



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.55 of 1993

In the matter of an application under Sub-Section (2) of Section 374, read with Section 382 of Criminal Procedure Code, 1973.

.....

Dolagobinda Jena **Appellant**

-versus-

State of Orissa **Respondent**

For Appellant : *Mr. S.K. Jena, Advocate*

For Opp. Parties : *Mr. S.P. Das, Addl. Standing Counsel*

PRESENT:

**THE HONBLE JUSTICE BIRAJA PRASANNA
SATAPATHY**

Date of Hearing: 21.11.2024 and Date of Judgment: 17.02.2025

Biraja Prasanna Satapathy, J.

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



2. Heard Mr. S.K. Jena, learned counsel for the appellant and Mr. S.P. Das, learned Addl. Standing Counsel for the State.

3. The present Appeal has been filed *inter alia* challenging the order of conviction and sentence passed by learned Assistant Sessions Judge, Anandpur in S.T. Case No.32/107 of 1992. Vide the said judgment, the appellant herein has been convicted and sentenced to undergo R.I. for 10 years and pay a fine a Rs.500/- in default R.I. for 3 (three) months for the offences U/s.313 of the Indian Penal Code. The appellant is also convicted to undergo R.I. for 3 (three) years and pay a fine of Rs.500/- in default R.I. for 3 (three) months for the offence U/s-493 of the Indian Penal Code.

4. While assailing the impugned judgment, learned counsel appearing for the appellant contended that basing on the complaint lodged by the father of the victim before the S.D.J.M., Anandpur, 1CC Case No.33 of 1991 was registered. In the said complaint



case, since cognizance was taken for the offences U/s.313/493 of IPC, the matter was committed to the Court of Sessions and after such commitment, charge was framed against the present appellant for the offences U/s.313/493 of IPC. The matter thereafter was transferred to the Court of learned Asst. Sessions Judge, Anandpur in S.T. Case No.32/107 of 1992 for trial.

4.1. It is contended that the complaint case was filed by the father of the victim in 1CC Case No.33 of 1991 with the allegation that the appellant kept physical relationship with the victim under pretext of marriage and accordingly the victim became pregnant for 4 (four) months. It is contended that on coming to know that the victim has become pregnant, the appellant administered some medicines on 03.03.1991 to the victim and thereby causing termination of the pregnancy.

4.2. It is contended that even though in the complaint petition so filed, allegation was made that



the appellant administered some medicines on the victim on 03.03.1991, but the complaint petition was only filed on 22.03.1991 and delay in making the complaint was not satisfactorily explained. It is accordingly contended that in absence of any explanation given by the complaint with regard to such delay, the complaint petition should not have been entertained. In support of the aforesaid submission, learned counsel for the appellant relied on the decision reported in (1972) 3 SCC (**Thulia Kali Vs. State of Tamilnadu**), Page-393. Hon'ble Apex Court in Para-12 of the decision has held as follows:-

“12. It is in the evidence of Valanjiaraju that the house of Muthuswami is at a distance of three furlongs from the village of Valanjiaraju. Police Station Valavanthi is also at a distance of three furlongs from the house of Muthuswami. Assuming that Muthuswami PW was not found at his house till 10.30 p.m. on March 12, 1970, by Valanjiaraju, it is not clear as to why no report was lodged by Valanjiaraju at the police station. It is, in our opinion, most difficult to believe that even though the accused had been seen at 2 p.m. committing the murder of Madhandi deceased and a large number of villagers had been told about it soon thereafter, no report about the occurrence could be lodged till the following day. The police station was less than two miles from the village of Valanjiaraju and Kopia and their failure to make a report to the police till the following day would



tend to show that none of them had witnessed the occurrence. It seems likely, as has been stated on behalf of the accused, that the villagers came to know of the death of Madhandi deceased on the evening of March 12, 1970. They did not then know about the actual assailant of the deceased, and on the following day, their suspicion fell on the accused and accordingly they involved him in this case. First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained. In the present case, Kopia, daughter-in-law of Madhandi deceased, according to the prosecution case, was present when the accused made murderous assault on the deceased. Valanjia Raju, step-son of the deceased, is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of them, nor any other villager, who is stated to have been told about the occurrence by Valanjia Raju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance, in our opinion, would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused-appellant upon it."



4.3. It is also contended that no evidence was laid by the P.W. 1 that the written report since was not accepted by the local police, the complaint was filed. Therefore, the complaint petition at the threshold should not have been entertained. It is also contended that even though the learned Trial Court held the victim as a minor girl aged about 13 years in the year 1991, but no single document was produced in support of her age.

