

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.76 of 2019

Khudia @ Khudiram Tudu Appellant

Mr. J. Kamila, Advocate.

-versus-

State of Odisha Respondent

Mr. M.R. Mishra
Additional Standing Counsel.

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
08.08.2023**

Order No.

14.

This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the appellant and learned counsel for the respondent. सत्यमेव जयते

Perused the letter received from the 3rd Additional Sessions Judge, Balasore dated 20.07.2023.

The appellant Khudia @ Khudiram Tudu faced trial in the Court of learned 3rd Additional Sessions Judge, Balasore in Sessions Trial Case No.22 of 2019 (191 of 2018) for offence punishable under section 376(2)(I) of the Indian Penal Code on the accusation that he being a relative of the son-in-law of the informant (P.W.4) committed rape on the victim (P.W.9), the disabled daughter of the informant.

The learned trial Court vide impugned judgment and order dated 30.08.2019 found the appellant guilty under

section 376(2)(I) of the Indian Penal Code and sentenced him to undergo R.I. for a period of ten years and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo R.I. for a further period of one year.

During course of the argument of the Jail Criminal Appeal, when a question came up for consideration as to whether proper opportunity has been provided to the appellant during trial to defend his case, this Court after discussing the provisions of law, precedents of the Hon'ble Supreme Court and this Court and also the order sheets and the evidence on record came to hold that no proper opportunity has been provided to the learned State defence counsel to prepare the case thoroughly and to cross-examine the victim. Accordingly, the impugned judgment and order of conviction of the appellant under section 376(2)(I) of the Indian Penal Code was set aside by this Court vide judgment and order dated 22.03.2023 and the matter was remanded to the learned trial Court with the following observations;

"The trial shall now commence from the stage of giving opportunity to the learned defence counsel for further cross-examination of the victim (P.W.9). The learned trial Court shall give due opportunity to the appellant to engage his own counsel, if he so likes and if the appellant expresses his inability to engage his own counsel, a State Defence Counsel shall be engaged to defend the accused. While engaging the State Defence Counsel, the learned trial Court shall see that a competent counsel who is having extensive practice in criminal law particularly having vast experience in conducting sessions trial and ability to provide meaningful assistance to the accused is engaged. The copies of complete police papers and other documents as required to be supplied to the accused under section 207 of Cr.P.C., copy of

heading of charge in Form No.32, the deposition copies of all the witnesses, copies of exhibited documents be supplied to the engaged counsel at least a week before the date is fixed for recording further cross-examination of the victim for preparation and opportunities shall be granted to the counsel to have meetings and discussion with the accused so that the accused would feel confident that the counsel chosen by the Court has adequate time and material to defend him properly. The learned defence counsel shall be provided opportunity not only to further cross-examine the victim but also the other witnesses, who have been examined by the prosecution, if the learned counsel so desires by filing a petition under section 311 of Cr.P.C. for recall indicating specific questions to be put to the witnesses and thereafter opportunity shall be provided to adduce defence evidence, if any and then argument shall be heard and after assessing the evidence on record, fresh judgment shall be pronounced in accordance with law. The evidence of the victim shall be recorded in Vulnerable Witness Deposition Centre, Balasore. The case is remanded to the Court of learned trial Court with a direction to dispose of the case as early as possible preferably within a period of three months from the date of receipt of copy of this judgment.

Since I have remanded the matter to the learned trial Court for fresh adjudication and the appellant is in judicial custody since 19.06.2018, he shall be released on bail on such terms and conditions as may deem just and proper by the learned trial Court with a specific condition that he shall appear before the Court on each date when the case would be posted for trial and shall not try to tamper with the evidence."

From the letter dated 20.07.2023, it appears that the learned trial Court took steps for its compliance after

getting the case record with the copy of the judgment from this Court. Since the appellant engaged his own counsel, no occasion arose for engagement of State Defence Counsel. The learned defence counsel also did not opt for any free copy of the police papers or testimonies of the witnesses. Accordingly, summons was issued to the victim through the I.I.C., Jaleswar Police Station for her cross-examination in VWDC at Balasore on 25.05.2023 at 10.30 a.m. and letter was issued to the coordinator, VWDC, Balasore for booking of the time slot. The victim being a deaf and dumb girl, letter was issued to the Principal, School for the Deaf of HWI, Mission Compound, Balasore for deputation of a special educator on the said date and time in order to facilitate such cross-examination of the victim. In pursuance of the summons, instead of the victim, her father Lepa Handa who is also the informant of the case appeared before the learned trial Court. Being duly identified by the learned State counsel, he submitted in writing that her daughter (victim) died three years back. Considering the gravity of the accusation and for further confirmation, a report was called for from the I.I.C., Jaleswar Police Station. The I.I.C., Jaleswar Police Station on 17.07.2023 gave a report confirming that the victim died about three years back in an accident.

In view of such letter issued by the learned 3rd Additional Sessions Judge, Balasore, since the victim is dead in the meantime and therefore, the observations made in the judgment and order dated 22.03.2023 of this Court could not be carried out and this Court has already set aside the judgment and order of conviction of the appellant under section 376(2)(I) of the Indian Penal Code, there would be no necessity for the appellant to face the trial again and accordingly, he is

hereby acquitted of the charge under section 376(2)(I) of the Indian Penal Code. The appellant is on bail by virtue of the order of this Court. He is discharged from liability of his bail bond. The personal bond and the surety bond stand cancelled.

The order be communicated to the learned trial Court forthwith for information.

(S.K. Sahoo)
Judge

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AMIT KUMAR MOHANTY Digitally signed by AMIT KUMAR MOHANTY
Date: 2023.08.10 16:28:50 +0530'

