THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.306 of 1995

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

Girish Sathua ……. ***Appellant***

-Versus-

State of Odisha ……. ***Respondent***

For the Appellant : Mr. Amulya Ratna Panda,
Amicus Curiae
For the Respondent : Mr. Jateswar Nayak, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 26.02.2026 :: Date of Judgment: 26.03.2026

S.S. Mishra, J. The present Criminal Appeal is directed against the judgment of conviction and order of sentence dated 31.10.1995 passed by the learned District & Sessions Judge, Phulbani in S.T. No.35 of 1994 arising out of G.R. Case No.390 of 1993, whereby the appellant

was convicted for the offences under Sections 448 and 376 of the Indian Penal Code read with Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and was sentenced to undergo rigorous imprisonment for seven years with a fine of Rs.5,000/-, in default, to undergo R.I. for three months for the offence under Section 376 IPC.

2. The present appeal has been pending since 1995. When the matter was called for hearing consistently, none appeared for the appellant. Therefore, on 24.02.2026, this Court requested Mr. Amulya Ratna Panda, learned counsel, who is 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. This Court records appreciation for the meaningful assistance rendered by Mr. Panda.

3. Heard Mr. Amulya Ratna Panda, learned Amicus Curiae for the appellant and Mr. Jateswar Nayak, learned Additional Government Advocate for the State.

4. The prosecution case in brief is that the prosecutrix, wife of P.W.2, was residing in her matrimonial house under Boudh Police Station along with her husband, mother-in-law and sister-in-law. It is alleged that on 03.10.1993 at about 7.00 p.m., the appellant forcibly pushed open the door of the house, entered the room of the prosecutrix, threatened her with a knife, gagged her mouth and forcibly committed sexual intercourse with her against her will. After the occurrence, the appellant allegedly left the place. On the return of her husband and other family members, the prosecutrix disclosed the incident to them and on the following morning, a report was lodged at Boudh Police Station. Upon registration of the case, investigation was undertaken and after completion of the investigation, charge-sheet was submitted against the appellant for the offences under Sections 448 and 376 IPC read with Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act.

5. The plea of the appellant before the trial Court was one of complete denial. It was further contended that the case was falsely

foisted against him due to previous ill-feeling and the alleged social discord in the village. The defence did not adduce any evidence.

6. In order to establish the charges, the prosecution examined seven witnesses. P.W.1 is the prosecutrix, P.W.2 is her husband, P.Ws.3 and 4 were seizure witnesses, P.W.5 was the doctor, who examined the accused, P.W.6 was the Investigating Officer and P.W.7 was the doctor, who examined the prosecutrix. The prosecution also relied upon several documents including the medical reports and the chemical examination report.

7. The learned trial Court, on appreciation of the evidence on record, held that the prosecution had succeeded in proving that the appellant had committed criminal trespass into the house of the prosecutrix and had committed rape upon her. The learned trial Court further held that the prosecutrix belonged to a Scheduled Caste and the appellant not being a member of such caste, the provisions of Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act were attracted. On such findings, the appellant was convicted and sentenced as indicated above. The relevant

portion of the aforesaid judgment is extracted herein below for ready reference:-

> *"15. On the premises, as discussed above, unhesitatingly this Court is of the view that the prosecution has been able to bring home that the accused did enter to the dwelling house of P.W.1 and 2 in the absence of other members of the house, calm down P.W.1 and committed forcible sexual intercourse on her inside the entry room of the house of P.Ws. 1 and 2 without the consent of P.W.1 within the scope of Section 376 I.P.C.*
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> *Since the accused has been found to have committed the sexual intercourse on P.W.1 without her consent and that on materials on record accused lapsed no time to go to the cot to pounce over P.W.1 to commit that sexual intercourse, it cannot but be assumed that the accused had dominant intention to commit the offence of rape within the scope of Section 376 I.P.C.*
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> *16. As regards the offence u/s. 448 I.P.C., it has been proved beyond reasonable doubt that the accused committed offence u/s. 376 I.P.C. inside the dwelling house of P.Ws. 1 and 2, a house property not belonging to the accused or that, the accused had no semblance of right of entry to that house or that any of the members of the dwelling house of P.Ws. 1 and 2 had consented to the entry of the accused to this dwelling house, accordingly the entry can very well be said to be "unlawful" and "illegal" entry of the accused to this dwelling house of P.Ws. 1 and 2. It has been proved that the*