4.4. It is also contended that prior to taking cognizance for the offences under Section 493/313 of the Indian Penal code, learned SDJM since never followed the provisions contained U/s.210 of the Cr.P.C.. Therefore, the order taking cognizance and consequential framing of charge with the order of conviction and sentence is not sustainable in the eye of law. It is also contended that age of the victim was never proved with due determination of her age by conducting ossification test by a medical officer. Therefore, it cannot be said that the victim was a



minor by the time the alleged incident occurred in the year 1991.

4.5. Learned counsel for the Appellant also contended that all the witnesses examined by the prosecution starting from P.W. 1 to 6 are all interested witnesses and no independent witnesses were examined in support of the charge framed against the appellant. It is also contended that since I.O. of the case has not been examined it caused prejudice to the appellant.

4.6. It is contended that the ingredients of Section 493 of IPC having not been proved by the prosecution, conviction and sentence of the appellant for the offence U/s.493/313 of IPC cannot sustain in the eye of law.

4.7. Making all these submissions, learned counsel for the appellant contended that the impugned order of conviction and sentence passed vide judgment dated 12.02.1993 is illegal and unsustainable in the eye of law and requires interference of this Court. It



is also contended that by virtue of the order passed on 03.08.1993, petitioner is continuing on bail and in the meantime more than 31 years have passed and there is no allegation that the appellant has violated any of the terms and conditions of the bail.

4.8. A further submission was also made that taking into account age of the appellant at the time of commission of offence, the appellant will now be aged about more than 63 years. Therefore, a lenient view be taken and if at all the order of conviction and sentence is upheld by this Court, the appellant be extended with the benefit of Probation of Offenders Act, 1958.

5. Mr. S.P. Das, learned Addl. Standing Counsel on the other hand basing on the available materials, contended that in view of the evidence laid by the prosecution more particularly the evidence of P.W. 2-victim, the appellant has been rightly convicted and sentenced for the offences U/s.313/493 of IPC. It is contended that in the evidence laid by the P.W. 2 in



her cross-examination, implication of the accused-appellant in the alleged offence is fully proved and on the face of the such statement of the victim, no further corroboration is required with examination of any other witness lest independent witnesses. Statement made by the victim in her cross-examination reads as follows:-

“3. Except the accused no other person had access to my house. The accused had instructed me not to disclose about this fact of marriage to me by garlanding. I had never gone to the house of the accused. I informed the accused about stoppage of my menstruation. The accused told that I conceived. I started suffering soon after the stoppage of the menstrual cycle.

4. I felt weak in my body. I did not take any medicine at that time. I did not complain about the weakness of my body to my parents.

5. The bijesthali of the deity Thanapati is situated in the middle of the village basti. There are residential houses near the bijesthali of the deity. After the sun-set i.e. about evening time the accused garlanded me. The accused used to cohabit with me taking advantage of the absence of my parents. The accused used to cohabit with me during day time as well as night time.

6. The neighbours knew about our relationship. None of the neighbours had ever objected. It is not a fact that the accused was not pulling on well with my father prior to the incident. It is not a fact that my father and uncle had ever assaulted the accused prior to the incident.

7. Dhruva Jena, Barinia Jena, and the accused are our neighbours. The accused



resides after 2 to 3 houses of our house. I have never disclosed about our relationship to any of the family members of accused. It is not a fact that the accused never married me by garlanding, cohabited with me, gave medicines resulting miscarriage.

8. It is not a fact that I did not state before the committing court that the accused was always enticing me to marry and that the accused gave me the tablets with the impression that those would improve my health condition; and that my father came to my house in the evening that day and that I got myself treated under Dr. Bal, M.O., Fakirpur P.H.C.; and that Dr. Bal disclosed about termination of 4 months pregnancy.

9. I have never disclosed about my relationship to any of my girlfriends. It is not a fact that Panas Jena and others were in visiting terms to my house.

10. Panas Jena happens to be my God-brother(Dharam Bhai)."

5.1. It is also contended that evidence of the victim-P.W. 2 has been well corroborated by his father who was examined as P.W. 1 and by the mother who was examined as P.W. 3. In Para-6 of her cross-examination, P.W. 3 has submitted as follows:-

"6. P.W. 1 informed the matter to police after about 4 days of the incident. P.W. 2 was taken to hospital after 6 days of the incident. It is not a fact that the accused did not marry P.W. 2 in the temple of the deity Thanapati by garlanding and that P.W. 2 did not conceive through the accused and that there was no termination of pregnancy on the 4th month of her pregnancy."

5.2. It is also contended that P.W. 1 in his evidence in chief in Para-4 clearly stated about the alleged



incident committed by the appellant-accused.

