

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2640 of 1998

- Kritanath Rawat, S/o Nohar Singh Rawat, aged about 26 years, R/o Village Pelma, Distt. Raigarh (CG)

---- Appellant

Versus

- The State Of M.P. (Now CG), The Station House Officer, Kapu, Distt. Raigarh (CG)

---- Respondent

And

CRA No. 2810 Of 1998

1. Maganram, S/o Phaguaa Gada, aged about 35 years, Labourer,
2. Mohan Singh, S/o Paimashi Gada, aged about 21 years, Labourer

All appellants residents of Village - Palega, PS-Kapoo, Distt. Raigarh.

---- Appellants

Vs

- State Of M.P. (Now CG)

---- Respondent

For appellants : Shri Sourabh Sharma and Shri Shailendra Bajpai,
Advocates
For Respondent/State : Shri S.K.Mishra, Panel Lawyer.

Judgment on Board by Justice Pritinker Diwaker

08/10/2015:

As these two appeals arise out of the judgment of conviction and order of sentence dated 15.10.1998 passed in S.T.Nos. 17/96 and 186/96, they are being disposed of by this common judgment.

02. Appellant Kritnath has been convicted under Section 376 of IPC

and sentenced to undergo RI for 10 years, to pay a fine of Rs.2,000/ and in default to undergo RI for six months. He has also been convicted under Section 3(1)(xi) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and sentenced to undergo RI for one year, to pay a fine of Rs.1000/- and in default thereof to undergo RI for three months.

Each of appellants Maganram and Mohan Singh has been convicted under Section 376 of IPC and sentenced to undergo RI for 10 years, to pay a fine of Rs.2,000/ and in default to undergo RI for six months.

03. As per prosecution case, on 22.12.1995 FIR (Ex.P/10) was lodged by the prosecutrix (PW-7), a married lady aged about 35 years, alleging therein that on 13.12.1995 at about 7 pm the accused/appellants came to her house, asked her husband to bring liquor and when her husband had gone from the house, they caught hold of her, gagged her mouth by inserting a piece of cloth, took her near old hospital, threw her on the field and committed forcible sexual intercourse with her one after another. She has stated that after commission of offence by two persons she took out the cloth from her mouth and requested the appellants not to do so but even then she was subjected to rape by third person. She has stated that she stayed there for the entire night and on the next morning when she was set free she returned to her house and narrated the whole incident to her husband, sister-in-law and at the instance of her husband a panchayat meeting was called where she was given Rs.2000/- as compensation. She has stated that subsequently the accused/appellants demanded back their money and also beat her.

She has stated that on account of fear she could not lodge report earlier. Based on this FIR, offences under Sections 376, 342, 34 of IPC and Section 3(1)(xii) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (in short "the Act") were registered against all the three accused persons.

04. As accused/appellant Kritram was of general caste, he was tried in ST No.17/96 for the offence punishable under Sections 376 of IPC and Section 3(1)(xi) of the Act whereas accused/appellants Maganram and Mohan Singh were tried in ST No.186/96 for the offence punishable under Section 376 of IPC only.

05. Since the FIR and the witnesses were common, both the aforesaid sessions trials were held together and common evidence have been recorded.

06. So as to hold the accused/appellants guilty, the prosecution examined as many as 10 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. Accused/appellant Kritnath also took a plea of alibi by saying that on the date of incident he had gone to some other village along with Sarpanch of the village.

07. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellants as mentioned in para-2 of this judgment.

08. Learned counsel for the appellants submit that most of the important witnesses have not supported the prosecution case and have turned hostile. Even the prosecutrix (PW-7) in examination-in-chief has not supported the prosecution case and has been declared hostile. However, when she was cross-examined, at some places she has stated that she was subjected to rape by the accused persons, but if her statement is read as a whole, there are material contradictions in her deposition and considering this aspect of the case, her statement cannot be believed. Even husband of the prosecutrix PW-5 Genda has not supported the prosecution case. Moreover, medical report of the prosecutrix also does not support the prosecution case. PW-9 Dr. Smt. A. Minj falsifies the version of the prosecution. Though in the FSL report, in article A & E i.e. petticoat of the prosecutrix and underwear of the accused/appellant Mohan, spermatozoa was found but the sample so collected were not sufficient to be sent for serological examination and therefore, in absence of serological report, same cannot be connected with the crime in question.

09. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

10. Heard counsel for the respective parties and perused the material on record.

11. PW-7 the prosecutrix has stated in her examination-in-chief that

she knew the accused/appellants and they have done nothing with her. She has stated that about a year back she had quarrel with the accused/appellants and then further clarified that it was a verbal quarrel. She has stated that the incident had taken place at about 9 pm in her house and at that time Tejobai and her son Goverdhan were there. After declaring her hostile she was cross-examined by the Public Prosecutor and there she has stated that she had informed the police that she was subjected to bad work by the appellants. She has further stated that after inserting a piece of cloth in her mouth she was taken to old hospital by the accused/appellants and then subjected to rape by one after another. In the village panchayat she had informed that there was a quarrel between them after consuming liquor and she did not inform the panchayat about commission of rape. She has further stated that when she was taken by the appellants to the place of occurrence, number of villagers had seen them and that she did raise cries throughout the night but nobody came to help her. According to her, in the hospital watchman was there, however, she did not disclose the incident to him. She has admitted that she lodged the report after inordinate delay whereas panchayat meeting was called on the second day. She has stated that as she was unable to walk she could not lodge report promptly. However, she has admitted that she went to panchayat meeting on foot. In para-10 she has stated that she did not consume liquor, however, in para-13 she she has stated that at times she consumes liquor and on the date of incident also she had consumed liquor and was under the influence of liquor. She has admitted that on the date of incident Sarpanch of the village was not there and along with him appellant Kritram had also gone.

