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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 3080 of 1998

Judgment reserved on: 03.11.2016

Judgment delivered on: 25.11.2016

1. Amar Singh, S/o. Sukhram, Aged about 22 years,
2. Sajjan Ram, S/o.Dhatiram, Aged about 40 years,
3. Karmu, S/o. Shivram, Aged about 40 years,
R/o. of village Bargideeh, P.S. Batoli, District Surguja (M.P.)

---- Appellants

Versus

State of Madhya Pradesh Through Station Officer, P.S. Batoli, District Surguja (M.P.).

---- Respondent

Criminal Appeal No. 2586 of 1998

Dhakad Ram S/o. Budhau Ram, Aged 35 years, Occupation Agriculture- resident of village Kunkuri, P.S. Batauli, District Surguja (M.P.)

Versus

State of Madhya Pradesh Through Station Officer, P.S. Batauli, District Surguja (M.P.)

---- Respondent

For Appellants	:-	Smt. Ranjana Jaiswal and Mr. A.K. Prasad, Advocates
For Respondent	:-	Mr. Sanjeev Pandey, Govt. Advocate

SB: Hon'ble Shri Justice Anil Kumar Shukla

C A V Judgment

1. Cr.A.No. 3080/1998 filed by the Accused-Appellants Amar Singh, Sajjan Ram and Karmu, and Cr.A.No. 2586/1998 filed by the Accused-Appellant Dhakad Ram have been preferred against judgment dated 13.10.1998 passed in Sessions Trial No. 139/1998. Thus, both the appeals are being disposed of by this common judgment.
2. These appeals are directed against the judgment of conviction and order of sentence dated 13.10.1998 passed by the Sessions Judge, Surguja in Sessions Trial No. 139/1998, whereby and whereunder the learned Additional Sessions Judge, after holding the Accused/Appellants along with three other co-accused persons guilty for committing gang rape on the prosecutrix, convicted each of them under 376 (2) (g) of the IPC and sentenced them to undergo rigorous imprisonment for ten years and pay a fine of Rs.10,000/-. In default of payment of fine, they were ordered to undergo further rigorous imprisonment for two years.
3. The impugned judgment is challenged on the ground that without there being any credible evidence against the appellants for abducting and committing gang rape upon the prosecutrix, the learned trial Court has convicted and sentenced the appellants and other co-accused persons as aforementioned.
4. Case of the prosecution, in brief, is that on 11.04.1998 at about 4.00 pm, when the prosecutrix (PW-1) aged about 25 years, was alone working in her field (Badi) at village Kunkuri, at that time, the appellants came to her and gagged her mouth and rest of the appellants carried her to the house of Rajesh. When she tried to raise

alarm, they closed her mouth by hand and appellant Amar Singh committed forceful sexual intercourse with her. Thereafter when the appellant Dhakad Singh was trying to commit rape, the prosecutrix anyhow escaped and ran towards the road. At a few distance, her brother Sakha Ram (PW-2) met with her whom she narrated the incident to him and thereafter she narrated the incident to her parent. According to the prosecutrix, if she would have not escaped from there then the other accused would also have committed rape on her.

5. On 11.04.1998 at about 9.00 pm, she lodged a report at Police Batauli vide Ex.P-1. She was sent for medical examination vide Ex.P-2A and was examined by Dr. Shashiprabha Jaiswal (PW-3) who gave her report (Ex.P-2). On 12.04.1998, the appellant-Amar Singh was also sent to the Hospital for medical examination vide Ex.P3A. Dr. Roop Singh Parihar (PW-4) examined him and gave his report (Ex.P-3A), in which, he found that the appellant was capable of committing sexual intercourse. The accused persons were arrested and the seized articles were sent for chemical examination to the F.S.L Sagar vide Ex.P-9.
6. After completion of the investigation, charge sheet was filed against the appellants in the Court of Judicial Magistrate First Class, Ambikapur, who, in turn, committed the case to the Court of Sessions Judge, Surguja at Ambikapur, who conducted the trial and convicted and sentenced the appellant as mentioned above.
7. To hold the appellants guilty, the prosecution examined prosecutrix (PW-1), Sakharam (PW-2), Dr. Shashiprabha Jaiswal (PW-3), Dr.

Roopsingh Parihar (PW-4), Assistant Sub Inspector S.S. Patel (PW-5). Appellants had examined Budheshwar (DW-1) in their defence.

8. Smt. Ranjana Jaiswal and Mr. A.K. Prasad, Advocates learned counsel for the appellants argued that the impugned judgment is illegal, unwarranted and against the requirements of law and procedure which cannot be sustained in the eyes of law. They further submits that the court below has wrongly come to the conclusion about the guilt of the appellant Dhakad Ram as there is no evidence against Dhakad Ram that he has committed sexual intercourse with the prosecutrix (PW-1). The evidence of the prosecutrix (PW-1) does not inspire confidence. There is material contradictions in the evidence of the prosecutrix (PW-1). Learned counsel for the appellants further argued that the evidence of the prosecutrix is not cogent and reliable and does not corroborates with the medical evidence. Therefore, it is not safe to rely upon the sole testimony of the prosecutrix. They further argued that the appellants have been falsely implicated in this case on the rivalry between two groups of the village. It is further argued that it is the case of the prosecution itself that the rape was committed by Appellant-Amar Singh. There is no allegation of rape against other co-accused persons. Learned counsel in support of their contentions, placed reliance on **Rai Sandeep alias Deepu v. State of NCT of Delhi** with **Hari Singh v. State (NCT) of Delhi**, 2012 CRI. L. J. 4119. Thus, the finding recorded by the learned Sessions Judge is liable to be set aside and the appellants deserves to be acquitted.

9. Shri Sanjeev Pandey, Govt. Advocate for the State/respondent, supporting the impugned judgment submitted that the conviction and sentence awarded by the learned Additional Sessions Judge do not warrant any interference by this Court.

10. I have heard learned counsel for the parties, perused the record of the trial Court and also the impugned judgment.

11. In order to appreciate the arguments advanced by learned counsel for the parties, it would be appropriate to extract the relevant provision of Section 376 of the IPC which reads as under:-

376. Punishment for rape.-

(2) Whoever,-

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided

Explanation 1.-Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section"

12. In view of the aforesaid provision and on going through the record of the trial Court, the evidence of the prosecutrix (PW-1) is substantial to analyze the factual matrix of the case with regard to the conduct and role played by the appellants in commission of the offence.

13. The question for consideration before this Court is that (i) whether the Accused-Appellants in furtherance of their common intention forcibly

took the prosecutrix to the house of Rajesh? (ii) Whether after taking in the said house, the Accused-Appellant had committed rape upon the prosecutrix?.

14. In order to appreciate the contention of the parties, I have examined the evidence adduced on behalf of the prosecution. The prosecutrix (PW-1) is a married lady. The incident is alleged to have taken place at 4:00 pm on 11.04.1998. She has stated in her evidence that on the date of incident at about 4 pm when she was working in her Badi (field) at that time, Karmuram, Amar Singh, Sajjan Singh and Dhakadram came there and they gagged her mouth and rest of the appellants abducted her, took her to the house of Rajesh. When the prosecutrix tried to raise alarm, they gagged her mouth and appellant Amar Singh committed forceful sexual intercourse with her. Thereafter, when other Appellants tried to caught hold the prosecutrix for committing sexual intercourse, she anyhow managed to escape from their custody and ran towards her house. It has been stated by the prosecutrix that in her way, she met her brother Sakharam (PW-2) to whom she narrated the entire incident. Thereafter, she alongwith her brother Sakharam returned back home along and narrated about the incident to her parents. On the same day, she lodged the report (Ex.P-1) in Police Station Batauli vide Ex.P-1. Her petticoat was seized vide Ex.P-2. She consented for her medical examination vide Ex.P-3.
15. The statement of the prosecutrix (PW-1) has been duly supported by the statement of (PW-2) Sakharam. Sakharam has deposed in his statement before the Court that he was going from Batauli to his house then the prosecutrix (PW-1) came to him and stated that all the

accused insulted her and Appellant-Amar Singh committed sexual intercourse with her. He has further stated that he went alongwith her sister (the prosecutrix) to lodge a report in the police station.

16. Smt. Shashiprabha Jaiswal (PW-3) is the Doctor who has conducted the medical examination of the prosecutrix PW-1 and gave her report Ex.P2A that the prosecutrix was a married lady and also mother of a child. Her secondary sexual character were well developed and her hymen was torn old. The prosecutrix was accustomed to sexual intercourse. There was no injury on the private part of the prosecutrix (PW-1). The doctor has not given any definite opinion of any forceful sexual intercourse having committed recently. However, on 14.04.1998 the accused/appellant Amar Singh was also sent for medical and the doctor found him fit for committing intercourse.
17. Dr. Roop Singh Parihar (PW-4) who conducted the MLC of Appellant-Amar Singh found abrasion $\frac{1}{2} \times \frac{1}{2}$ cm on right thigh of red colour and opined that if a person lies down on a woman for committing sexual intercourse, then there can be scratches from the nails of any person. From the said statement of the Doctor, the statement made by the prosecutrix even in her cross-examination remains unshaken. No fact has been revealed by statement of Dr. Roop Singh Parihar, that the prosecutrix might be telling a lie. As far as no injuries found on the body of the prosecutrix is concerned, the circumstances in which the prosecutrix was subjected to sexual intercourse were like that in a closed room in presence of Appellant Amar Singh, there was no option for the prosecutrix to escape, she was helpless at that time. In

the said case, there is no possibility of there being any injuries on the body of the prosecutrix.

18. Station house Officer S.S. Patel (PW-5), has deposed in his deposition that on 12.04.1998 he prepared the spot map vide Ex.P-6. In his cross-examination he has stated that the house mentioned in the map vide Ex.P6, there are two houses of Rajesh and one house of Siddhu, adjacent to the road. However, in the said map, the house of the parents of the prosecutrix has not been shown and further the distance between the house of Rajesh and house of the parents of the prosecutrix has also not clearly been stated by him.
19. The defence witness Budheshwar (DW-1) deposed that there was road in between Rajesh's house and his house. The distance between the house of the parents of the prosecutrix (PW-1) from the house of Rajesh is about 1 km away. However, this defence witness in his evidence at paragraph 7 has also deposed that there was filed in between the house of Rajesh and the house of prosecutrix's parents. Thus, the distance narrated between the two houses appears to be doubtful as per the evidence of (DW-1). The prosecutrix (PW-1) was working in her field and the appellants came to her and gagged her mouth and took to Rajesh's house and Appellant Amar Singh committed forceful sexual intercourse with her. This action on the part of the Appellants cannot be considered as unnatural. Thus, on this point, the argument of counsel for the appellants is not acceptable.
20. So far as false implication by the prosecutrix on the ground of rivalry between two groups in the village is concerned, in this regard, the prosecutrix (PW-1) has stated in para 9 that it is wrong that she has

falsely implicated the Appellants at the instance of Patel. In this manner, PW-2 Sakharam, in his cross-examination has accepted that one group is of Patel's and the other group belongs to his cousin. The appellants are the members of Patel group. There is a groupism in the village and the prosecutrix is not related to any specific group or party. The defence witness Budheshwar (DW-1) in his deposition has stated a woman would not put her character on stake to take revenge for any incident which would have happened earlier. The plea of false implication due to rivalry, by itself is improbable as a married lady would never accuse any person falsely of rape and sacrifice her chastity and exposing the entire family to shame at the risk of condemnation by the Society. In the citations relied on by the learned counsel for the Appellants, in that case, the prosecutrix was raped by more than one person and the facts and circumstances were entirely different. Thus, they are not at all applicable in this case.

21. So far as the argument of disbelieving the evidence of Prosecutrix PW-1 is concerned
 - (a) The incident happened on 11.04.1998 at 4 pm and on the same day at about 9 PM the FIR (Ex.P-1) has been lodged by the prosecutrix PW-1 in the Police Station.
 - (b) Immediately, after the incident, on the road the prosecutrix PW-1 met with her brother Sakharam (PW-2) and narrated the fact to him ,thereafter, she narrated the incident to her parents.
 - (c) That the rape was committed by Appellant Amar Singh with the prosecutrix PW-1 in a closed room and the other appellants were

standing outside the house, in this situation, no injury was found on the body of the prosecutrix (PW-1).

- (d) Previously there was no enmity between the appellants and the prosecutrix (PW-1). Then the question of falsely implicating the appellants herein the crime in question does not arise.

Therefore, there is no reason to disbelieve the evidence of the prosecutrix(PW-1).

22. In the matter of **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat AIR 1983 SC 753** Hon'ble Supreme Court has held that as under- Corroboration is not the sine qua non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society.
23. Taking into consideration the over all evidence available on record, I am of the considered opinion that the court below has rightly placed reliance on the statement of the witnesses, specifically on the statement of prosecutrix (PW-1) that she was subjected to rape by the Appellants. The same to be quite trustworthy and is sufficient for convicting them u/s 376 (2) (g) IPC.

24. In the result, I do not find any merit in both the appeals (Cr.A.Nos. 3080 of 1998 and 2586/1998). They are liable to be and is accordingly dismissed.
25. The appellants are on bail. Their bail bonds are cancelled and they be taken into custody forthwith to serve out the remaining period of sentence imposed upon them. Copy of this judgment be sent to the concerned Court for information and compliance.

Sd/-
(Anil Kumar Shukla)
Judge