



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.244 of 1997
CNR-ODHC010003431997

(In the matter of an application under Section 374(2) of the Criminal Procedure Code, 1973)

Babulal Bhoi

.....

Appellant

-Versus-

State of Odisha

.....

Respondent

For the Appellant : Mr. Sumit Lal, *Amicus Curiae*

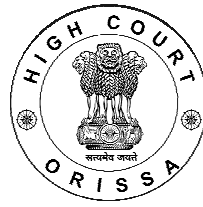
For the Respondent : Mr. Aurobinda Mohanty, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 11.08.2026 : Date of Judgment: 25.08.2026

S.S. Mishra, J. The present Criminal Appeal is arising out of the judgment dated 20.10.1997 passed by the learned Sessions Judge, Bolangir in Sessions Case No.2 of 1997, whereby the appellant has been convicted for the offences punishable under Section 376 of the Indian Penal Code and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “the SC/ST Act”) and has been sentenced to undergo rigorous imprisonment for seven years and three years respectively. Both the sentences have been directed to run concurrently.



2. The present appeal has been pending since 1997. When the matter was called for hearing, Mr. H.S. Mishra, learned counsel for the appellant, submitted that he has no instruction from his client in this matter. So, he recuses from this matter. Therefore, on 11.08.2026, this Court requested Mr. Sumit Lal, learned counsel, who was present in Court to assist the Court as Amicus Curiae. He has readily accepted the same and after obtaining entire record, assisted the Court very effectively. He has also filed written notes of submission along with relied upon judgments. This Court records appreciation for the meaningful assistance rendered by Mr. Lal.

3. Heard Mr. Sumit Lal, learned Amicus Curiae appearing for the appellant and Mr. Aurobinda Mohanty, learned Additional Standing Counsel appearing for the Respondent-State.

4. The prosecution case, in brief, is that the prosecutrix, P.W.1, was married to P.W.6-Jayaram Sahani and was residing with him. On 02.03.1996, while she was allegedly present in the vegetable garden of her husband at Podhmunda, the appellant is alleged to have approached her, caught hold of her saree, dragged her into a hut situated in the garden and forcibly committed sexual intercourse with



her. It was further alleged that in the course of the occurrence her blouse was torn, her religious thread was snapped and her glass bangles were broken. The prosecution further alleged that P.W.6 and P.W.10 arrived at the spot and the appellant thereafter fled from the place of occurrence. On the basis of the oral report lodged by P.W.1 on 04.03.1996, Khaprakhol P.S. Case No.20 of 1996 was registered for the offences under Section 376 of the IPC and Section 3(1)(xi) of the SC/ST Act.

5. The prosecution examined eleven witnesses. The prosecution also relied upon Exts.1 to 10, and material exhibits M.Os I to VI. The defence, on the other hand, is one of denial.

6. The learned trial Court, upon appreciation of the evidence adduced by the prosecution, held the prosecution case to have been established beyond reasonable doubt. The learned trial Court placed substantial reliance upon the testimony of the prosecutrix (P.W.1), finding her evidence cogent, consistent and trustworthy and observing that her cross-examination had not materially shaken her version. The evidence of P.Ws.2, 6 and 10 was treated as corroborative of her presence with the appellant at the place of occurrence. The learned



trial Court also relied upon the medical evidence of P.W.5, who had found abrasions on the chest and right elbow and a bruise on the back of the prosecutrix, and opined that such injuries could be caused by forcibly laying her on a rough surface. The seizure of the broken bangles and religious thread from the spot, coupled with the detection of semen stains on the saree of the prosecutrix and the lungi of the appellant, was also relied upon as corroborative circumstances supporting the allegation of forcible sexual intercourse. The defence plea that the sexual act was consensual was rejected. The learned trial Court further disbelieved Exts.A, B and C and the evidence of D.Ws.1 and 2 relating to the caste meeting, holding that there were substantial discrepancies in the documents and that the same appeared to have been subsequently manufactured to support the defence version. Consequently, the learned trial Court held that the prosecution had proved the commission of rape under Section 376 IPC beyond reasonable doubt. It further held that the prosecutrix belonged to a Scheduled Tribe and the appellant was not a member of a Scheduled Caste or Scheduled Tribe and concluded that by committing rape upon the prosecutrix, the appellant had dishonoured



