

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 390 of 2010

1. Baliram S/o Santudas Jangde, aged about 38 years
2. Hemdas S/o Santudas Jangde, aged about 40 years
3. Heeradas S/o Santudas Jangde, aged about 48 years

All R/o village Farhada, PS Jarhagaon, District Bilaspur, CG

---- Appellants

Versus

1. State Of Chhattisgarh through PS Jarhagaon, District Bilaspur, CG

---- Respondent

For Appellants	-	Shri Vivek Shrivastava, Advocate.
For Respondent.	-	Shri Ravindra Agrawal PL

Hon'ble Shri Justice Pritinker Diwaker

CAV Judgment

06 /04/2016

This appeal is directed against the judgment and order dated 22.04.2010 passed by Additional Sessions Judge (FTC) Mungeli, District Bilaspur in Sessions Trial No. 29/2009 convicting the accused/appellants under Section 376 (2) (g) IPC and sentencing each of them to undergo rigorous imprisonment for ten years with fine of Rs. 2000/-, plus default stipulations.

2. Case of the prosecution in brief is that on 30.4.2009 in between 6-7 PM when the prosecutrix (PW-7) - a married lady aged about 22 years had gone towards the village pond to answer the

call of nature, the accused/appellants who were hiding there beforehand, caught hold of her and after gagging her mouth committed forcible sexual intercourse with her one after the other putting under the threat of life, and also snatched away her gold locket. Thereafter, the prosecutrix somehow got back home and after narrating the incident to her mother-in-law namely Kanti Bai (PW-10) she became unconscious. On 1.5.2013 type-written report Ex. P-13 was made by her mentioning therein that the accused/appellants had roped her husband in a false case for which he was undergoing the jail sentence of 7 years in Central Jail Bilaspur. Apart from the manner in which she was subjected to gang rape by the accused/appellants, the written report also speaks of the fact that on earlier occasion also son of accused/appellant Baliram namely Amar Singh had caught hold of her with bad intention and that incident too was reported to the police though no action thereon has been taken. Written report states about one other incident where nephew of accused/appellants namely Anil had killed Manglu and Ganga by setting their house on fire while they were sleeping inside, and that on account of their criminal tendency and panic prevailing in the area nobody speaks against them. Thus in the written report she has prayed for taking sympathetic view in the matter and also get her medically examined through Women Police Station. Based on this type-written report, FIR Ex. P-12 was registered against the accused/appellants for the offences punishable under Sections 376 (2) (g) and 392 IPC. Thereafter, the prosecutrix was medically examined on 2.5.2009 by Dr. (Smt.) Vibha Sindur (PW-2) who gave

her report Ex. P-6 (contents to be discussed later). After completion of investigation, charge sheet was filed by the police for the offence punishable under Sections 376 (2) (g), 392 in the alternative 392/34 IPC followed by framing of charge by the Court accordingly.

3. So as to hold the accused/appellants guilty, prosecution has examined 11 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court acquitted the accused/appellants of the charge under Sections 392, in the alternative 392/34 IPC but has convicted and sentenced them as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellants submits that the accused/appellants have been falsely implicated in the case just because daughter of accused Bali Ram was once kidnapped and subjected to rape by the husband of the prosecutrix for which he was sentenced to undergo the jail sentence of seven years. He submits that a very improbable story has been put forth by the prosecutrix that she was subjected to rape by the accused/appellants who are the real brothers. As regards presence of scratch marks found on the breasts and fore-arms of the prosecutrix, counsel for the accused/appellants submits that the same could be self inflicted to ensure implication of the

accused/appellants in a false case. According to the counsel for the appellants, had the prosecutrix been subjected to gang rape by the accused/appellants in the open field, as is the case of the prosecution, she would have sustained injuries on her back and other parts of the body as well, which is not the case herein. According to him, the prosecutrix did not make any effort to come out of the clutches of the accused/appellants and that shows that she has narrated in the court absolutely a false story. It is further submitted that husband of the prosecutrix was sentenced vide judgment and order dated 31.3.2009 and just within a month therefrom a false report has been lodged against the accused/appellants.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants under Section 376 (2) (g) IPC are strictly in accordance with law and there is no infirmity in the same. He submits that as no suggestion was put to the doctor examining the prosecutrix whether the scratch marks present on the breasts of the prosecutrix were self inflicted, the version of the prosecutrix cannot be disbelieved. As regards absence of injuries on the private parts of the prosecutrix, State counsel submits that as she was a married lady aged about 22 years, she cannot be supposed to suffer injuries in private part.