accused committed the offence of rape. Thus, the essential requirement within the scope of Sections 441,442 read with Sec. 448 I.P.C. has been amply brought home against the accused. Add to it, the commission of rape on P.W. 1, much less, a married lady, in her own house is certainly an act intended to cause annoyance and insult her. On approach, on this direction also, the accused can be said to have committed criminal trespass to the dwelling house of P.Ws. 1 and 2. In this case, no other intention behind the criminal trespass can be assessed, except the dominent intention which prompted the accused to commit rape on P.W.1. Intention of the accused can be gathered from the facts and circumstances of the case. The following passage is the observation of the Honourable apex Court in the citation reported in A.I.R. 1970 S.C. page 20 (Rash Behari Chatterjee V. Fagu Shaw and others):-

> *"5. xxx the law does not require that the intention must be to annoy a person who is actually present at the time of trespass."*

is very clear.

17. The substantive offence u/s. 376 I.P.C. and Sec. 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act, 1989 have provided life imprisonment. But however, P.W. 1 is 'KEUTA' by caste, a member of Scheduled Caste and the accused being a 'gold smith', not being a member of Scheduled caste, the penal provisions provided in special law of Sec.3(2)(v) of the Scheduled Casts and Scheduled Tribes (Prevention of Attrocities) Act, 1989 will be attracted.

Thus, in the net, unhesitatingly a finding can be achieved that prosecution has brought home the offence u/ss 376 and 448 I.P.C, read with sec. 3(2)(v) of Scheduled castes and Scheduled Tribes(Prevention of Attrocities) Act ,1989 against the accused. The accused is found guilty for the offence u/ss. 448/376 I.P.C. read with sec. 3(2)(v) of Scheduled castes and Scheduled Tribes (Prevention of Attrocities)Act, 1989 and is convicted thereunder."

8. Mr. Panda, the learned Amicus Curiae for the appellant, submitted that the conviction recorded by the learned trial Court is unsustainable in law as the evidence of the prosecutrix (P.W.1) is neither reliable nor consistent. He contended that although P.W.1 alleged in her examination-in-chief that the appellant forcibly entered the house, gagged her mouth and committed sexual intercourse against her will, her cross-examination reveals material contradictions which render her testimony doubtful. In paragraph-8 of the cross-examination, she admitted that she could not raise any alarm either when the accused pushed open the door or even when he allegedly assaulted her. Further, though she stated in her examination-in-chief that she disclosed the occurrence to her in-laws upon their return, in paragraph-9 of the cross-

examination, she admitted that she had not disclosed the incident to her mother-in-law. Accordingly, such inconsistencies materially affect the credibility of the sole eyewitness and indicate that the prosecution story is not free from doubt.

9. He further submitted that the medical evidence completely contradicts the prosecution case. P.W.7, the doctor who examined the prosecutrix, categorically stated that there were no external injuries on any part of her body including her thighs or private parts, no foreign pubic hair was detected and there was no matting of pubic hair on the pubic area. The doctor further stated that the vaginal swab was collected for chemical examination and the report (Ext.12) revealed that no semen or spermatozoa was detected. Significantly, the doctor also opined that the chance of sexual intercourse within forty-eight hours prior to the examination was very remote. The absence of semen in the vaginal swab and the medical opinion ruling out recent sexual intercourse create a serious doubt regarding the allegation of rape.

10. Mr. Panda also contended that the surrounding evidence does not corroborate the prosecution case. P.W.2, the husband of the prosecutrix, admittedly had no direct knowledge of the occurrence and his testimony is based solely on what was allegedly disclosed to him after his return from Boudh. The prosecution also failed to examine other material witnesses such as the mother-in-law and sister-in-law who were stated to have been informed about the occurrence. It is, therefore, argued that when the medical evidence renders the ocular testimony improbable, the Court ought to extend the benefit of doubt to the accused. In support of this contention, he placed reliance upon the decision in ***Suresh v. State of Haryana***, ***Criminal Appeal No.281/SB of 1992***, wherein it was held that when medical evidence contradicts the prosecution version and no signs of recent sexual assault are found, the testimony of the prosecutrix requires careful scrutiny before sustaining a conviction.

11. I have carefully considered the submissions advanced by the learned Amicus Curiae for the appellant and the learned counsel for the State and have gone through the records of the case, including the

depositions of the witnesses, the medical evidence and the documents produced.

