

(58)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2712 of 1997

1. Chhotelal son of Rupsingh Satnami, aged 21 years,
2. Ganesh son of Paharu Satnami, aged 20 years,
3. Guddu alias Rohit son of Gadha Satnami, aged 22 years,

All by occupation Agriculturists, resident of Katod, PS Shivarinarayan, Tahsil Janjgir, District Bilaspur, MP

---- Appellants

Versus

State of Madhya Pradesh (now CG)

---- Respondent

For Appellants	-	Shri M.K. Baeg, Advocate
For Respondent	-	Shri Adil Minhaj, PL

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

16/09/2016

This appeal is directed against the judgment and order dated 22.12.1997 passed by Additional Sessions Judge, Janjgir, District Bilaspur in Sessions Trial No. 364/1996 convicting accused/appellant Chhotelal u/s 376; accused Ganesh and Rohit u/s 376/114 and all the accused/appellants u/s 341 IPC. Sentence imposed on accused Chhotelal is RI for seven years with fine of Rs. 500/- u/s 376; on accused Ganesh and Rohit RI for three years with fine of Rs. 500/- each u/s 376/114 and on all three the RI for one month with fine of Rs. 200/- u/s 341 IPC, plus default stipulations.

2. As per the case of prosecution, on 29.3.1996 FIR Ex.P-1 was lodged by prosecutrix (PW-1) aged about 16 years alleging that on 24.3.1996 when she had gone to attend nature's call, accused/appellants came there, forcibly took her to the nearby field of some Bhuvneshwar, and after pressing her mouth threw her on the ground. It is alleged that accused Ganesh had pressed her mouth, accused Rohit pressed her legs whereas accused Chhotelal removed the sari and blouse worn by her and after removing his own underwear and *lungi* committed forcible sexual intercourse with her. It is also alleged that all the three accused/appellants threatened her of life in case she disclosed the incident to anyone. Thereafter, she wore her clothes, went to the house of accused Chhotelal and disclosed the incident to his father Roop Singh but he drove her away. Thereafter, being thirsty she drank water and became unconscious. She has alleged that the accused/appellants then took her on bicycle and dropped near her house and that after regaining consciousness she narrated the incident to her mother. After her father got back home, her mother is stated to have informed him about the incident who in turn informed the same to other villagers and thereafter the report was lodged. Based on this report, offences under Sections 341, 376, 506/34 IPC were registered against the accused/appellants. Prosecutrix was medically examined by Dr. M.L. Sahu (PW-3) who vide his report Ex. P-4 referred her to a lady doctor for further examination which was done by Dr. S. Birthare (PW-16) vide report Ex. P-28. After completion of investigation, charge sheet was filed by the police followed by framing of charge against the accused

Chhotelal u/s 341, 506-B and 376; against accused Ganesh and Rohit Kumar u/s 341, 506-B and 376/114.

3. So as to hold the accused/appellants guilty, prosecution has examined 16 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 has convicted and sentenced the accused/appellant 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 and that the story cooked up by the prosecutrix that she was raped by the accused/appellant Chhotelal in an open place after the accused/appellants Ganesh and Guddu alias Rohit pressed her limbs, appears to be highly improbable. He further submits that even the medical report does not support the case of the prosecution.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are strictly in accordance with law and there is no infirmity in the same. According to the State counsel the medical report of the prosecutrix Ex. P-28 fully supports the case of the prosecution.

7. Prosecutrix (PW-1) has stated that on the date of incident at about 7 PM when she had gone towards the canal for answering

the call of nature, all the three accused/appellants came there, caught hold of her, took her in the nearby enclosure, accused Ganesh pressed her mouth, accused Rohit held her legs, accused Chhotelal removed her sari and blouse and after undressing himself he committed forcible sexual intercourse with her. She has further stated that while leaving after committing the offence, they threatened her also of life in case disclosure of the incident was made by her. Thereafter, she wore her sari, went to the house of accused Chhotelal and informed his father Roop Singh about the incident. According to this witness, when accused/appellants Ganesh and Rohit were to take her home, she became unconscious and after administration of saline in the hospital she regained consciousness and informed her mother about the incident. This witness has further stated that she was not aware as to when her father returned after attending the dance programme and that she was feeling pain in her private part. She has stated that when the accused/appellants were taking her away, she tried to raise her cries but they had pressed her mouth. In cross-examination also this witness remained firm to what she stated in her examination-in-chief. Chhedinbai (PW-2) - mother of the prosecutrix has stated that after dropping the prosecutrix near her house when the accused/appellants Ganesh and Rohit were getting back, she had seen them and at that time she (prosecutrix) was in semi conscious condition and gained consciousness after sprinkling water on her face and then informed her to have been ravished by accused Chhotelal and thereafter when her husband returned home, the report was lodged. M.L. Sahu (PW-3) is the witness who

medically examined the prosecutrix and as she was dehydrated saline was administered on her. According to him, since the prosecutrix complained pain in her stomach, he referred her to the lady doctor for further examination. Jethuram (PW-4) is the Patwari who prepared spot map Ex. P-3. Dr. S. Chaterjee (PW-7) is the radiologist who gave his report Ex. P-10 opining the age of the prosecutrix in between 18 and 19 years. Shiv Prasad alias Lulu (PW-10), Bhururam (PW-11), Shankarlal (PW-12), Hemlal Bharti (PW-13) and Jethuram (PW-14) have not supported the case of the prosecution and have been declared hostile. Dr. N.L. Dhritlahre (PW-15) is the investigating officer who has duly supported the case of the prosecution. Dr. S. Birthare (PW-16) is the witness who medically examined the prosecutrix and gave her report Ex. P-28 stating that she noticed "laceration mark over left side of vaginal orifice, tenderness; hymen is not intact and signs of intercourse has been observed within a week".

8. Close scrutiny of the material available on record including the evidence of the prosecutrix thus makes it apparent that on 24.3.1996 at about 7 PM when she was going to answer the call of nature, all the three accused/appellants came to her, caught hold of her and after taking her to the nearby enclosure, accused/appellant Chhotelal committed forcible sexual intercourse whereas the other two accused/appellants namely Ganesh and Guddu alias Rohit facilitated the said act by overpowering her. The narration made by the prosecutrix as to in what manner the act was executed and subsequently she was threatened of life in the event of disclosure of the incident made by her appears to be

convincing and trustworthy. Mother of the prosecutrix namely Chhedinbai (PW-2) has also supported the version of the prosecutrix that after her daughter (prosecutrix) was dropped outside the house by accused/appellants Ganesh and Guddu alias Rohit, she was in semi conscious condition and when after sprinkling water on her face she regained consciousness, act of accused/appellant Chhotelal was disclosed by her. Even the lady doctor medically examining the prosecutrix has also supported the case of the prosecution and stated that laceration mark over left side of vaginal orifice, tenderness was found and her hymen was not intact. She has also noticed the signs of intercourse with her within a week therefrom.

9. Thus in aforesaid view of the matter this Court is of the considered opinion that the prosecution has proved its case by adducing cogent and reliable evidence and the Court below too has properly appreciated the same. The findings recorded by the Court below are therefore based on appropriate reasoning and require no interference by this Court. Conviction of the accused/appellants as described above is hereby maintained.

10. Appeal thus being without any substance is liable to be dismissed and it is dismissed as such. Appellants' bail is cancelled and they are directed to be sent to jail forthwith to serve out remaining part of the sentence imposed on them.

**Sd/-
Pritinker Diwaker
Judge**