

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 630 of 2011**

1. Ravi Behra

---- Appellant

Versus

1. State of Chhattisgarh

---- Respondent

And**CRA No. 165 Of 2012**

1. Ravishankar Yadav @ Bharat @ Guddu

---- Appellant

Vs

1. State of Chhattisgarh

---- Respondent

For Appellants	:	Mr. Raj Kumar Pali in Cr.A.No.630/2001 and Mr. F.S.Khare in Cr.A.No.165/12
For Respondent/State:		Mr. Rama Kant Pandey, Panel Lawyer

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgement on Board by T.P.Sharma, J.**23/03/2015**

Criminal Appeal No. 630/2011 and Criminal Appeal No. 165/2012, arising out of common judgment dated 13.07.2011 passed by the Special Judge in Special Criminal Case No.10/2010, are being disposed of by this common judgment.

2. By filing the aforesaid Criminal Appeals, the appellants have challenged the legality, validity and propriety of the judgment of conviction and order of sentenced dated 13.07.2011 passed by the Special Judge under SC/ST (Prevention of Atrocities)

Act, Jashpur, in Special Criminal Case No. 10/2010 whereby and whereunder after holding the appellants guilty for commission of gang rape with prosecutrix after confining her, the Court below convicted the appellants under Section 376(2)(g) and 342 of the I.P.C. and sentenced them to life imprisonment with fine of Rs.10,000/- and in default to further undergo RI for three years and to undergo RI for six months each.

3. Conviction is impugned on the ground that without there being any iota of evidence against the appellants, the Court below convicted and sentenced the appellants as aforementioned and thereby committed illegality.

4. As per case of the prosecution, on 28.01.2010 appellants along with absconding accused Anup Pandey came to the prosecutrix (name not mentioned), who was present near vegetable market. The appellants called her, thereafter they dragged her to the house situated behind the Rest House. They removed their cloths and cloths of the prosecutrix and committed intercourse one by one without her consent. Thereafter, they closed the door from outside and fled from the spot. She shouted whereupon neighbours heard her sounds and they went to Police Station Patthalgaon and informed about the incident to Police, who came and opened the door. Prosecutrix came from inside.

Panchanama was prepared vide Ex.P.4. Prosecutrix lodged F.I.R. vide Ex.P.1. Spot map was prepared vide Ex.P.3. Undergarments of the prosecutrix were seized vide Ex.P.5. Her caste certificate was seized vide Ex.P.9. Patwari prepared spot map vide Ex.P.7. She was examined vide Ex.P.10 by Dr.Anita Minj (P.W.5), who noticed her that she was accustomed to intercourse. Broken bangles and broken lock were seized from the spot vide Ex.P.12. Undergarments of appellant – Ravi Shankar Yadav were seized vide Ex.P.13 and undergarments of appellant – Ravi Behra were also seized vide Ex.P.14. Slides of the appellants and that of prosecutrix were seized vide Ex.P.16 & 17. Seized articles were sent for chemical examination to F.S.L. vide Ex.P.21.

5. Statements of the witnesses were recorded under Section 161 of the Code of

Criminal Procedure, 1973 (for short 'the Code').

6. After completion of investigation, charge sheet has been filed before the Court of J.M.F.C., Patthalgaon, who in turn committed the case to the Court of Special Judge under SC/ST (Prevention of Atrocities) Act, Jashpur.

7. After providing an opportunity of hearing to the parties, the learned Special Judge, Jashpur, convicted and sentenced the appellants as mentioned in para 1 of this judgment.

8. We have heard learned counsel for the parties and perused the record of Court below including judgment impugned.

9. Mr. F.S.Khare and Mr. Raj Kumar Pali, learned counsel for the appellants, vehemently argued that conviction is based on the evidence of P.W.1 Prosecutrix, but, her evidence does not inspire confidence and trustworthy. She was known to the appellants. Police has not conducted any test identification parade. In absence of test identification parade, the evidence of the prosecutrix does not inspire confidence and trustworthy. Her evidence appears to be unnatural. Lastly, counsel for the appellants submitted that age of the appellants is 20 – 20 years and they are teenage youths. The prosecutrix is a consenting party, but, technically the appellants have committed the offence. Therefore, their sentence imposed by the Court below is required to be reduced substantially.

10. On the other hand, Mr. Rama Kant Pandey, learned counsel for the State, opposed the appeal while submitting that the evidence of the prosecutrix (P.W.1) by itself is sufficient to prove the guilt of the appellants.

11. In order to appreciate the arguments advanced by the parties, we have to examine the evidence adduced on behalf of the prosecution. As per evidence of the prosecutrix (P.W.1), the appellants were known to her, she was dragged by the appellants to a house and thereafter they committed intercourse one by one and after commission of offence, they left her and closed the door. She shouted and then door

was opened by the Police. She lodged a report in Police Station Patthalgaon. Defence has cross-examined this witness at length. Substantially in para 23 of her evidence, the defence was suggested that she had gone with the appellant Ravi Behra with her consent which she denied. In para 24 of her evidence, she denied that there was no physical relationship maintained by her with the appellants with her consent and she has falsely implicated them for committing intercourse with her forcibly. This evidence clearly reveals that the appellants have committed intercourse with the prosecutrix one by one and they have taken the defence of consent, which has been denied by the prosecutrix (P.W.1).

12. As per Section 114-A of the Indian Evidence Act, 1872, in case of absence of consent in connection with the commission of gang rape and if prosecutrix denied such consent, then the Court is required to presume that she did not consent. Section 114A of the Evidence Act, 1872 reads thus:

“114A. Presumption as to absence of consent in certain prosecutions for rape.--- In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.”

13. In the light of legal presumption available in the present case and the evidence of the prosecution (P.W.1) in paras 23 & 24, the only legal presumption available in the present case is that the appellants have committed gang rape with the prosecutrix after confining her in a house.

14. After appreciating the evidence available on record, the Court below convicted and sentenced the appellants as aforementioned.

15. As regards the sentence imposed upon the appellants, considering the age of the appellants as 20 – 20 years and the detailed evidence of the prosecutrix, sentence of the appellants requires consideration.

16. Consequently, both the appeals are partly allowed. Conviction and sentence of the appellants under Section 342 of the I.P.C. and that conviction of the appellants under Section 376 (2) (g) of the I.P.C. are hereby maintained. However, instead of sentence of life imprisonment imposed upon the appellants by the Court below, the appellants are sentenced to undergo RI for 10 years with fine of Rs.10,000/- and in default to further undergo RI for three years each.

JUDGE

JUDGE