7. Heard counsel for the parties and perused the evidence on record.

8. Prosecutrix (PW-7) has stated in her evidence that on 30.4.2009 when she had gone to the field of one Nem Singh situate near the village pond, the accused/appellants came there from behind, caught hold of her, threw her down and subjected her to forcible sexual intercourse one after the other. According to her, first of all accused Bali Ram committed the sexual intercourse and then accused Hemlal and Hira Das took their turn. Accused/appellants are also stated to have snatched away the gold locket worn by her. Thereafter, she got back home, narrated the entire incident to her mother-in-law and then became unconscious. According to her, on the next day she went to the police station to lodge the report and as the police did not register the report, she went to the office of Superintendent of Police, gave her written report mentioning the entire incident therein and thereupon the Superintendent of Police instructed the police of concerned police station to register the FIR. Thereafter, this witness is stated to have come to Police Station Jarhagaon from where the police took her to the hospital at Mungeli for medical examination. In Police Station Jarhagaon she is also stated to have handed over her petticoat and underwear with white spots under seizure memo Ex. P-16. Further clarifying the things, this witness has stated that she had given the type-written report Ex. P-13 to the Superintendent of Police and the same was got typed by a typist sitting near the SP office. According to this witness, during commission of offence her blouse was torn and she had received the nail scratches of the accused/appellants on her breasts. In cross-examination this witness has stated that she had given the hand-written report to the typist who had typed

the same accordingly. According to her, she had not given the hand-written report to the SP and just shown the same to him and it is on his instructions she got it typed and gave to him. She has specifically denied to have consulted an advocate before getting the report typed. According to her, at the time of recording of her case diary statement she had disclosed to the police about receiving nail scratches on her breasts; becoming unconscious after reaching home and then narrating the incident on gaining consciousness, but if they do not find place therein she could not tell the reason for that. She is further stated to have informed the doctor about injuries on her back but if the same is not mentioned in the medical report, she could not say anything for that. She has reiterated that when the accused/appellants caught hold of her she did raise her cries but they had gagged her mouth. She has admitted that the pond near which the incident took place is open to all and the people used to pass thereby, but at the relevant time no public movement was there. She has further stated that accused Hira Das had snatched away the gold locket worn by her. She has expressed her ignorance about daughter of accused Bali Ram being kidnapped and raped by her husband but has admitted that he was imposed jail sentence for the same. According to her, at the time of making report she had disclosed that the accused/appellants had implicated her husband in a false case in which he was sentenced to seven year imprisonment by the Court. She has denied that on the next day of her husband being sentenced, she had lodged the false report against the accused/appellants. She has further denied that on earlier

occasions also she lodged the report against the accused/appellants. Raj Kumari (PW-8) - the sister-in-law of the prosecutrix has stated that on 30.4.2009 when she had gone towards the village pond to answer the call of nature, accused/appellants were seen by her committing rape on the prosecutrix but she did not disclose it to anyone. Thereafter, according to this witness, the prosecutrix got back and fell unconscious and on sprinkling water she regained consciousness and informed to have been sexually exploited by the accused/appellants. In cross-examination, she has stated that as she was under the impression that the victim might be someone else, she did not raise her cries. She however has shown her ignorance about the other incident where husband of the prosecutrix had kidnapped and raped the daughter of accused Bali Ram. Kanti Bai (PW-10) - the mother-in-law of the prosecutrix has stated in her evidence that on the date of incident after returning home her daughter-in-law (prosecutrix) fell unconscious and after she sprinkled water on her face, she regained consciousness and told her that she was ravished by the accused/appellants. According to this witness, when the prosecutrix reached home she did not see any injury on her body but her blouse was torn. According to her, she had come to the court for giving evidence after consulting the advocate. She has admitted that on the next day after the husband of the prosecutrix was sentenced by the Court below, she (prosecutrix) had informed her about the present incident. Dr. (Smt.) Vibha Sindur (PW-2) is the witness who medically examined the prosecutrix and gave her report Ex. P-6

stating that she noticed number of abrasions on her breasts and both forearms but no injury or bleeding was there in her private part and that as she was habitual to sexual intercourse no opinion regarding recent sexual intercourse with her could be given. As regards injuries on the body of the prosecutrix this witness has stated that they were simple in nature and could have been caused by nail like pointed object within 2-3 days there-before which could be healed within a period of seven days. This witness has further stated that petticoat and underwear of the prosecutrix were given to the police constable for being taken to the Forensic Science Laboratory for chemical examination. In paragraph No. 13 this witness has stated that she did not notice any injury on the back, thigh and legs of the prosecutrix. She has also stated that no abrasion on her neck or sign of struggle was noticed by her. Dr. Amit Lal (PW-1) is the witness who medically examined the accused/appellants and gave his reports Ex. P-3, Ex. P-4 and Ex. P-5 stating that they were capable of making sexual intercourse. Anish Kumar (PW-4) – the witness to seizure of articles made under Ex. P-9, Ex. P-10 and Ex. P-11 has not supported the case of the prosecution and has been declared hostile. Salik Rajput (PW-5) is the witness who assisted in the investigation. Vikas Tiwari (PW-6) is the Patwari who prepared spot map Ex. P-14. Kunwar Das (PW-9) – the father-in-law of the prosecutrix has stated that a day after the incident when he returned from Mungeli, he saw the prosecutrix weeping and on being asked she informed him to have been sexually exploited by the accused/appellants. He has further stated that on account of being night the report could not be lodged on

the same day. S.K. Dubey (PW-11) is the investigating officer who has duly supported the case of the prosecution.

