

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 124 of 2010**

1. Trilochan Dhruv S/o Vijay Dhruv, aged about 19 years
2. Santosh Kumar Dhruv S/o Sawant Dhruv, aged about 24 years
3. Amar Singh Dhruv S/o Panchkoud Dhruv, aged about 20 years

{All residents of Jangal Para Nagari, Police station Nagri, District Dhamtari, CG}

---- Appellants**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Nagari, District Dhamtari CG

---- Respondent

For Appellants: Shri YC Sharma, Advocate
 For Respondent/State: Shri Ashish Surana, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice I.S. Uboweja****Order On Board by Pritinker Diwaker, J****23/09/2015**

This appeal has been filed against the judgment of conviction and order of sentence dated 29.1.2010 passed by the Additional Sessions Judge (FTC) Dhamtari, in Sessions Trial No. 48/2009 convicting the accused/appellants under Section 376 (G) IPC and sentencing each of them to undergo imprisonment for life with fine of Rs. 500, plus default stipulations.

2. As per the case of prosecution on 16.10.2009 at 6.20 am FIR Ex. P-1 was lodged by the prosecutrix (PW-1) aged about 15 years alleging that on the previous night i.e. 15.10.2009 at 9 pm when she along with her friend Ishwari was returning from the temple after performing *Puja*, near an under-construction house of some

Dinesh, the accused/appellants herein met her, lifted her inside that house and committed sexual intercourse one after another. First of all it is accused/appellant Trilochan Dhruv who ravished her and thereafter Santosh and Amar Singh took their turn. It is further alleged that when accused Trilochan was trying to have his second turn, mother of the prosecutrix came there along with some other persons including the owner of the said under construction house and incident was narrated to them by her. Based on this FIR, offence under Section 376 (G) IPC was registered against the accused/appellants. Prosecutrix was medically examined on 16.10.2009 by Dr. (Smt.) Asha Tripathi (PW-6) who gave her report Ex. P-11 opining that she was subjected to rape. Accused/appellants were also medically examined by Dr. Sunil Bharti (PW-10) who gave his reports Ex. P-14, P-16 and P-18 opining them to be fully capable of having sexual intercourse. After investigation, charge sheet was filed against the accused/appellants under Sections 376 (G), 363 and 366 IPC. However, the Court below framed the charge against them under Sections 376 (G) and 363 IPC.

3. In order to prove the complicity of the accused/appellants in the crime in question, the prosecution has examined 11 witnesses. Statements of the accused/appellants under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellants as mentioned above.

5. Counsel for the accused/appellants submits that there is no legally admissible evidence as regards the age of the prosecutrix

and therefore the trial Court has committed an error in holding her to be aged about 15 years at the time of incident. He submits that as the accused/appellants were not known to the prosecutrix, question of named report being lodged by her does not arise, and in such a situation it would have been fair on the part of the prosecution to conduct test identification parade. He further submits that, may be, some of the accused persons had committed sexual intercourse with the prosecutrix but she has un-necessarily implicated all of them in a false case. According to the counsel for the accused/appellants, had the prosecutrix really been subjected to gang rape, injuries would have been many more in number whereas in this case the medical report indicates the injury in private part only. Lastly, he submits that at the time of incident the accused/appellants were young boys and therefore it would have been just and proper if in stead of maximum sentence of life imprisonment, they would have been awarded the minimum of 10 year imprisonment.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same. According to him, even assuming that at the relevant time the prosecutrix was not minor, the accused/appellants cannot derive any benefit as there is ample evidence to show that they forcibly took her to an under-construction house and committed rape on her one after another and in these circumstances the sentence imposed on them cannot be termed as disproportionate.