Statement of P.W. 1 in Para-4 of the evidence reads as follows:-

5.3. Learned Addl. Standing Counsel further basing on the evidence laid by P.W. 7, who happens to be the Doctor, contended that in his evidence P.W. 7 clearly admitted that with taking of Chloroquine Tablet, there is possibility of abortion. Statement of the P.W. 7 in Para-1, 2 and 5 reads as follows:-



diagnosis. Ext-1 is the O.P.D. ticket. Ext-1/1 is my signature. Ext-2 is the prescription.

2. *Pregnancy of 4 months can be terminated by taking chloroquine tablets. The pregnancy was in the process of termination at the time of my examination.*

5. *If one would swallow chloroquine tablets, then there is possibility of abortion. Effectiveness of a tablet depends upon the age of pregnancy and the dose.”*

5.4. Placing reliance on the evidence laid by the P.Ws., more particularly evidence of victim-P.W. 2 and the Doctor-P.W. 7, learned Addl. Standing Counsel contended that the appellant has been rightly convicted and sentenced which requires no interference. Learned Addl. Standing Counsel in support of his aforesaid submission relied on the decision reported in **(2013) 1 SCC 562 (Ram Chandra Bhagat v. State of Jharkhand)**. Hon’ble Apex Court in Para-17, 18 & 19 of the decision has held as follows:

“17.Stroud's Judicial Dictionary (5th Edn.) explains “deceit” as follows:

“Deceit.—“Deceit”, deceptio, fraus, dolus, is a subtle, wily shift or device, having no other name; hereto may be drawn all manner of craft, subtilly, guile, fraud, wiliness, slight, cunning, covin, collusion, practice, and offence used to deceive another man by any means, which hath none other proper or particular name but offence’.”



Black's Law Dictionary (8th Edn.) explains "deceit" thus:

"Deceit, n.—(1) The act of intentionally giving a false impression <the juror's deceit led the lawyer to believe that she was not biased>. (2) A false statement of fact made by a person knowingly or recklessly (i.e. not caring whether it is true or false) with the intent that someone else will act upon it."

In The Law Lexicon by P. Ramanatha Aiyar (2nd Edn., Reprint 2000), "deceit" is described as follows:

"Deceit.—Fraud; false representation made with intent to deceive; 'Deceit, "deception of fraud" is a subtle, wily shift or device, having no other name. In this may be included all manner of craft, subtlety, guile, fraud, wiliness, slight, cunning, covin, collusion, practice and offence used to deceive another may be by any means, which hath none other proper or particular name but offence'."

18. "Deceit", in the law, has a broad significance. Any device or false representation by which one man misleads another to his injury and fraudulent misrepresentations by which one man deceives another to the injury of the latter, are deceit. Deceit is a false statement of fact made by a person knowingly or recklessly with intent that it shall be acted upon by another who does act upon it and thereby suffers an injury. It is always a personal act and is intermediate when compared with fraud. Deceit is sort of a trick or contrivance to defraud another. It is an attempt to deceive and includes any declaration that misleads another or causes him to believe what is false.

19. If a woman is induced to change her status from that of an unmarried to that of a married woman with all the duties and obligations pertaining to the changed relationship and that result is accomplished by deceit, such woman within the law can be said to have been deceived and the offence under Section 493 IPC is brought home. Inducement by a person deceitfully to a woman to change her status from unmarried woman to a lawfully married woman and on that inducement making her cohabit with him in the belief that she is lawfully married to him is what constitutes an offence under Section 493. The victim woman has been induced to do that which, but for the false practice, she would not have done and has been led to change her social and domestic status. The ingredients of Section 493 can be said to be fully satisfied when it is proved — (a) deceit causing a false



belief of existence of a lawful marriage, and (b) cohabitation or sexual intercourse with the person causing such belief. It is not necessary to establish the factum of marriage according to personal law but the proof of inducement by a man deceitfully to a woman to change her status from that of an unmarried to that of a lawfully married woman and then make that woman cohabit with him establishes an offence under Section 493 IPC.”

5.5. Learned Addl. Standing Counsel relied on another decision of the Hon’ble Apex Court reported in **(2020) 3 SCC 736 (Arun Singh and Others Vrs. State of Uttar Pradesh)**. Hon’ble Apex Court in Para-18 to 23 of the decision has held as follows:

“18. Section 493 reads as under:

“493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

19. A plain reading of the section goes to show that in order to constitute an offence under this section, it has to be demonstrated that a man has deceitfully caused any woman, who is not lawfully married to him, to believe that she is lawfully married wife and thereby to cohabit with him. In other words, the accused must induce a woman, not lawfully married to him, to believe that she is married to him and as a result of such misrepresentation, woman should believe that she was lawfully married to the man and thus there should be cohabitation or sexual intercourse.

