

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 984 of 2007

1. Gharbharan, s/o Ram Bharos, aged about 22 years
2. Jai Nandan S/o Jai Mangal, aged about 22 years
3. Samayalal S/o Ameer Singh, aged about 26 years

All R/o village Tiwaragudi, Police Station Ramanujnagar,
District Sarguja, CG

---- Appellants

Versus

1. State Of Chhattisgarh through District Magistrate, Sarguja,
CG

---- Respondent

For Appellants	-	Smt. Indira Tripathi, Advocate.
For Respondent.	-	Shri Ashish Suarana, PL

Hon'ble Shri Justice Pritinker Diwaker

CAV Judgment

26.04.2016

This appeal is directed against the judgment and order dated 29.9.2007 passed by Additional Sessions Judge, Surajpur, in Sessions Trial No. 220/2007 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. 500/-, plus default stipulations.

2. Case of the prosecution in brief is that on 5.4.2007 at about 7.30 PM FIR (Ex.P-1) was lodged by the prosecutrix (PW-1) - a married lady aged about 25 years alleging that on that day at

about 11 AM when she was returning from the village pond, accused Jai Nandan and Gharbharan apprehended her; took to the nearby shrubs and committed forcible sexual intercourse with her. First person committing the offence was accused Gharbharan and it is accused Jai Nandan who took his turn after him. Yet another accused Samay Lal is alleged to have held her while being subjected to rape by other two. After commission of the offence, the accused/appellants left the spot and on reaching home she narrated the incident to her grand mother-in-law and then the report was lodged based on which offence under Section 376 (2) (g) IPC was registered against the accused/appellants. Thereafter, the prosecutrix was medically examined by Dr. (Smt.) R. Singh (PW-7) who gave her report Ex. P-14. After completion of investigation, charge sheet was filed by the police for the offence punishable under Section 376 (2) (g) followed by framing the charge accordingly.

3. So as to hold the accused/appellants guilty, prosecution has examined 08 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/appellants as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellants submits as under:

- (I) that in the FIR the prosecutrix has stated that it is accused Gharbharan who committed sexual intercourse with her first and then other accused Jai Nandan did it whereas her court statement shows that first the offence was committed by Jai Nandan and then by Gharbharan, and thus according to him, the prosecutrix being inconsistent cannot be said to be a reliable witness;
- (ii) that there is no allegation of commission of rape by accused Samay Lal;
- (iii) that the prosecutrix is stated to be not aware of the names of the accused/appellants but even then the report was lodged by naming each one of them, which shows false implication of the accused/appellants;
- (iv) that though the prosecutrix is stated to have come to know the names of accused/appellants from her father-in-law, but why he happened to disclose it to her, has not been clarified by her;
- (v) that no test identification parade has been conducted by the prosecution nor the father-in-law of the prosecutrix has been examined, and that also makes the case of the prosecution doubtful.
- (vi) that grand mother-in-law of the prosecutrix namely Rajni Bai (PW-3) has categorically stated that the accused/appellants were not known to the prosecutrix and their names might have been disclosed to her by the passers-by; and
- (vii) that in the absence of test identification parade the accused/appellants cannot be convicted simply on the basis of the statement of the prosecutrix that she knew them.

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.

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

8. Prosecutrix (PW-1) has stated in her evidence that on the date of incident at about 10 AM when she was returning from the pond after taking bath, accused Jai Nandan and Gharbharan met her on the way and without saying anything they took her to the nearby shrubs. Meanwhile, accused/appellant Samay Lal who was hiding himself behind a stone also appeared on the scene. Accused Jai Nandan pressed her breasts, accused Gharbharan held her legs and accused Samay Lal held her hands. She has further stated that after removing her clothes, accused Jai Nandan committed sexual intercourse with her first and then it was done by accused Gharbharan and then all of them left the spot taking the clothes carried by her. After reaching home, she narrated the entire incident to her grand mother-in-law and her husband and grand mother-in-law in turn informed her father-in-law about the same. Thereafter, the report was lodged and with her consent she was medically examined. In cross-examination she has stated that while lodging the report she informed the police that first of all accused Jai Nandan committed the offence but how the name of

Gharbharan was mentioned by the police to be the first offender, she could not tell the reason for that. According to her, the accused/appellants had pulled and not dragged her to the shrubs. She has stated that before the incident she was not aware of the names of the accused/appellants and she came to know the same thereafter through her father-in-law and accordingly she disclosed their names to the police at the time of lodging FIR. On being asked as to by whom the offence was committed, she has specifically named the two - Jai Nandan and Gharbharan and as regards accused Samay Lal she has stated that he was just holding her hands. Further when a question was put to her by the defence regarding the presence of accused Samay Lal, she has answered the same saying that when accused Jay Nandan and Gharbharan apprehended her and took her to the shrubs, he was not there and appeared on the scene just thereafter from the hiding behind a stone. She has denied the place of incident being stony. She has also denied the old enmity with the accused and her husband or father-in-law. She has stated that she did raise the cries at the time of commission of offence but the spot being in isolation, nobody could hear the same. Indar Sai (PW-2) - the husband of the prosecutrix has stated that when he returned home from his workplace, his aunt and the prosecutrix herself informed that while returning from the pond after taking bath, accused/appellants Jai Nandan and Gharbharan apprehended her (prosecutrix) and after taking in the shrubs committed forcible sexual intercourse with her. According to him, prosecutrix also informed him that accused Samay Lal did not do anything with her.