7. Prosecutrix (PW-1) has stated that on the date of incident at about 9 pm while she along with her friend Ishwari was returning home from the Sai temple after performing Puja, the

accused/appellants met her on the way, forcibly lifted her away to the under-construction house of some Dinesh and committed rape on her one after another. According to her, while being held by other two, she was undressed by accused/appellant Trilochan. Describing the incident she has stated that first of all she was subjected to forcible sexual intercourse by accused Trilochan, then by Santosh and then by Amar Singh, and when accused Trilochan was to have his second turn, her mother Vimla Bai and the owner of the said under-construction house Dinesh Dhruv came there and on seeing them all the accused/appellants left the spot. Thereafter, she is stated to have informed about the incident of rape to her mother and several other persons including the owner of the under-construction house where she was sexually abused. In cross examination also this witness remained absolutely firm to the things stated by her in the examination in chief. Dr. (Smt.) Asha Tripathi (PW-6) is the witness who medically examined the prosecutrix and gave her report Ex. P-11. According to this witness, she noticed swelling on the arms of the prosecutrix; vulva also had swelling and reddishness; hymen appeared recent torn with bleeding; vagina did not admit two fingers easily and on touch she was feeling pain in her private part. The conclusive opinion of this witness was that the prosecutrix was not habitual to sexual intercourse but she had sex within one or two days prior to examination. Dr. Sunil Bharti (PW-10) is the witness who medically examined the accused/appellants and gave his reports Ex. P-14, P-16 and P-18 stating that they all were fully capable of having sexual intercourse. Vimla Bai (PW-2) is the mother of the prosecutrix who has stated that when her daughter (prosecutrix) did not return home from Sai temple for quite some time in the night, she along

with Dinesh and Barja Nani proceeded in search of her and on reaching near an under-construction house, Dinesh asked her to get into the same as people used to assemble there for gambling, and after they went therein, accused Trilochan left the spot carrying clothes in his hand and the condition of the prosecutrix was worse. According to this witness, the prosecutrix informed her by name that the accused/appellants had subjected her to sexual intercourse turn by turn. Mahendra Kumar (PW-3) - the brother of the prosecutrix has stated that when his mother and the prosecutrix got back home, he came to know about the incident. Rajkumar Sen (PW-4) is the witness to seizure of marksheet and undergarments of the prosecutrix made under Ex. P-5 and P-4. Seema Nagvanshi (PW-5) is the witness who took the prosecutrix to Government Hospital, Dhamtari for medical examination. Pooran Singh Sahu (PW-8) is the witness who took the seized articles to Forensic Science Laboratory for chemical examination, however, the FSL report is not on record. Rajauram (PW-9) is the Patwari who prepared spot map Ex. P-6. Rajesh Kumar Sahu (PW-11) is the investigating officer who has duly supported the case of the prosecution.

8. This Court has gone through the judgment impugned and the evidence adduced by the prosecution including that of the prosecutrix. The traumatic portrayal of the incident by the victim that while returning from the temple after performing Puja, the accused/appellants, three in number, waylaid her and after lifting her away inside an under-construction house, sexually exploited her turn by turn in a brutal manner, appears to be very realistic and deplorable too. Pathetic narration given by the victim gets full support from the medical evidence as well where the doctor examining her has noticed various injuries symptomatic of sexual

intercourse within a day or two prior to examination. The doctor has also opined that the prosecutrix was not habitual to sexual intercourse. Even the mother of the prosecutrix has also made a convincing statement to the effect that while searching the prosecutrix when she reached the under-construction house in question, accused Trilochan had left the spot with the clothes in his hand. All these circumstances lead to the only conclusion that taking advantage of helplessness of the prosecutrix the accused/appellants have sexually abused her in a barbaric manner which has to be dealt with sternly. This Court does not find any force in the argument of the counsel for the accused/appellants that in the absence of any evidence as to the age of the prosecutrix, the Court below has gone wrong in holding her to be about 15 year old at the relevant time for the reason that even if the prosecutrix was major, the act of the accused/appellants in subjecting her to forcible sexual intercourse cannot call for any leniency. Thus the submission with respect to her age being unmeritorious is turned down.

9. In sum and substance, the prosecution has fully proved its case and the trial Court has also been justified in acting upon the same while recording its findings. Judgment impugned thus gets full affirmation leading the appeal to outright dismissal.

10. Result being the dismissal of appeal calls for no interference in the judgment impugned. Accused/appellants are already in custody and therefore no direction from this Court regarding their surrender etc. is necessary.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(I.S.Uboweja)

Judge