and outraged her modesty and exposed her to contempt and indignity, thereby attracting Section 3(1)(xi) of the SC/ST (Prevention of Atrocities) Act, 1989. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

“Thus ocular accounts of P.Ws.1, 2, 6 and 10, medical evidence available from the mouth of P.W.5 and seizure of incriminating material exhibits Exts.1 to VI establish beyond reasonable doubt that the prosecutrix was subjected to forcible sexual intercourse without her consent, against her will and inspite of her stiff resistance. Therefore, prosecution has well substantiated the allegation of commission of offence of rape under section 376, I.P.C. by the accused against the victim woman P.W.1.

18. There is absolutely no dispute that P.W.1 belongs to SAHARA caste and is a member of Scheduled Tribe. Assertions on this score made by P.W.1 find support from the evidence of P.W.1 as well as D.Ws.1 and 2. It is also admitted by the accused that he is not a member of any Scheduled Caste or Scheduled Tribe. By committing rape on her the accused not only intended to dishonour and outrage the victim woman's modesty but also exposed her to utter contempt and indignity even in the estimation of her husband P.W.6. Therefore, prosecution has also established commission of offence under section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 beyond reasonable doubt.

19. In the result, accused Babulal Bhoi is found guilty of offences under section 376, I.P.C. and section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes



(Prevention of Atrocities) Act, 1989 and convicted thereunder.”

7. Mr. Lal, learned *Amicus Curiae* appearing for the appellant submitted that the impugned judgment of conviction is unsustainable in law as the learned trial Court failed to appreciate the evidence in its entirety and placed undue reliance upon the testimony of the prosecutrix while overlooking the material contradictions and circumstances emerging from the evidence of the prosecution witnesses themselves. He contended that the evidence of P.W.6, the husband of the prosecutrix, materially contradicts the prosecution version, as he stated that he had found the prosecutrix and the appellant together in the cottage and suspected an illicit relationship between them, pursuant to which a caste meeting was convened. He placed reliance upon the evidence of D.Ws.1 and 2 and Exts.A and B relating to the caste meeting, which, according to the learned *Amicus Curiae*, supported the defence plea that the sexual act was consensual rather than forcible. He further submitted that the prosecutrix herself admitted in cross-examination that the appellant had not held her while removing his apparel and that she had neither assaulted him nor



attempted to use any of the agricultural implements available in the cottage. The learned Amicus Curiae argued that these circumstances, coupled with the evidence of the Investigating Officer that he found no other sign of violence at the place of occurrence except the broken bangles and torn religious thread, created a serious doubt regarding the prosecution allegation of forcible sexual intercourse.

8. Mr. Lal further contended that the medical evidence had been selectively relied upon by the learned trial Court. Although P.W.5 found certain abrasions and bruises on the prosecutrix, there was no injury on her vagina or vulva, while P.W.4, who examined the appellant, found no injury on his private parts, knees, elbows, face or neck. Thus, the medical evidence, at best, established sexual contact but could not conclusively establish that the intercourse was forcible or without consent. He also challenged the conviction under Section 3(1)(xi) of the SC/ST Act on the ground that the statutory requirement of a valid investigation under Rule 7 of the SC/ST (Prevention of Atrocities) Rules, 1995 had not been complied with, since the investigation was conducted by P.W.11, a Sub-Inspector, whereas the Rules require investigation of an offence under the Act by a police



officer not below the rank of Deputy Superintendent of Police. He relied upon the law laid down by the Hon'ble Supreme Court in *State of Madhya Pradesh v. Babbu Rathore & Anr.*, in *Crl. Appeal No.123 of 2020*, it was urged that the investigation into the offence under the SC/ST Act by an officer below the prescribed rank was illegal and consequently the conviction under Section 3(1)(xi) could not be sustained. On these grounds, learned Amicus Curiae prayed for setting aside the impugned judgment of conviction and acquitting the appellant of the charges.