According to her, Sarpanch returned to village at about 11 pm and appellant Kritram also returned with him. She has admitted that at about 11 pm appellant Kritram came to her, after meeting her he went from there and prior to that he had not come to her. She has stated that the accused persons had assured her to give money for not lodging report. She has admitted that when she was taken from her house, at that time her sister-in-law and her husband were also there but they were in the veranda. She has stated that she knew Tilak who is elder brother of accused/appellant Mohan and she had a quarrel with Tilak for which panchayat meeting was also called. She has admitted that for beating her, appellant Mohan was fined Rs.2000/- by the panchayat. She has further admitted that the money given to her was snatched away by brother-in-law of Dharmpal (PW-4) and therefore, she lodged the report. She has further clarified that if the money had not been snatched away from her, she would not have lodged report. She has stated that during the incident she sustained injury on her back, her bangles were broken as a result of which she also sustained injuries on her hand and all the injuries were disclosed by her to the doctor.

12. PW-5 Genda, husband of the prosecutrix, has not supported the prosecution case and has been declared hostile. PW-9 Dr. Smt. A. Minj medically examined the prosecutrix vide Ex.P/17 and did not notice any injury on her person including her private part. She has stated that there was no sign of recent sexual intercourse and the prosecutrix was habitual to sexual intercourse. She has categorically stated that while examining the prosecutrix she had not noticed any

injury on her hand or either of the wrists. She has also stated that she had not noticed any such injury which could have been caused to the prosecutrix 8-10 days prior to the incident. PW-1 Mukhiram a witness to village panchayat has stated that in relation to quarrel between the accused/appellants and the prosecutrix a panchayat meeting was called. This witness was declared hostile. PW-2 Doodhnath and PW-4 Dharampal Singh have also turned hostile and did not support the prosecution case. PW-8 Chhattar Singh registered FIR and did initial part of investigation. PW-10 B.N. Tiwari, investigating officer, has supported the prosecution case.

13. Close scrutiny of the evidence makes it clear that though on 22.12.1995 the prosecutrix (PW-7) lodged FIR (Ex.P/10) alleging therein that she was subjected to rape by the accused/appellants one after another but when she was examined before the Court she was first declared hostile and on her cross-examination by the Public Prosecutor, at some places she has supported the prosecution case whereas at some other places she has not. At one place, she has stated that she was subjected to rape by all the three accused persons whereas at another place (para-10) she has stated that accused/appellant Kritram was not in the village, he had gone along with Sarpanch and returned only at 11 pm and then came to her house and after meeting her only he went away from there. This apart, she has categorically stated that she sustained injury during commission of the offence on her hands and wrists whereas medical report falsifies her version. The doctor has not noticed any such injury on her body. Further, in para-16 she has admitted that as the money

given to her as compensation in the panchayat meeting was snatched away by brother-in-law of Dharapal (PW-4), on account of that only she had lodged the report and further clarified that if the said money had not been taken from her, she would not have lodged report. According to her while she was being taken from her house by the appellants, two persons of her family were very much there in her house, on the way she met number of persons but she raised no hue and cry, no protest was offered and therefore, this creates doubt in the mind of the Court. If the statement of the prosecutrix is read as a whole, it does not inspire confidence of the Court and rather it appears that she, for the reason best known to her, has falsely implicated the accused/appellants. Even husband of the prosecutrix has not supported the prosecution case. As per FSL report (Ex.P/26) spermatozoa was found on the underwear of accused/appellant Mohan, but the quantity of the same was not sufficient for serological examination and therefore, in absence of serological report, the aforesaid circumstance cannot be taken against accused/appellant Mohan.

14. Thus, considering the material contradictions in the statement of the prosecutrix, the medical evidence as well as the evidence of the other prosecution witnesses, I am of the view that the prosecution has utterly failed to prove guilt of the accused/appellants on the basis of evidence adduced by it beyond all reasonable doubt. The findings recorded by the trial Court holding the appellants guilty under Sections 376 of IPC and Section 3(1)(xi) of the Act suffer from factual and legal infirmities and as such, liable to be set aside.

15. In the result, both the appeals are allowed. The impugned judgment of the trial Court is hereby set aside and the accused/appellants are acquitted of the charges leveled against them. They are reported to be on bail, their bail bonds stand discharged and they need not surrender.

Sd/
(Pritinker Diwaker)
Judge

Khan