12. Upon consideration of the rival submissions and careful scrutiny of the evidence on record, this Court finds that the case of the prosecution essentially rests upon the testimony of P.W.1, the prosecutrix. It is well settled that the evidence of a prosecutrix stands on a higher pedestal and if it is found reliable and trustworthy, conviction can be based on her sole testimony without further corroboration. However, where serious infirmities appear in the prosecutrix evidence or where the medical and scientific evidence runs contrary to the prosecution case, the Court must carefully scrutinize the evidence before sustaining a conviction.

13. In the present case, the medical evidence assumes considerable significance. P.W.7, the doctor who examined the prosecutrix, has clearly stated that she did not find any external injuries on her body including her thighs or private parts. She also did not find any foreign pubic hair or matting of pubic hair. Importantly, the vaginal swab did not

reveal the presence of semen and the doctor opined that the possibility of sexual intercourse within forty-eight hours prior to the examination was very remote. Extract of P.W.7's testimony is profitable to be reproduced for true appreciation:

> *"1. On 4th October, 1993 I was working as L.T.R.M.O. in Sub-divisional Hospital Boudh. On that day on police requisition I examined Santoshini Beriha W/O Bipra Beriha of village Rani Sahi, P.S. Boudh, then District Phulbani and found the following injuries.*
> *(i) She had no external injuries on her person either on her theigh or on her private or on her other part of the body.*
> *(ii) I found no foreign pubic hairs over her private parts.*
> *(iii) I found no matting of pubic hairs on her pubic area.*
> *(iv) On clinical examination (naked eye examination) there is no evidence of menoral diseases.*
> *xxxxx xxxxxx xxxxx*
> *The chance of sexual intercourse is very remote within 48 hours, before the time of my examination."*

14. These medical findings create a serious inconsistency with the prosecution version that the appellant forcibly committed sexual intercourse and ejaculated semen inside the vagina of the prosecutrix.

When the medical expert categorically stated that the possibility of such intercourse within the relevant period is remote and the chemical examination report also fails to detect semen, the Court cannot ignore such evidence.

15. The prosecution has also failed to establish the applicability of Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act. Except for the statement of the prosecutrix that she belongs to "Keuta" caste, no material has been produced to show that she belongs to a Scheduled Caste as notified under the Constitution (Scheduled Castes) Order. In the absence of satisfactory proof of such status, the conviction under the said provision cannot be sustained. The Honourable Supreme Court of India in the case of ***Masumsha Hasanasha Musalman vs State of Maharashtra***, reported in ***2000 (3) SCC 557,*** held thus:-

> *"Section 3(2)(v) of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such*

member, shall be punishable with imprisonment for life and with fine. In the present case, there is no evidence at all to the effect that the appellant committed the offence alleged against him on the ground that the deceased is a member of a Scheduled Caste or a Scheduled Tribe. To attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Indian Penal Code is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2)(v) of the Act arises. In that view of the matter, we think, both the trial court and the High Court missed the essence of this aspect. In these circumstances, the conviction under the aforesaid provision by the trial court as well as by the High Court ought to be set aside."

16. However, the evidence on record does indicate that the appellant had entered into the house of the prosecutrix and behaved in a manner which outraged her modesty. The testimony of the prosecutrix regarding the unauthorized entry of the appellant and his conduct inside the house remains largely unshaken. Such conduct clearly falls within the ambit of assault or use of criminal force to a woman with intent to outrage her modesty. Therefore, though the prosecution has failed to establish the

charge of rape beyond reasonable doubt, the materials on record are sufficient to bring home the offence punishable under Section 354 of the Indian Penal Code.

17. It is brought to the notice of this Court that the appellant has already undergone one year and two months of imprisonment during the pendency of the proceedings. Considering the nature of the offence now found proved and the lapse of considerable time since the occurrence of the year 1993, the period already undergone by the appellant would meet the ends of justice.

18. Accordingly, the conviction of the appellant under Section 376 of IPC read with Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act is set aside. Instead, the appellant is convicted under Sections 448/ 354 of the Indian Penal Code and is sentenced to the period of imprisonment already undergone by him.

19. The Criminal Appeal is accordingly partly allowed.

20. This Court acknowledges the effective and meaningful assistance rendered by Mr. Amulya Ratna Panda, 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 26th Day of March, 2026/Subhasis Mohanty