



18/02/17

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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1225 of 1999

1. Totu @ Amar Kumar, aged about 19 years, S/o Mahabir Prasad Sarthi, R/o Jatiya Talab, Jarhabhata, P.S. Civil Lines, Bilaspur (M.P.)

--- Appellant

Versus

1. State of Madhya Pradesh through S.H.O., P.S. Anusuchit Jati Kalyan Prakoshtha, Bilaspur (M.P.).

--- Respondent

And

CRA No. 1285 of 1999

1. Vinnu @ Vinod Kumar S/o Bisahu Ram Nai, aged about 22 years, R/o Village Jatiya Talab, Jaharbhata, P.S. Civil Lines, District Bilaspur, M.P.

--- Appellant

Versus

1. The State of Madhya Pradesh

--- Respondent

For Appellant – Ms. Itu Rani Mukherjee, Advocate (in CRA No.1225/1999).

For Appellant – Mr. Varunendra Mishra, Advocate (in CRA No.1285/1999).

For Respondent/State – Ms. Shobha Kashyap, Deputy Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

16-02-2017

1. By this common judgment Criminal Appeal No.1225/1999 and Criminal Appeal No.1285/1999 are being disposed of as both are connected appeals arise out of the common judgment passed by the Court below.

2. Challenge in these two appeals is to the judgment of conviction and order of sentence dated 17-04-1999 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act, 1989'), Bilaspur in Special Criminal Case No.19/97 whereby and whereunder the learned Special Judge under the Act, 1989 after holding both the appellants guilty for using criminal force with intent to outrage modesty



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of the prosecutrix (PW-1) (name not mentioned), convicted both the accused/appellants under Section 354 of the Indian Penal Code, 1860 (in short 'the IPC') and sentenced to undergo R.I. for 2 years to each appellant with a direction that the period already undergone be set off under the relevant provision.

3. Conviction is impugned on the ground that without there being any iota of evidence the Court below convicted and sentenced, the appellants as aforementioned and thereby committed illegality.

4. As per the case of the prosecution, on 04-01-1997 at about 5.00 p.m. when the prosecutrix was returning her home both the accused/appellants restrained her, the prosecutrix (PW-1) anyhow managed to escape and reached her home. Thereafter, at about 6.00 p.m. when she was going to her elder sister's house, again the accused/appellants met her and they showed her knife and under the threat to take life both the accused/appellants committed forcible sexual intercourse one after another and also gave her threat not to disclose it to anybody and also gave a silver chain. Thereafter, the prosecutrix narrated the incident to her elder sister thereafter, her family members and next day the matter was reported before Civil Lines police. Police registered the case against the accused/appellants under Section 354/34 of the IPC as crime No.1997/92. Thereafter, in subsequent facts adduced before police, the matter was registered under Section 376(2)(g) of the IPC, Section 3(2)(v) of the Act, 1989. She was examined after obtaining the necessary consent from the prosecutrix and family members. Undergarment was also seized. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code'). Both the accused/appellants were also arrested on 07-01-1997 and 06-01-1997 respectively. The matter was, in turn, further investigated by अजाक police as the prosecutrix belongs to member of Scheduled Castes. The caste certificate was also collected. After completion of the investigation, charge sheet

was filed before the Special Judge under the Act, 1989 on 05-04-1997. The learned Special Judge framed the charges under Section 376 (2)(g) of the IPC and Section 3(2)(v) of the Act, 1989.

5. In order to prove guilt of the accused/appellants, the prosecution examined 13 witnesses in all. The statements of both accused/appellants were recorded under Section 313 of the Code wherein they denied the circumstances appearing against them, pleaded innocence and false implication in crime in question.

6. After affording opportunity of hearing to the parties, the learned Special Judge under the Act, 1989 acquitted both the accused/appellants for the charges under Section 3(2)(v) of the Act, 1989 and also under Section 376(2)(g) of the IPC and convicted both accused/appellants for lesser penal offence, i.e., under Section 354 of the IPC and sentenced them as aforementioned.

