

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2163 of 2000

1. Laxman, son of Bandhan Uraon, aged about 30 years,
2. Shivprasad, S/o Amru @ Amarsingh, aged about 42 years,
3. Rama s/o Bandhan Uraon, aged about 25 years,

All resident of Village Shivpur, P.S. Baikunthpur, Distt. Korla (MP)

---- Appellants

Versus

- The State of M.P.

---- Respondent

For Appellants	:	Shri Vishnu Koshta, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

24/11/2017

This appeal arises out of the judgment of conviction and order of sentence dated 8.8.2000 passed by the Additional Sessions Judge, Baikunthpur, Distt. Korla in S.T.No.163/1999 convicting each of the accused/appellants under Sections 376(2)(g), 363 & 366 of IPC and sentencing them to undergo RI for 10 years, pay a fine of Rs.200/-; RI for 3 years, pay a fine of Rs.200/-; and RI for 3 years, pay a fine of Rs.200/- with default stipulations respectively.

02. As per prosecution case, on 25.2.1999 at about 8 pm when the prosecutrix came out from her house to attend the call of nature, the appellants caught hold of her, took her to a nearby kitchen garden,

when she tried to raise alarm, appellant No.3 Rama gagged her mouth by inserting a piece of cloth and then appellants No. 1 & 2 (Laxman & Shivprasad) committed rape upon her one after another. Unnumbered FIR (Ex.P/1) was registered at the instance of prosecutrix on 26.2.1999 at 10 am at Police Outpost – Charcha and thereafter numbered FIR (Ex.P/14) was registered on the same day at 2.30 pm against the appellants under Sections 376/34 of IPC. The prosecutrix was sent for medical examination which was conducted by PW-13 Dr. Shobha Chaturvedi vide Ex.P/13. As per medical report, no definite opinion could be given by the doctor regarding forcible sexual intercourse and there was no injury, either external or internal, on her person. Vaginal slides of the prosecutrix were prepared as Articles C1 & C2 and sent to FSL. Likewise, petticoat of the prosecutrix (Article A) and underwear of accused/appellant Laxman (Article B) were also seized and sent to FSL. As per unexhibited FSL report, spermatozoa was found on all these articles. Appellants Laxman and Shivprasad were also medically examined by PW-7 Dr. DK Chikanjuri and they were found capable of performing sexual intercourse vide Ex.P/9A and P/10A respectively. To determine the age of the prosecutrix, she was sent for x-ray examination and as per report Ex.P/11 of the Radiologist (PW-8 Dr. MK Jain), her radiological age was found to be 14-16 years. After filing of charge sheet, the trial Judge framed charges under Sections 363, 366 and 376(2)(g) of IPC against the accused/appellants.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 13 witnesses. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the

prosecution case, pleaded innocence and false implication. In their defence they examined one Dr. Rajni Sharma as DW-1.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment.

05. Learned counsel for the appellants submits as under:

- that on account of previous enmity between the appellants and the family of the prosecutrix, they have been falsely implicated. The factum of enmity between them has been admitted by the prosecutrix also.
- That as per statement of the prosecutrix she was subjected to gang rape by two appellants, however, as per her medical report there was no injury, external or internal, on her person, which goes to show that the appellants have been falsely implicated and no such offence has ever taken place.
- That as per medical report of the prosecutrix she was found to be habitual to sexual intercourse.
- That there is no conclusive piece of evidence regarding age of the prosecutrix.
- That there is no allegation against appellant No.2 Rama that he committed rape with the prosecutrix and therefore, under no circumstances he can be convicted under Section 376(2)(g) of IPC.

06. On the other hand, supporting the impugned judgment it has been

argued by the State counsel as under:

- that the prosecutrix is very firm in her version and nothing could be elicited from her by the defence to make her evidence doubtful or shaky.
- Even if no injury has been found on the person of the prosecutrix, considering her unrebutted statement the appellants can be convicted for the offence.
- That the prosecutrix has categorically stated that as there was enmity between the appellants and her family, on that count the appellants committed rape with her.
- That as per FSL report spermatozoa was found on the underwear of the appellant Laxman, apart from the clothes and vaginal slides of the prosecutrix, and no explanation has been offered in this regard by appellant Laxman.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 prosecutrix has stated that on the date of incident she was at her house along with her maternal grand-mother Bifaiya and at around 8 pm she went out of her house for urination, at that time her maternal grand-mother was cooking food, when she came out the appellants caught hold of her, took her to the nearby kitchen garden of her father, when she tried to raise alarm, appellant Rama inserted a piece of cloth into her mouth and thereafter, she was subjected to rape in the kitchen garden by appellants Laxman and Shivprasad one after another. At that time, appellant Rama had gagged her mouth on account of which she could not raise alarm. She states that at that time

