

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 318 of 2010

1. Bansilal Patel S/o Chedu Ram, aged about 21 years
 2. Jitendra Sahu s/o Harish Chandra Sahu, aged about 20 years
- Both R/o Girra, Police Station Palari, District Raipur, CG

---- Appellants

Versus

1. State Of Chhattisgarh through SHO PS Palari, District Raipur, CG

---- Respondent

For Appellants	-	Shri N.S. Dhurandhar, Advocate.
For Respondent.	-	Shri Ravindra Agrawal PL

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

06 /04/2016

This appeal is directed against the judgment and order dated 31.03.2010 passed by Special Judge (Atrocities) Raipur, in Special Case No. 68/2008 convicting the accused/appellants under Sections 450/34 and 376 (2) (g) IPC and sentencing each of them to undergo rigorous imprisonment for three years with fine of Rs. 500/ u/s 450/34 and rigorous imprisonment for ten years with fine of Rs. 1000/- u/s 376 (2) (g), plus default stipulations.

2. Case of the prosecution in brief is that on 10.4.2008 FIR (Ex. P-1) was lodged by the prosecutrix aged about 14 years alleging that on 5.4.2008 her parents were not at home and that when she and her sister Nirmala were busy in the household work, at about 1

PM the accused/appellants came there and asked for water and after drinking water they got back. Thereafter, when her sister went to the village pond for cleaning the clothes, accused/appellants again came to her house; closed the front and back door; accused Bansi dragged her to the cot; made her lie thereon; removed her clothes and committed forcible sexual intercourse with her. It is alleged that in spite of her cries, accused Jitendra kept standing nearby and after Bansi, he also took his turn. Meanwhile, when her sister knocked the door, accused/appellants went away from the back door but while they were getting out, she (sister) had seen them and then the prosecutrix narrated the incident to her. After arrival of parents on 10.4.2008, she informed them also about the incident and after that the report came to be lodged based on which offences under Sections 450, 376/34 IPC and 3 (1) (xii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the "Special Act") were registered against the accused/appellants and she was medically examined by Dr. Mamta Thakur (PW-9) who gave her report Ex. P-20. Ossification test was also conducted vide report Ex. P-19 according to which the age of the prosecutrix could be between 16 and 18 years at the relevant time. After completion of investigation, charge sheet was filed by the police for the offence punishable under Sections 376 (2) (g), 450 IPC and 3 (1) (xii) & 3 (2) (v) of the Special Act. The Court below however framed the charges u/s 450/34, 376 (2) (g) IPC and 3 (1) (xii) of the Special Act.

3. So as to hold the accused/appellants guilty, prosecution has examined 13 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 the special Act but has convicted and sentenced them as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellants submits that there is inordinate delay of six days in lodging the report which has not been explained satisfactorily as required under the law. He submits that there is no legally admissible evidence to show that on the date of incident the prosecutrix was minor and medical evidence also does not support the case of the prosecution. According to the counsel for the appellants as the accused/appellants are in jail since 6.5.2008 and if their conviction is not likely to be dislodged the sentence imposed on them may be reduced to the period already undergone taking lenient view in the matter.

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 Sections 376 (2) (g) and 450 IPC are strictly in accordance with law and there is no infirmity in the same. He submits that there is clear evidence on record that taking advantage of loneliness of the prosecutrix, the accused/appellants gained entry into her house

and committed forcible sexual intercourse with her one after another and therefore they are not required to be dealt with leniently. Medical report is also argued to partially support the case of the prosecution which says that her hymen was healed and it was in 6 o'clock position and her vagina admitted one finger and there was possibility of her being subjected to sexual intercourse. He submits that as the prosecutrix was medically examined six days after the incident, her hymen may have been healed by that time. He further submits that the version of the prosecutrix appears to be trustworthy which has been corroborated by her sister Nirmala (PW-2) who had seen the accused/appellants while running away from the back door.

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

8. Prosecutrix (PW-1) has stated in her evidence that after class 6 she had given up her studies. She is stated to know the accused/appellants herein. According to her, on the date of incident her parents and brothers were not at home. On that day at about 1 PM the accused/appellants had come to her house and got back after drinking water. Thereafter, when her sister Nirmala went to the pond for cleaning the clothes and she was all alone in her house, they again gained entry into her house, accused Jitendra closed the front and the back door, accused Bansi dragged her to the cot, made her lie on that, removed her clothes and committed forcible sexual intercourse with her. She has stated that first Bansi committed sexual intercourse and then Jitendra too took his turn.

