injury The victim also did not voluntarily disclose before me about commission of rape. It is not a fact that I have not properly examined the victim and submitted my report at the behest of the police and deposing falsehood.

4.2. Learned Addl. Standing Counsel taking this Court to the evidence of P.W.5 as well as P.Ws.12 & 18 and the medical report so exhibited contended that since allegation of rape has been well proved by the prosecution beyond all reasonable doubt, no illegality or



irregularity can be found with the impugned order of conviction and sentence passed against the Appellant.

4.3. It is further contended that on the face of the evidence of P.W.5 r/w P.W.12 & 18, even though no independent witness has been examined by the prosecution, it is not fatal to the case of the Prosecution and no adverse inference can be drawn against the prosecution . It is also contended that since the victim, who happens to be a lady of 80 years has supported the allegation and nothing has been elicited by the defence, showing therein that no such incident has taken place, relying on the testimony of P.W.5 only, the order of conviction and sentence has been rightly passed.

4.4. Learned Addl. Standing Counsel further contended that P.W.14, who examined the accused also found that the accused has sustained certain injuries and the suggestion given by the defence that the accused being a married person and he has committed the same on his wife, cannot be believed. P.W.14 has found the following



injury on the body of the accused. Statement of P.W.14 reads as follows:

On 12.9.17 I was working as medicine specialist at DHH, Angul. On that day, on police requisition, I had examined the accused named Anil Nath, aged about 25 years, S/o.Kumaramani Nath, vill-Bhubanpur, Industrial Nisha, Dist-Angul and my findings are as follows:-

(i) The accused Anil Nath is capable of doing sexual intercourse.

(ii) Clothings had no clue of sexual offence.

(iii) No bodily injury suggestive of forcible sexual intercourse was found, that means injury to the genital and nearby area and injury by broken bangles on anywhere on the body were absent, but he had laceration on nose, size 4" x 4" on nose.

(iv) Laceration over right shin of tibia may be due to assault or due to hard blunt. No abrasion or incised injury found.

2. Features of sexual intercourse was found that means within 24 hours at the time of examination and patient had not taken bath since committing sexual intercourse.

(a)Features were mated pubic hair found.

(b) Dried stains of semen on prepuce and glans pennies.

(c) seminal stain on monspubis area.

(d) skin of genital partially swollen and prepuce was swollen.

(e) No smegma was found.

3. Semen sample collected and preserved and handed over to police. Blood grouping and VDRL test done. Blood group was O +ve, VDRL non-reactive. Pubic hair preserved.

Opinion:- *Features of recent sexual intercourse within 24 hours was found at the time of examination.*

*This is my report marked as **Ext.5 and Ext.5/1** is my signature on the same*

Cross-Examination by the Defence.



4. My report reveals that the accused was married. In case of sexual intercourse with his own wife by the accused, the features found by me during examination are possible except the injuries. The injuries are possible in case of assault by anybody.

4.5. Making all these submissions, learned Addl. Standing Counsel contended that since the prosecution has proved the charges against the Appellant beyond all reasonable doubt, no illegality or irregularity can be found with the impugned order of conviction and sentence.

5. Having heard learned counsel for the parties and considering the submission made, this Court finds that the prosecution case was set into motion basing on the FIR lodged by the informant-P.W.1 on 11.09.2017 in Industrial P.S. Case No.111 of 2017. The alleged offence took place on 11.09.2017 and the F.I.R was lodged on the very same day. It is found from the record that P.Ws.12 & 18, who examined the victim, clearly proved the allegation of rape on the victim by the accused.



5.1. Not only that, P.W.14, who examined the accused has also found injury on his body. It is also found that P.W.5 in her deposition has clearly proved the allegation of rape committed on her by the accused. This Court taking into account the statement of the victim-P.W.5 vis-à-vis the statement of P.Ws.12 & 18 as well as P.W.14, is of the view that the prosecution has proved the charge of rape on the Appellant beyond all reasonable doubt. There is no material placed to disbelieve the statement of P.W.5. It is also the view of this court that a lady of 80 years will depose falsehood about the charge, against a boy of 26 years.

5.2. Therefore, this Court is not inclined to interfere with the order of conviction and sentence, so passed against him vide the impugned judgment dt.10.09.2019. While not inclined to interfere with the said order of conviction and sentence, but taking into account the age of the victim vis-à-vis the age of the appellant, this Court is of the view that ends of justice will be met, if the appellant will be convicted and



sentenced to undergo the minimum sentence so prescribed for the offence under Section 376(1) of the I.P.C. This Court accordingly is only inclined to impose the minimum sentence of 10 (ten) years in place of 12(twelve) years on the Appellant for the offence under Section 376(1) of the I.P.C.

5.3. The Appeal accordingly stands disposed of with the aforesaid modification of the sentence for the offence under Section 376(1) of the I.P.C.

6. Appeal stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 7th April, 2026 / Sangita