

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 596 of 2000

1. Pooran Singh Gond, S/o Bandhan Singh Gond, aged 22 years.
2. Sapooram, S/o Bandhan Gond, aged 19 years.
3. Shiv Narayan, S/o Bandhan Gond, aged 18 years.
4. Ishwar Singh, S/o Girwar Singh, aged 17 years.

All residents of village Ratkhandi, Police Station Pali, District Korba.

**---- Appellants
(In Jail)**

Versus

1. State of Madhya Pradesh (now CG), through the Police Station Pali, District Korba.

---- Respondent

For Appellants:
For Respondent:

Shri Rakesh Pandey, Advocate
Shri S.K. Mishra, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker

JUDGEMENT

07/10/2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 3.1.2000 passed by the 2nd Additional Sessions Judge, Bilaspur (CG) in S.T. No.292/99 convicting the accused/appellants under Sections 450 & 376 (2) (g) & of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo R.I. for 05 years and fine of Rs.500/-, in default to undergo additional S.I. for 01 month and R.I. for 10 years and fine of Rs.500/-, in default to undergo S.I. for 01 month respectively.
2. Appellants No.1 to 3 are real brothers whereas appellant No.4-Ishwar is their cousin brother. There exists serious land dispute between the families of appellants and prosecutrix. On 3.7.1999, the prosecutrix (PW-1), married lady aged about 30 years, lodged FIR (Ex.P-1) alleging therein that on the

previous day i.e. 2.7.1999 at about 10.00 a.m. when she was cooking food in her room on hearth, accused persons came there, caught hold her and committed sexual intercourse with her one after another. It has been further alleged that she tried to save herself but could not succeed as she was caught hold by accused persons. It has further been alleged that first of all it is accused/appellant No.1-Pooran who ravished her and thereafter Sapuran, Shivnarayan & Ishwar took their turn. It has been alleged that while accused/appellant No.4-Ishwar was committing sexual intercourse with her, she became unconscious. Thereafter her sister-in-law Sonkunwar (PW-2) brought her to sense to whom she asked for water and after drinking water, she has informed about the incident of rape to her. After some time when her husband came back home from the forest, she also disclosed the incident to him. Thereafter she is stated to have informed about the incident of rape to the village Secretary & Kotwar. It has further been alleged that due to ongoing land related dispute she has been subjected to rape by the accused persons and on account of being subjected to rape by them, blood came out from her private part. Based on this FIR, offence under Sections 454 & 376 (2) (g) of the IPC was registered against accused/appellants. Prosecutrix was medically examined by Dr. (Smt.) R. Dharie (PW-9) who has not found any injury on her private part. She has referred the prosecutrix to the Gynaecologist, District Hospital, Korba for opinion. Dr. (Smt.) M.D. Ram had further examined the prosecutrix vide Ex.P-6B and she too had not noticed any injury on her. She has opined that the prosecutrix is habitual to intercourse and in absence of any injury, no definite opinion can be given about forceful intercourse or whether she is raped by more than two persons cannot be said. Accused persons were also medically examined by Dr. S.S. Paikra (PW-8) who gave his reports of Ex.P-10A, P-11A, 12A & 13A opining them

to be fully capable of having sexual intercourse. On completion of investigation, charge sheet was filed against accused/appellants for the offence punishable under Sections 450 & 376 (2) (g) of the IPC followed by framing of charges by the Court below under those sections.

3. The prosecution in order to bring home the charges levelled against accused/appellant examined nine witnesses in all. Statements of the accused/appellants were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication on account of land related dispute between both the parties.
4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, convicted & sentenced the accused/appellants as described above.
5. During the pendency of this appeal, an application was filed on behalf of accused/appellant Nos.3 & 4 namely Shivnarayan & Ishwar, claiming themselves to be juvenile and pursuant to the order passed by this Court an enquiry was conducted by the 1st Additional Sessions Judge, Bilaspur. According to the enquiry report, on the date of incident aforesaid accused/appellants were juvenile. This report has not been disputed in any manner by the counsel for the State.
6. Learned counsel for accused/appellants submits that a highly improbable story has been put forth by the prosecutrix that while she was cooking food in her house, she was subjected to gang rape by accused/ appellants one after another. According to the prosecutrix, on account of being subjected to gang rape by accused/appellants, blood came out from her private part, but the doctor who had medically examined has not noticed any injury on her private part. Had the prosecutrix really been subjected to gang rape, she ought to have sustained injuries on her body but the situation is not so in the case. He further submits that incident is said to have taken place in

the house of prosecutrix, which is surrounded by other residential houses, and admittedly at the time of commission of offence, her mouth was not gagged by any means, but she had not raised any hue & cry for help and this conduct of prosecutrix makes the prosecution story doubtful and unreliable. Further, the prosecutrix was cooking food on hearth in which woods were burning but she has not tried to cause injuries to accused persons with burning wood of hearth. He further submits that the prosecution witnesses have admitted in their evidence that family of accused/appellants and family of prosecutrix were not on talking terms with each other on account of a land related dispute and therefore possibility of false implication of accused/appellants cannot be ruled out in this case. He further submits that in absence of FSL report on record, recoveries effected from accused/appellants are of no value. He further submits that even husband of the prosecutrix had lodged report against the elderly members of the family of accused/appellants based on which offence under Sections 294, 506 & 323/34 of IPC was registered against them under Crime No.157/99. He further submits that accused/appellants No.1 & 2 have remained in jail for about two years whereas accused/appellants No.3 & 4 have remained in jail for about 2 ½ years.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that the evidence of prosecutrix alone is sufficient to convict accused/appellants and therefore the judgment impugned convicting & sentencing them as mentioned above being strictly in accordance with evidence of witnesses, calls for no interference in this appeal. He further submits that though there was land related dispute between the parties but there is no evidence on record to show that on account of said dispute, appellants have been falsely implicated by the prosecutrix.