9. Before examining the rival submissions on the charge under Section 376 of the IPC, it would be appropriate to first consider the legality of the conviction recorded under Section 3(1)(xi) of the SC/ST Act. Section 9 of the SC/ST Act confers power upon the State Government to confer, by notification, powers of investigation in respect of offences under the Act upon specified police officers. In exercise of the rule-making power, Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 prescribes the rank of the investigating officer. Rule 7(1), in clear terms, provides that an offence committed under the Act shall be



investigated by a police officer not below the rank of Deputy Superintendent of Police. The rule further contemplates appointment of such investigating officer by the State Government, Director General of Police or Superintendent of Police, having regard to his experience, ability and sense of justice.

10. The Honorable Supreme Court, while considering the scope of Section 9 of the Act read with Rule 7 of the Rules, has authoritatively held in *State of Madhya Pradesh v. Babbu Rathore & Anr.*, in *Criminal Appeal No.123 of 2020*, that Rule 7 prescribes that the investigation of an offence under the Act shall be conducted by a police officer not below the rank of Deputy Superintendent of Police and that an officer below that rank cannot act as the investigating officer in respect of an offence under the Act. The Supreme Court reiterated that investigation of an offence under Section 3 of the SC/ST Act by an officer not appointed in terms of Rule 7 is illegal and invalid.

The same principle had earlier been enunciated by the Supreme Court in *State of M.P. v. Chunnilal @ Chunni Singh*, reported in *(2009) 12 SCC 649*, which was expressly noticed and



relied upon in **Babbu Rathore**. The Supreme Court held that Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code of Criminal Procedure, when read together, lead to the conclusion that investigation of an offence under Section 3 of the SC/ST Act by an officer not appointed in terms of Rule 7 is illegal and invalid. It was held thus:-

“6. By virtue of its enabling power it is the duty and responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the Rules provided rank of investigation officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer.

The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation to an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under the IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non-investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in appropriate Court for the offences punishable under the IPC notwithstanding investigation and the charge sheet being not liable to be



accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence.”

Applying the aforesaid principle to the facts of the present case, this Court has no hesitation in holding that the investigation undertaken by P.W.11, a Sub-Inspector, in respect of the offence under Section 3(1)(xi) of the SC/ST Act was contrary to the express mandate of Rule 7 of the 1995 Rules. Therefore, the non-compliance with Rule 7, by itself, operates against the conviction recorded under Section 3(1)(xi) of the SC/ST Act.

11. In view of the aforementioned, this Court arrived at an inevitable conclusion that the conviction recorded by the learned trial Court against the appellant of the charges punishable under Section 3(1)(xi) of the SC & ST Act is not sustainable in the eye of law. Hence, the appellant is acquitted of the said charges. Now, the question regarding the validity of the findings recorded by the learned trial Court regarding the guilt of the appellant for the offence punishable under Section 376 of IPC needs to be analysed on the basis of the evidence on record.



12. To appreciate the evidence on record in regard to the said offence, two aspects need to be ascertained on the basis of materials available record.

Firstly, whether the learned Sessions Judge, Bolangir has rightly analysed the evidence to hold that the prosecution proved the offence of rape against the appellant beyond all reasonable doubt.

Secondly, from the evidence on record, whether the defence plea of consent is established or not.