9. In the statement recorded under Section 313 of the Code of Criminal Procedure accused Bali Ram has stated that as his daughter was kidnapped and raped by the husband of the prosecutrix and for that he was sentenced to seven year imprisonment by the Court, he has been roped by the prosecutrix in a false case. Same thing has come in the 313 Cr.P.C. statements of other accused/appellants namely Hem Das and Hira Das.

10. So as to draw a conclusion this Court feels it apposite to have a composite but brief re-look of the material brought on record by the prosecution including the evidence of the witnesses. Prosecutrix (PW-7) has categorically stated in her Court statement that on 30.4.2009 when she had gone towards the village pond to answer the call of nature, accused/appellants already lay in hiding nearby, pounced upon her, threw her down, committed forcible sexual intercourse with her one after the other and snatched away the gold locket worn by her. She has then particularized the turn taken by the accused/appellants in commission of rape upon her such as first by accused Bali Ram, then by Hemlal (Hem Das as per judgment impugned) and then by Hira Das. She went on to state that though she tried to raise her cries during the commission of offence, accused/appellants had gagged her mouth and also torn her blouse. In the incident certain abrasions on her breasts and forearms were also received by the victim which have been duly confirmed by the doctor (PW-2) who had medically examined her

vide Ex. P-6. After returning home the prosecutrix is stated to have fainted and on regaining consciousness disclosed the incident of being raped by the accused/appellants to her mother-in-law namely Kanti Bai (PW-10). On the next day the prosecutrix is stated to have first gone to the concerned police station and as the report was not registered, she gave type-written report (Ex. P-13) to the Superintendent of Police and then on his instructions the police registered FIR Ex. P-12. The statement of the prosecutrix is duly supported by her sister-in-law Raj Kumari (PW-8) – the eyewitness to the incident who has categorically stated that on 30.4.2009 when she had gone towards the village pond for answering the call of nature, the accused/appellants were seen by her committing sexual intercourse on the prosecutrix. She has further stated that after the prosecutrix returned home, she fell unconscious and after regaining consciousness on account of sprinkling water on her face, she narrated the pathetic tale of being sexually victimized by the accused/appellants. This witness has stated that being under the impression that the woman being victimized by the accused/appellants might be some other woman, she did not raise her voice. Mother-in-law of the prosecutrix namely Kanti Bai (PW-10) has also corroborated the statement of the prosecutrix in categorical terms stating that after reaching home she (prosecutrix) became unconscious and when she regained consciousness after sprinkling water on her face, she expressed her agony of being ravished by the accused/appellants and that the blouse worn by her was torn. Father-in-law of the prosecutrix has also corroborated the version of the prosecutrix in specific

terms. This apart, broken bangles, torn blouse and locket were also seized by the prosecution under Ex. P-19. Further, petticoat and underwear of the prosecutrix also contained semen-like stains, however, the FSL report is not on record to confirm the same. Having thus taken note of the statement of the prosecutrix which has been corroborated by Raj Kumari (PW-8), Kunwar Das (PW-9) and Kanti Bai (PW-10), this Court does not see any reason to move on a path other than the one paved by the prosecution to establish its case. Other argument of the counsel for the accused/appellants that the prosecutrix did not receive any injury on her back and private part also does not appear to have any substance for the reason that being a 20 year old married lady and according to the doctor habitual to sexual intercourse, she is not supposed to receive injuries in her private part. As regards absence of injuries on back, since she was sexually victimized by three persons one after the other and therefore while being ravished by one, the possibility of the other two overpowering and incapacitating her from making struggle cannot be ruled out. Even otherwise, in sex related offences, injury on the body of the prosecutrix, internal or external, if she is not wavering in stating the things, is not a *sine qua non*.

11. Yet another argument of the counsel for the accused/appellants that implication of the accused/appellants in a false case is the counter-blast of the judicial pronouncement sending the husband of the prosecutrix to jail for kidnapping and raping the minor daughter of accused Bali Ram, does not sound very convincing. Rather, if connoted differently, the possibility of

the accused persons nurturing in their mind the “*gang-rape for single rape*” attitude to settle the old scores cannot be ruled out. As has been the tradition, no woman in a civilized society that too just in her twenties having a long span of life to live would like to buy a brand “sexually used” not by one, nor two but three at a time, just for the fact that her husband has been sent to jail in some criminal case.

12. In view of the overall assessment of the evidence adduced by the prosecution, this Court does not see any reason so as to disturb the well-weighed findings recorded by the Court below. Appeal is thus held to be unmerited and liable for dismissal.

13. To say straightaway, the appeal is dismissed and the judgment impugned is affirmed. Appellants being already in jail, no order regarding surrender etc. appears necessary.

Sd/-

(Pritinker Diwaker)

Judge