He however has denied any dispute between his family and that of the accused. Rajni Bai (PW-3) - the grand mother-in-law of the prosecutrix has stated that on being asked, she (prosecutrix) informed her that while getting back from the pond after taking bath, accused Jai Nandan and Gharbharan apprehended her and committed forcible sexual intercourse with her. This witness is also stated to have been informed by the prosecutrix that accused Samay Lal did nothing except holding her hand at the time of commission of offence. On being asked as to who told her the names of the accused/appellants, she informed this witness that it might be someone doing so. Lajrus Ekka (PW-4) is the head constable who recorded FIR (Ex. P-1) and assisted in the investigation. Dr. Deep Kumar (PW-5) is the witness who medically examined the accused/appellants Jai Nandan and Gharbharan vide Ex. P-6 and P-8 and opined that they were capable of performing sexual intercourse. N.P. Porte (PW-6) is the investigating officer who has duly supported the case of the prosecution. Dr. (Smt.) R. Singh (PW-7) is the witness who medically examined the prosecutrix and gave her report (Ex. P-14) stating that she did not notice any external or internal injury on the prosecutrix; two fingers easily entered her vagina and that she was habitual of having sex. Chandan Kerketta (PW-8) is the Patwari who prepared spot map Ex. P-5.

9. After hearing counsel for both the sides and perusing the evidence of the witnesses and other material on record with a greater degree of caution this Court arrives at the conclusion that prosecutrix (PW-1) has throughout been fully consistent in deposing

the things. She has described the tragic incident experienced by her saying that on the date of incident at about 10 AM when she was returning from the pond after taking bath, accused Jai Nandan and Gharbharan apprehended her and after taking in the shrubs committed forcible sexual intercourse with her. She has made it clear that first this act was done by accused Jai Nandan and then by Gharbharan and while they were doing so, accused Samay Lal was holding her hands and did not do anything else. After commission of offence, she came to her house and told the incident to her grand mother-in-law Rajni Bai (PW-3) and husband Inder Sai (PW-2). The prosecutrix has stated that she knew the accused appellants who were residents of nearby village Makarbandha. Though it has come in her evidence that she did not know the accused/appellants before commission of the offence and their names were disclosed to her by her father-in-law, yet looking to her consistent description as to how they waylaid her and after taking in the shrubs exploited her sexually, the same does not become fatal to the case of the prosecution. Nobody is expected to keep in mind every person by name and that is what appears to have happened with the prosecutrix too. Further, it has come on record that prior to the incident there was no enmity between the parties and therefore, the element of false implication also vanishes from the picture. No doubt, the prosecutrix is stated to be unaware of the names of the accused/appellants, possibility of disclosure of incident to her grand mother-in-law and husband after reaching home by refreshing their features leading to connectivity with name cannot be ruled out. There is no fault on the part of the

prosecutrix if the test identification parade has not been conducted by the police and it is not in any way helpful to the accused/appellants because in the Court she has identified both of them to be the beasts pouncing upon her privacy. Argument of counsel for the accused/appellants that in the FIR the prosecutrix has named Gharbharan to have first played with her moral entity followed by Jai Nandan is rendered meaningless in view of her clarification made in the cross-examination where she has stated that it was Jai Nandan who committed forcible sexual intercourse with her first and then accused Gharbharan also satisfied his lust, and that same sequence was given to the police also but how the name of Gharbharan is mentioned to be the first culprit, she could not tell. Further, the spot being un-stony and that too the victim was overpowered by the other two while being ravished, absence of external injury suggesting resistance on her part is not advantageous to the defence. Similarly, the prosecutrix being a married lady is also not supposed to suffer any internal injury on account of the act of the accused/appellants. Her conduct in stating the things against two persons to have played with her morality turn by turn and the other one (Samay Lal) holding her hand appears to be very realistic otherwise she had every occasion to put him also in the category of a rapist. But it does not mean that accused Samay Lal is innocent, rather he is equally guilty as he facilitated the other two in commission of the offence alleged. The prosecutrix thus appears to have stated exactly the same thing which she came across. This Court has no reason to doubt

her testimony duly supported by her husband and grand mother-in-law.

10. Aforesaid factual analysis in the light of evidence of the witnesses thus makes this Court to affirm the well assessed conclusion drawn by the trial Court as a whole holding the accused/appellants guilty as mentioned above. Order accordingly. Appeal has no substance and it is hereby dismissed. Appellants are already in jail and let them be there till completion of sentence imposed on them by the Court below.

Sd/-

(Pritinker Diwaker)

Judge