13. To deal with the first issue, the evidence of the victim-P.W.1 needs to be appreciated. P.W.1 in her testimony has deposed that about one year back, at about 9 a.m., on a Saturday, she was alone in the vegetable garden and was plugging tomatoes. The accused Babulal came there and moved around her. Thereafter, he dragged her to the cottage belonging to her. He caught hold of her saree from behind and physically dragged her inside the hut. She raised alarm upon which the accused threatened to remain silent. The accused removed her saree and tore her blouse; he laid her on the ground. Thereafter, he removed his lungi and chadi which he was wearing. In that process, she sustained injuries on her elbows, back and chest



when the accused forcibly pinned her down on the ground. She further deposed that the accused, laying her down on the ground, forcefully committed rape on her despite protest. All of a sudden, her husband-P.W.6- Jayaram and her brother-P.W.10-Jenamani Naik reached at the spot. Seeing the accused Babulal, both P.W.6 and P.W.10 got annoyed. There was exchange of hot words between them. At that point of time, she narrated regarding the entire occurrence to her husband-P.W.6. In the cross-examination, she deposed that accused did not hold her but he was near to her when he removed his lungi and chadi. At that time, when she tried to get up, the accused again caught hold of her saree. To the suggestion of the defence, she has also deposed that she did not physically resist the act either by scratching the accused with her nail or forcefully pushing her. This part of her evidence corroborated with the evidence of the doctor-P.W.5. The prosecutrix was examined by P.W.5 after two days of the incident and he found the following injuries:

(ii) There were injury marks like abrasions found on her chest, right elbow, back and on the left breast. However, no injury was found either on her vagina or valva.



(iii) The injury on the right wrist was although found to be simple, but it was measured to be 1/8" X 1/6".

Similarly, the injury on the right elbow was measured to be 1/6" X 1/4" whereas the injury at the back of the prosecutrix was measured to be 15" X 1".

The doctor further deposed that the abrasions and bruises found on P.W.1, prosecutrix could be possible by commission of rape on her by forcefully laying her down on the ground having rough surface.

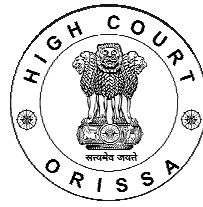
14. Since the prosecutrix very specifically attributed the overt act to the accused appellant and described the incident in minute detail which stood corroborated with the evidence of the doctor, who found the corresponding injuries on her body, the evidence of the prosecutrix cannot be doubted in regard to the occurrence. Therefore, the commission of the offence of rape on the basis of the evidence on record cannot be ruled out.

15. Having found that the appellant has committed the sexual intercourse with the prosecutrix-P.W.1, the vital question to be considered is whether such sexual encounter had happened on the consent of the prosecutrix or not.



16. To appreciate the same, the evidence of two post-occurrence witnesses, namely, P.W.6 and P.W.10 needs to be carefully appreciated. P.W.6 is the husband of P.W.1 the prosecutrix. He, in his evidence has deposed that when he along with P.W.10 reached at the vegetable garden, they found accused Babulal coming out from the cottage. P.W.1 also came out thereafter. He entertained suspicion on seeing them emerging out of the cottage in quick succession. He entered into the cottage and told P.W.10 that his cousin sister was engaged in illicit relationship. P.W.10 replied that he would be a witness to such conduct. Further, he deposed that his wife P.W.1 was a lady of immoral character. Therefore, he sought for divorce from her before the Panchayat. On the following day, i.e., on Sunday, a meeting of the community was called for on the basis of his written complaint before them which is Ext.A. The prosecutrix appeared in the meeting. On being enquired, she admitted her guilt.