8. I have heard learned counsel for the parties and perused the material available on record.
9. The prosecutrix (PW-1) has stated in her evidence that on the date of incident at about 10.00 a.m. she was cooking food in her house. Her husband had gone out of house in connection with his work. Accused/appellants had entered her house and threw her on the floor. Accused/appellants No.2 to 4 namely Sampooran, Shivnarayan & Ishwar caught hold her and thereafter accused/appellant No.1-Pooran committed sexual intercourse with her. According to her, while being held by other three, her saree was torn by accused Pooran. Thereafter accused Sampooran, Shivnarayan & Ishwar committed sexual intercourse with her one after another. She has further stated that on being subjected to rape by two persons, she became unconscious and when she was lying in that stage, her sister-in-law Sonkunwar (PW-2) woke her up. She asked for water from her and after drinking water, she informed her that she was subjected to rape by accused persons. This witness has further stated that her sister-in-law had gone to call her husband and just after arrival of her husband, Bandhan, father of accused/appellant Nos. 1 to 3, also came to her house along with Parat and committed *maarpeet* with her husband. She has further stated that she had also narrated the incident to Sarpanch Mohan & Secretary Itwar. On the next day, report of incident was lodged in the Police Station Pali. She has further stated that she was medically examined and her stained & torn clothing were seized by the police. In the cross-examination, she has stated that her father-in-law Sakharam is brother of Bandhan, father of accused/appellants No.1 to 3, and there exists a land related dispute between them. She has clarified that though the dispute was settled earlier but the accused persons have revived it again. House of accused persons is situated at about 150 yards from her house

and in between, there are residential houses of other persons. She has further stated that while she was cooking food in her house, the incident had occurred. She has further stated that accused persons were not armed with any weapon. She has further stated that on account of injuries suffered by her during the course of incident, she was not in a position to walk and therefore she was brought to the police station on bicycle.

10. Sonkunwar (PW-2) has stated that on being asked by prosecutrix, she provided her water to drink and thereafter the prosecutrix disclosed to her that she was subjected to gang rape by accused persons. She has further stated that when she had disclosed about the incident to his brother i.e. husband of the prosecutrix, he started abusing accused persons. Thereafter Bandhan, father of accused/appellant No.1 to 3, came along with others and assaulted her brother as a result of which he sustained injuries.
11. Itwara Singh (PW-3) has stated that in the evening of fateful day he was informed by Nohar Singh, husband of prosecutrix, that accused persons had committed rape with his wife. In the cross-examination this witness has admitted that there exists a land related dispute between the parties. This witness has further stated that disputed land is recorded in the name of accused persons and not in the name of husband of prosecutrix.
12. Pratap (PW-4) is brother of the prosecutrix and he has stated that on the date of incident at about 2.00 p.m. when he came back to his house, the prosecutrix told him that accused persons had committed sexual intercourse with her. He too has admitted the fact that a land related dispute was going on between the husband of prosecutrix and family of accused persons. He is also the witness of seizure memo of Ex.P-2 by which saree of the prosecutrix was seized.
13. G.P. Markam (PW-7) is the Investigating Officer and he has duly supported the prosecution case.

14. Dr. S.S. Paikra (PW-8) is the witness who medically examined accused persons and opined that they all were capable of having sexual intercourse.
15. Dr. (Smt.) R.Dahire (PW-9) is the witness who medically examined the prosecutrix vide Ex.P-6. According to this witness, she had noticed slight swelling over scapular region on right side with pain and this injury, which is simple in nature, may be caused by hard & blunt object. She had not noticed any injury on both thighs or external genital or near the private part of prosecutrix. She had referred the prosecutrix to the Gynaecologist, District Hospital, Korba for opinion where she was re-examined by Dr. (Smt.) N.D. Ram who gave her report (Ex.P-6B) opining that in absence of any injury, no definite opinion can be given about forceful intercourse or rape by more than two persons.
16. Close examination of the evidence of the witnesses including that of the prosecutrix makes the entire prosecution story highly improbable because it has come in the evidence that husband of the prosecutrix was having a land related dispute with the family of accused persons and therefore the possibility of implication of accused/appellants in a false case cannot be ruled out. The other allegation regarding her subjection to gang rape at the hands of accused/appellants is also without any foundation because the doctor examining the prosecutrix did not notice any injury on her body, rather the doctor examining her has clearly stated that she could not give any opinion regarding forceful intercourse or rape by more than two persons. Further, according to the prosecutrix herself, on account of being subjected to gang rape by accused persons, blood came out from her private part but the medical evidence does not state anything like that. In the absence of any utterance by the prosecutrix, the injury noticed by the doctor on her scapular region cannot be said to be the outcome of incident of gang rape and it might have been there for variety of reasons.

Evidence further goes to show that house of the prosecutrix was surrounded by other houses and that her mouth was not gagged by accused/appellants by any means. Thus, the prosecutrix had every opportunity to raise alarm for help but she did not choose to do so. That apart, according to the case of prosecution at the relevant time the prosecutrix was busy in cooking food on hearth and thus she had every opportunity to check entry of accused/appellants at the first sight itself but she did not even do that. Thus considering the facts & circumstances of case and conduct of the prosecutrix during commission of offence and subsequent thereto, she does not appear to be a trustworthy witness on whose statement accused/appellants can be held guilty either under Section 450 or even 376 (2) (g) of the IPC. In totality of circumstances, this Court is of the considered opinion that benefit of doubt has to be extended to accused/appellants.

17. In the result, the appeal is allowed. Impugned judgment convicting and sentencing the appellants as mentioned above is hereby set aside. Appellants are acquitted of the charges levelled against them. The appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
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