20. A three-Judge Bench of this Court in *Ram Chandra Bhagat v. State of Jharkhand* [*Ram Chandra Bhagat v. State of Jharkhand*, (2013) 1 SCC 562 : (2013) 1 SCC (Cri) 551] after analysing



the provisions of Section 493 IPC, has observed as under: (SCC pp. 565 & 568, paras 7 & 19)

“7. ... Upon perusal of Section 493 IPC, to establish that a person has committed an offence under the said section, it must be established that a person had deceitfully induced a belief to a woman, who is not lawfully married to him, that she is a lawfully married wife of that person and thereupon she should cohabit or should have had sexual intercourse with that person. Looking at the aforestated section, it is clear that the accused must induce a woman, who is not lawfully married to him, to believe that he is married to her and as a result of the aforestated representation, the woman should believe that she was lawfully married to him and there should be cohabitation or sexual intercourse as a result of the deception.

19. If a woman is induced to change her status from that of an unmarried to that of a married woman with all the duties and obligations pertaining to the changed relationship and that result is accomplished by deceit, such woman within the law can be said to have been deceived and the offence under Section 493 IPC is brought home. Inducement by a person deceitfully to a woman to change her status from unmarried woman to a lawfully married woman and on that inducement making her cohabit with him in the belief that she is lawfully married to him is what constitutes an offence under Section 493. The victim woman has been induced to do that which, but for the false practice, she would not have done and has been led to change her social and domestic status. The ingredients of Section 493 can be said to be fully satisfied when it is proved — (a) deceit causing a false belief of existence of a lawful marriage, and (b) cohabitation or sexual intercourse with the person causing such belief. It is not necessary to establish the factum of marriage according to personal law but the proof of inducement by a man deceitfully to a woman to change her status from that of an unmarried to that of a lawfully married woman and then make that woman cohabit with him establishes an offence under Section 493 IPC.”

21. The essence of an offence under Section 493 IPC is, therefore, practice of deception by a man on a woman as a consequence of which the woman is led to believe that she is lawfully married to him



although she is not and then make her cohabit with him.

22. Deceit can be said to be a false statement of fact made by a person knowingly and recklessly with the intent that it shall be acted upon by another who on believing the same after having acted thereupon suffers an injury. It is an attempt to deceive and includes such declaration and statement that misleads others or causes him to believe which otherwise is false and incorrect.

23. In other words, to constitute an offence under Section 493 IPC, the allegations in the FIR must demonstrate that the appellant had practised deception on the daughter of the complainant causing a false belief of existence of lawful marriage and which led her to cohabit with him."

6. Having heard learned counsel for the parties and after going through the materials available on record, this Court finds that prosecution case was set in motion with initiation of a complaint case in 1CC Case No.33 of 1991 before the learned SDJM, Anandpur. As found, since cognizance was taken against the accused-appellant for the offence U/s.313/493 of IPC, the matter was committed to the Court of Sessions. As found, charge was framed against the appellant for the offence U/s.313/493 of the IPC and prosecution in order to prove the case, examined 7 nos. of P.Ws. This Court after going through the evidence of the victim-P.W.2 vis-à-vis the evidence of the Doctor-P.W.7, finds that the victim



clearly implicated the accused-appellant for having sexual relationship with her and administering the medicine to terminate the pregnancy on 03.03.1991. Since the evidence of P.W. 2 has not been discarded in her cross-examination by the appellant-accused, this Court in view of such uncontroverted evidence of the victim coupled with the statement of P.W. 1, 3 and 7, is of the view that the appellant has been rightly sentenced to undergo the imprisonment vide the impugned judgment dated 12.02.1993. Accordingly, this Court finds no illegality or irregularity with the judgment dated 12.02.1993 and is not inclined to interfere with the same.

6.1. However, while not being inclined to interfere with the same, taking into account the incident being of the year 1991 and since in the meantime more than 33 years have passed, this Court directs for release of the appellant under the provisions of Probation of Offenders Act, 1958. This Court accordingly directs the appellant to appear before the



learned Asst. Sessions Judge, Anandpur for his release under the provisions of Probation of Offenders Act, 1958, within a period of 1 (one) month from the date of receipt of this order. On such surrendering of the appellant, learned Asst. Sessions Judge shall do the needful in terms of the provisions contained under the Probation of Offenders Act, 1958.

7. The Appeal accordingly stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 17th of February, 2025/Basudev

Signature Not Verified

Digitally Signed
Signed by: BASUDEV SWAIN
Designation: SR. STENO
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 20-Feb-2025 13:08:43