17. P.W.10, the cousin brother of the prosecutrix had deposed that P.W.6 asked him to accompany him to his bari. As soon as they reached near the bari, they could hear the noise from inside the cottage belonging to P.W.6. P.W.1, the prosecutrix was shouting to



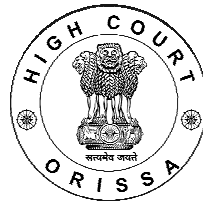
leave her. He rushed towards the hut and found the accused with P.W.1 inside the hut. The wearing apparel of P.W.1 was torn and then the accused fled away. However, in the cross-examination, he admitted that the Panchayat was called on the following day. A faisalanama Ext.B was also written. P.W.6 wanted to divorce P.W.1, being a woman of immoral character. He also deposed that P.W.1 admitted to such allegation against her character for which the caste committee decided for divorce to be granted by P.W.6. Very importantly, this witness has stated that P.W.1 went to the accused's house soon after conclusion of the committee meeting at night. None accompanied her. He along with another cousin brother Birendra, subsequently went to the house of the accused.

18. To further establish the defence of consensual sexual encounter by the appellant with P.W.1, the defence has examined the Vice-President of the Caste Committee as D.W.1. In his deposition, D.W.1 has stated that the caste committee was called on the basis of a written complaint Ext.A given by P.W.6. In the meeting, P.W.6 has narrated the incident, *inter alia*, stating that his wife, P.W.1 and accused were inside the hut and were engaged in illicit relationship. When he



discovered that he attempted to assault his wife, P.W.10 restrained him. P.W.1 has admitted that she was with the accused in the hut by her own volition. The admission of P.W.1 regarding the consensual sexual encounter with the accused has been admitted before D.W.1.

Similarly, one of the members of the caste committee was also examined as D.W.2. In his testimony, he has deposed that in the meeting, P.W.6 alleged that though he had asked P.W.1 to go to the market on Saturday and P.W.1 was found engaged in love talk with the accused in the hut in his garden when P.W.6 and P.W.10 went there. He deposed that P.W.6 got annoyed and tried to assault the accused. However, P.W.10 obstructed him. Being asked, P.W.10 has admitted that his sister P.W.1 and the accused were present in the hut. He further deposed that he along with D.W.1 and other villagers went to ascertain regarding the incident from P.W.1, the prosecutrix and they confirmed from P.W.1 about the allegation. Thereafter, P.W.1 also came to the meeting and in that meeting as well, she admitted the allegation to be true on the basis of which P.W.7 having heard P.W.1, asked her not to visit their house and also a faisalanama Ext.B was reduced down in writing.



19. From the evidence of P.Ws.6, 10 and D.Ws.1 and 2, it is eminently clear that the sexual encounter, which had taken place in the cottage of P.W.6 appears to be a consensual act particularly because from perusal of the evidence on record, it is found that when the husband of the victim P.W.6 saw the accused and the victim also at the cottage, the victim did not complain to the husband regarding such incident. Rather, she narrated the said fact to her husband when she was only asked about the same. From the deposition of the husband of the victim and the other witnesses besides the Panch faisalanama of Ext.B and the written complaint Ext.A, it appears that the accused had illicit relationship with the victim.

20. The medical evidence, which stares on the face of record to establish the offence of rape is only indicates minor injuries appeared on the body of the victim, which may be consistent to the agriculture work or because of a consensual intimacy. This further strengthens from the fact that the accused bore no injuries on his body. Further, from the evidence of P.W.11, the Investigating Officer, he found there was no sign of any violence in the cottage. However, he found some broken bangles and religious thread. There was no mark of violence



in the cottage. Since the conviction under Section 376 of IPC requires proof of absence of consent beyond all reasonable doubt, the evidence as discussed above creates a reasonable doubt regarding the incident as has been accounted by prosecutrix P.W.1.

P.W.1 herself in her cross-examination has stated that she has not dealt any blow or scratched to the accused with her nail. No physical resistance was shown by her during such act and the evidence of P.W.4 further strengthens non-violence at the time of the sexual act. P.W.4, who medically examined the accused, has deposed that there was no injury on the private part of the accused and also there was no injury detected on his knee, elbow, face or neck. Even P.W.5, the doctor, who examined the prosecutrix, found no injury mark on the vagina or valva of the prosecutrix.