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

8. Learned counsel for both accused/appellants jointly argued that the State never preferred any appeal against the acquittal of both accused/appellants for the offence under Section 376(2)(g) of the IPC and Section 3(2)(v) of the Act, 1989. Also Criminal Revision No. 1159/1999 preferred by the prosecutrix (PW-1) was dismissed for want of prosecution as there was non-payment of P.F. and no any application had been filed to condone the delay on 23-02-2016. With this, acquittal of both the appellants as aforementioned attains finality. Also the incident is more than 20 years old, both accused/appellants were aged about 19 years and 20 years at the time of the incident, they were the first offender, prior to the incident no any criminal history of the accused/appellants, even after the present incident they have not involved themselves in any other crime and also they will not commit any offence in future. They were arrested on 07-01-1997 and 06-01-1997 and were in custody till 08-05-1997 as shown in the order sheet

of the trial Court and also they marked their appearance as on bail on 27-05-1997, it goes to show that they remained in custody for more than 4 months. Also prior to the substitution of the Criminal Law (Amendment) Act, 2013, w.e.f. 03-02-2013, penal part for Section 354 of the IPC was that which may extend to two years or with fine or with both. As both accused/appellants remained in jail for more than 4 months, they were aged about 19 and 20 years at the time of the incident and looking to the entire facts and circumstances, they may be sentenced for the period already undergone as there is no minimum sentence prescribed in the matter and also on account of entire conduct of the prosecutrix, the trial Court not believed story of gang rape to a woman belonging to Scheduled Caste category and acquitted both accused/appellants in both of the penal offences as aforementioned and convicted them only for use of criminal force to a woman with intent to outrage her modesty. Therefore, both these appeals may be allowed and the appellants may be considered sympathetically.

9. Per contra, learned counsel for the respondent/State opposed the argument advanced on behalf of both appellants and would submit that though the charges under Section 376(2)(g) of the IPC and Section 3(2)(v) of the Act, 1989 are not proved against the appellants, but in a detailed discussion the trial Court noticed use of criminal force by two accused over a teenage girl, with this, the trial Court rightly convicted and sentenced the appellants. Hence, both the appeals may be dismissed.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution during the trial.

11. As per the facts, State has not preferred any acquittal appeal against the accused/appellants. Also the criminal revision preferred by the prosecutrix was dismissed for want of prosecution as the P.F. was not paid and also no application for condonation of delay was filed, revisioner was also not represented either in person or through her counsel. With this, as there is no any

challenge for the acquittal of both accused/appellants, their acquittal attains finality for the moment; and after entire appreciation, the trial Court merely found that the accused/appellants are guilty for use of criminal force against the prosecutrix (PW-1) with intent to outrage her modesty. The incident is about about 20 years old, the criminal appeal is pending since 1999, both the accused/appellants were aged about 19 years and 20 years respectively, they were the first offender, no any criminal antecedent were reported in the charge sheet and as prayed they have not involved themselves in any other crime after this incident. Looking to the entire facts and circumstances and also as both accused/appellants remained in jail during the trial for more than 4 months and also as per law applicable for Section 354 of the IPC, no any minimum sentence was prescribed, it would be appropriate to sentence the accused/appellants to the period already undergone by them.

12. Consequently, both the appeals filed by the convicted accused/appellants are hereby allowed in part. Conviction of both accused/appellants under Section 354 of the IPC are hereby affirmed after due consideration as the prosecution duly proved the ingredients of Section 354 of the IPC against both accused/appellants. So far as substantive jail sentence is concerned, both accused/appellants, instead of R.I. for two years to each appellant, are sentenced to the period already undergone by them. Both accused/appellants are on bail. They be set at liberty forthwith. Their bail bonds shall continue for a further period of six months as required under Section 437-A of the Code.

13. Both appeals are allowed in part.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE