

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 55 of 2000**

- Dinesh Kumar Sone of Devsharan Mishra aged about 36 years, Resident of village Urtaon District Shahdol, present at MQ/992 Pragatinagar, Deepka (Chhattisgrah)

---- Appellant

Versus

- State of Chhattisgarh, through the Station House Officer, Kusmunda, District Korba (Chhattisgarh)

---- Respondent

And**Criminal Appeal No. 99 of 2001**

- Ramesh Kumar S/o Nathu Ram aged about 28 years, R/o Saraipali (Boida) P.S. Pali, Village- Ranki, Thana & P.S Kusmunda, District – Korba.

---- Appellant

Versus

- State of Chhattisgarh

---- Respondent

For Appellants

Mrs. Smriti Shrivastava under instruction of
Mrs. Savita Tiwari, Advocate

For State

Mr. Vinod Tekam, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****13.12.2016**

1. These two appeals have been preferred assailing the judgment of conviction dated 30.11.2000 passed in Sessions Trial No. 50/2000 by the Special Judge (SC/ST Act), Bilaspur whereby the appellants in

the two appeals have been convicted for the offence under Section 376(2) (G) of the IPC and sentenced to undergo R.I. for 10 years.

2. The facts of the case in brief is that an F.I.R. was lodged on 30.05.2000 at around 10:55 pm by PW-2 the Prosecutrix at the Police Outpost Kusmunda, Korba alleging that in the evening of the said day at around 7 pm the two appellants in the two appeals forcibly made the Prosecutrix to drink liquor and thereafter she has been ravished by both the Appellants repeatedly and that with difficulties she could escape from the clutches of the Appellants and then she immediately took shelter in the house of PW-1, Mohar Singh and called upon other persons and the matter was reported to the Police Station and the F.I.R. was lodged. After the investigation were complete the matter was put to trial vide the Sessions Trial No. 50/2000. During the course of the trial the prosecution examined as many as 9 witnesses and there was no witness examined on behalf of defence and finally vide the impugned judgment the Court below found the appellants to be guilty of having committed offence under Section 376 (2) (G) of the IPC convicted the appellants in the two appeals for the said offence to undergo R.I. for 10 years, leading to the filing of the present two appeals.
3. Learned Counsel for the Appellants assailing the impugned judgment submits that the prosecution has not been able to establish its case beyond all reasonable doubt. Secondly the material witness PW-1 Mohar Singh and PW-3, Lakhman Singh both have not supported the case of the prosecution. It was also contended by the Counsel for the Appellants that the first person to help the Prosecutrix as alleged in the F.I.R. is the daughter-in-law of PW-1, Mohar Singh and who for

reasons best known has not been examined at all which further creates doubt in the Prosecution story. It was further contended by the Counsel for the Appellants that from the deposition of the Prosecutrix it gives sufficient indication that she was a consenting party to the physical relationship if at all if such an incident has taken place between the appellants and the Prosecutrix. It is said that when the appellants brought liquor, and along with the liquor they had brought three glasses where there was only 3 persons i.e. the two appellants and the Prosecutrix. She further highlighted the fact that the Prosecutrix also had consumed liquor, this shows that there was some element of consent on part of the Prosecutrix. Therefore, the prosecution story is falsified. It was also contended that by the Counsel for the Appellants that the doctor who had immediately examined the Prosecutrix on the very next day also could not give any definite opinion on the aspect of the Prosecutrix being subjected to sexual intercourse or in respect of commission of rape by the two appellants on her or not. Thus prayed for setting aside of the impugned judgment and acquittal of the Appellants.

4. Learned State Counsel opposing both the appeals submits that it is the case where the prosecution in fact has sufficiently proved the case beyond all reasonable doubts against the present appellants and therefore does not warrant any interference in the impugned judgment of conviction. According to the State Counsel the case of the prosecution stands established from the statement of the prosecution witnesses recorded, particularly Prosecutrix herself who has narrated the entire facts as it is and there is no discrepancy, omission or contradiction or improvements in her Court statement

that she had made when compared with the FIR which has been lodged in this case. Further State Counsel submits that even otherwise there is no strong reason made out by the defence to disbelieve version of the Prosecutrix or to doubt the Prosecutrix. According to the State Counsel in addition to the ocular evidence brought by the prosecution it also stands corroborated from the medical evidence which have come on record. According to the State Counsel though the Doctor has not been able to establish the issue whether the Prosecutrix has been subjected to recent sexual intercourse or not that probably is for the reason that the Prosecutrix was a married middle aged lady but the medical evidence however has confirmed of there being scratch marks all over the body which supports case of the prosecution of the Prosecutrix being subjected to force and sexual intercourse.

5. According to State Counsel that PW-1 Mohar Singh who has turned hostile but his evidence itself is confirming the fact that the Prosecutrix on the fateful day has rushed to his house naked and had sought for clothes and help which he had provided. According to the State Counsel the appeals are thus bereft of merits and deserve to be rejected.
6. Having considered the rival contentions put forth on either side and on perusal of record what clearly culls out from the record is the fact that the on 30.05.2000 at around 10:55 pm an F.I.R. was lodged by the Prosecutrix which was entered in zero by the Police authorities. In the F.I.R. she had mentioned of her being ravished by the two appellants and the incident also was just about a couple hours prior to her reporting the matter to the Police authorities. Thus there is

prompt reporting of the incident by the victim to the Police authorities. The Police authorities started investigation and recorded statement of the relevant witness immediately. The Prosecutrix in the instant case was also subjected to medical examination on the very next day i.e. on 31.05.2000 and during the course of the medical examination it was found that all over her body i.e. on her chest, breast and on her neck as well as on her thighs there were numerous scratch marks made by nail of human being and there was also blood clot found on her right breast with swelling over it. This clearly suggest that the Prosecutrix was subjected to physical assault. Further from the deposition it would also reflect that PW-1 Mohar Singh in whose house the Prosecutrix had taken shelter immediately after escaping from the clutches of the Appellants has also confirmed the statement what the Prosecutrix had narrated to the Police authorities. Though the said PW-1 Mohar Singh in the Court statement has not fully endorsed the statement and has turned hostile but he admits the fact that on the said date when the Prosecutrix did come to his house she was naked and his family members had provided her clothes to wear. Thus statement of PW-1 Mohar Singh sufficiently proves the incident that occurred on 30.05.2000.

7. Taking into consideration the deposition which have been laid by the Prosecution particularly the Statement of the Prosecutrix made before the Court when compared to her statement made at the time of lodging of the complaint and during the course of investigation, does not show much contradiction or conflict. In addition when we see other aspect like prompt lodging of the F.I.R and the incident

being corroborated by the Statement of Mohar Singh, PW-1 there is not much for this Court to disbelieve the statement of the Prosecutrix.

8. In view of the observation made in the preceding paragraphs this Court does not find any illegality or infirmity on the part of the Court below either on the facts or law while convicting the Appellants for the offence that were charged against them.
9. Accordingly, the present Appeals being bereft of merits does not warrant interference and the two Appeals accordingly stands dismissed.
10. The Appellants are on bail. Their bail bonds are cancelled. They are directed to surrender forthwith and/or be taken into custody for serving out remaining period of their sentences.

Sd/-
(P. Sam Koshy)
JUDGE