Mr. Sumit Lal, learned Amicus Curiae appearing for the appellant, has relied upon various judgments to substantiate his case on the basis of the evidence as discussed above. Relying upon paragraphs-40, 41, 42 and 43 of the judgment of the Hon'ble Supreme Court in the case of *Krishan Kumar Malik vs. State of Haryana*, reported in (2011) 7 SCC 130, Mr. Lal submitted that the scientific



evidence in the present case is lacking to establish the prosecution case. Paragraphs- 40, 41, 42 and 43 of the said judgment read thus:

“40. The appellant was also examined by the doctor, who had found him capable of performing sexual intercourse. In the undergarments of the prosecutrix, male semen were found but these were not sent for analysis in the forensic laboratories which could have conclusively proved, beyond any shadow of doubt with regard to the commission of offence by the appellant. This lacuna on the part of the prosecution proves to be fatal and goes in favour of the appellant.

41. It is pertinent to mention here that the appellant is a physically handicapped person to the extent of 55% as per doctor's report, and this fact is not controverted by the prosecution. This much of handicap of any person would be easily noticeable, which the prosecutrix failed to mention at all. In fact, this would have been much better identification of the appellant, which the prosecutrix did not mention at all.

42. On account of the aforesaid shortcomings, irregularities and lacuna on the part of the prosecution, in our considered opinion, it will not be safe to convict the appellant.

43. With regard to the matching of the semen, we find it from Taylor's Principles and Practice of Medical Jurisprudence, 2nd Edn. (1965) as under:

“Spermatozoa may retain vitality (or free motion) in the body of a woman for a long period, and movement should always be looked for in wet specimens. The actual time that spermatozoa may remain alive after ejaculation cannot be precisely defined, but is usually a matter of hours. Seymour claimed to have seen movement in a fluid as much as 5 days old. The detection of dead spermatozoa in



stains may be made at long periods after emission, when the fluid has been allowed to dry. Sharpe found identifiable spermatozoa often after 12 months and once after a period of 5 years. Non-motile spermatozoa were found in the vagina after a lapse of time which must have been 3 and could have been 4 months."

Had such a procedure been adopted by the prosecution, then it would have been a foolproof case for it and against the appellant."

Mr. Lal, learned Amicus Curiae has drawn the attention of this Court to Ext.10, the chemical examination report. He submitted that although P.W.1, the prosecutrix has stated in his examination-in-chief, that while the accused was committing rape, semen stain fell on her saree. The said saree worn by P.W.1 was seized and lungi worn by the accused was also seized and sent for chemical examination. Ext.10 is the chemical examination report, which reveals that no opinion could be given regarding the presence of semen either in the saree mark A or lungi mark B.

In view of the aforementioned, the nature of evidence, the inevitable conclusion that is to be drawn on the analysis of the evidence is that although the appellant and P.W.1 had sexual intercourse on the date and time, as the witnesses have deposed, but



the said sexual encounter appears to be consensual one. Therefore, the appellant is entitled to the benefit of doubt.

21. Accordingly, the impugned judgment of conviction and the order of sentence dated 20.10.1997 passed by the learned Sessions Judge, Bolangir in Sessions Case No.2 of 1997 in so far as the offence under Section 376 of IPC is concerned, the same stands set aside and the appellant is acquitted of all the charges. The bail bond stands discharged.

22. The Criminal Appeal is allowed.

23. This Court acknowledges the effective and meaningful assistance rendered by Mr. Sumit Lal, learned Amicus Curiae in this case. Learned Amicus Curiae is entitled to an honorarium of Rs.7,500/- (Rupees seven thousand five hundred) to be paid as a token of appreciation.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 25th August, 2026/Subhasis Mohanty

Signature Not Verified

Digitally Signed
Signed by: SUBHASIS MOHANTY
Designation: Personal Assistant
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 25-Aug-2026 16:29:22