Thereafter, when her sister returned from the pond and knocked the door, they left the spot from the back door. According to this witness, after she opened the door crying, her sister chased the accused/appellants and then she (prosecutrix) informed the entire incident to her (Nirmala). After her mother returned home on 10.4.2008, she narrated the entire incident to her and then the report was lodged. Thereafter, she was medically examined with her consent and that of her father and her caste certificate was seized. Barring some minor contradictions, she stood firm in her cross-examination also. According to her, she has cried at the time of commission of offence but it was not heard by anyone. Nirmala (PW-2) – sister of the prosecutrix has stated that on the date of incident her parents and brothers were not at home as they had been to her maternal uncle's village and except prosecutrix and herself nobody else was in the house. She has stated that when the prosecutrix and her sister were busy in the household work, accused/appellants had come there at about 1 PM but after taking water they had got back and she went to the pond for cleaning the clothes. After she returned from the pond, the door was bolted from inside which was opened by the prosecutrix who was weeping and at that time the accused/appellants were running away. She tried to chase them but they moved away towards jungle. She has further stated that on being asked the prosecutrix informed her about the incident of rape. In cross-examination also this witness has remained firm to what she has stated in the examination-in-chief. Dr. Mamta Thakur (PW-9) is the witness who medically examined the prosecutrix and gave her report Ex. P-20 stating that

her hymen was old ruptured; it was in 6 o'clock position; vagina admitted one finger and that possibility of sexual intercourse with her was there. She also referred the prosecutrix for ossification test and according to her x-ray Ex. P-19 her age was between 16 and 18 years at the relevant time. Mutana (PW-3) is the mother of the prosecutrix who has stated that when she returned from her maternal home, the prosecutrix informed her to have been subjected to forcible sexual intercourse by the accused/appellants and asked her to lodge the report. Santoshi Bai (PW-4) is the witness who had seen the accused/appellants running away from the house of the prosecutrix, however, she has not supported the case of the prosecution and has been declared hostile. Jahar Singh (PW-5) – father of the prosecutrix and Pusau Ram (PW-6) have also not supported the case of the prosecution and have been declared hostile. Vijay Das Manikpuri (PW-7) is the village Kotwar and witness to the spot map prepared by Patwari. He is also the witness to seizure made under Ex. P-9 to Ex. P-12. Paras Ram Dewangan (PW-10) is the Patwari who prepared spot map Ex.P-22. Prem Singh Netam (PW-11) is the witness who assisted in the investigation. M.K. Mishra (PW-12) is the investigating officer who has duly supported the case of the prosecution. Dr. F.R. Nirala (PW-13) is the witness who medically examined the accused/appellants and gave his reports Ex. P-27 and Ex. P-28 stating that they were capable of performing sexual intercourse.

9. After hearing counsel for the parties and considering the evidence of the prosecutrix and other witnesses, it becomes apparent that on 5.4.2008 when the prosecutrix was all alone in

her house the accused/appellants gained entry therein, accused Jitendra bolted the front and back door from inside, accused Bansi dragged her to the cot, made her lie over that and committed forcible sexual intercourse and then accused Jitendra also took his turn. Evidence of the prosecutrix has also been supported by her sister Nirmala (PW-2) who had seen the accused/appellants running away after returning from the village pond and then the prosecutrix informed her about the entire incident. Mother of the prosecutrix namely Mutana (PW-3) has also supported the case of the prosecution stating that when she got back from her maternal house on 10.4.2008, the prosecutrix informed her about the incident and asked to lodge the report. Even the medical report Ex. P-20 goes to show the possibility of commission of sexual intercourse with the prosecutrix and that her hymen was healed. Healing of hymen is but natural because medical examination of the prosecutrix took place six days after the incident. As regards delay in lodging the report, the prosecutrix has correctly explained the same stating that after her parents got back home on 10.4.2008 the report was lodged immediately thereafter. Further, the submission of counsel for the appellants that the prosecution has not proved the prosecutrix to be minor on the date of incident has no substance because it is not a case of consent. Even if it is taken that on the date of incident the prosecutrix was not minor, the accused/appellants cannot derive any benefit of the same because they had intruded upon her privacy taking advantage of her loneliness in the house against her will and without her consent and that she has been quite consistent in stating the things at all

the stages which has received corroboration from her sister (PW-2) who had seen the accused/appellants fleeing the spot and also tried to chase them.

10. Thus the prosecution has proved its case beyond all reasonable doubt and so also the Court below has been justified in basing its findings of conviction thereon. This Court does not see any reason to interfere with the judgment impugned convicting and sentencing the accused/appellants as mentioned above. Even sentence imposed on the appellants is reasonable and there is no room to accept the submission of the counsel for the appellants to reduce the sentence to the period already undergone by them.

11. Appeal therefore, being devoid of substance is liable to be dismissed and it is dismissed as such and the judgment impugned is affirmed. As the appellants are already in jail, no order regarding surrender etc. is required to be passed.

12. While writing the judgment impugned, the Court below has mentioned the name of the prosecutrix and thus given a complete go-bye to several decisions of the Apex Court criticizing such practice. It is indeed a matter of great concern.

13. Let a copy of this order be sent to the concerned Judge with a note of caution that such practice should not recur henceforth while writing the judgments or orders involving the offences specified in Section 228-A IPC.

Sd/-

(Pritinker Diwaker)

Judge