PW-5 Kashi was passing through the said place and hearing some noise when he asked as to who is there, the accused persons left her and fled from the spot and then she informed Kashi about commission of rape upon her by the accused persons. After reaching home she also narrated the incident to her aunt Baikunwar, uncle and maternal grand-mother and on the next morning report was lodged. She states that her medical examination was done and her wearing apparels were seized.

In cross-examination she admits that her father is in jail for the last 10 years and her three elder brothers who are married have ousted her from the house. She also admits that the accused persons are in possession of 12 acres of land of her father and that she is interested in getting the said land vacated but the accused persons are not giving back her land. However, she has denied the suggestion that because of the said dispute she has lodged a false report and states that in fact on account of this dispute only the accused persons have committed rape on her. She states that no crop was standing on the field in question and it was a sort of garbage, it was a moonlit night and that the field was grassy, therefore, she did not sustain any injury. She has denied all the adverse suggestions put to her by the defence.

09. PW-2 Bifaiya, maternal grand-mother of the prosecutrix has stated that the prosecutrix is about 16-17 years of age and she was residing with her. She has stated that on the date of incident at about 7-8 pm the prosecutrix had gone out to ease herself and after some time she returned and informed her that the appellants Rama & Laxman and one another person, whose name she does not

remember, have committed bad work with her and when Kashi reached there, the accused persons fled from the spot. She also remained firm in cross-examination. PW-3 Baikunwar has stated that on the date of incident at about 8-9 pm when she was in her house, her husband was not there, the prosecutrix came to her weeping and informed that she was subjected to bad work by the accused persons when she had gone out to ease herself. PW-4 Rajulal, PW-5 Kashiram and PW-6 Anarkali have turned hostile. PW-7 Dr. DK Chikanjuri medically examined the appellants Laxman and Shivprasad and found them capable of performing sexual intercourse vide Ex.P/9A and P/10A respectively. PW-8 Dr. MK Jain, Radiologist, examined the prosecutrix to determine her age and opined that her radiological age appears to be in between 14 and 16 years. He has stated that while opining so he had considered the variation of two years on either side. PW-9 Shyamlal Mishra, Patwari, prepared the spot Ex.P/5. He has stated that stones were not there on the place of occurrence. PW-10 Kanhaiya Prasad Gupta, Head Constable, did part of investigation. PW-11 JA Maravi, investigating officer, has duly supported the prosecution case. PW-12 Mukteshwar Singh registered the FIR. PW-13 Dr. Shobha Chaturvedi medically examined the prosecutrix vide Ex.P/13 and according to her, no definite opinion could be given regarding forcible sexual intercourse and there was no injury, either external or internal, on her person.

DW-1 Dr. Rajni Sharma has merely stated that considering the medical report (Ex.P/13A) of the prosecutrix she appears to be habitual to sexual intercourse.

10. Close scrutiny of the evidence makes it clear that relations between the prosecution and the appellants were not cordial as there was an old land dispute between their families. On the date of incident i.e. 25.2.1999 at about 8 pm when the prosecutrix had gone out of her house for urination, the appellants caught hold of her, took her to a nearby kitchen garden and when she tried to raise alarm, appellant No.3 Rama gagged her mouth by inserting a piece of cloth and then appellants No. 1 & 2 (Laxman & Shivprasad) committed rape upon her one after another. The prosecutrix thereafter informed about the said incident to her maternal grand-mother (PW-2 Bifaiya), aunt Baikunar (PW-3) and uncle Rajulal (PW-4). A very prompt report was lodged by the prosecutrix. In her lengthy cross-examination, the defence has utterly failed to elicit anything from her to make her evidence untrustworthy or doubtful. Though PW-4 Rajulal and PW-5 Kashiram have turned hostile, but version of the prosecutrix finds due corroboration from the evidence of PW-2 Bifaiya and PW-3 Baikunwar. So far as previous enmity between the parties is concerned, the prosecutrix has specifically denied the suggestion that on account of previous enmity she had lodged a false report. Rather, in the given facts and circumstances of the case, it can safely be taken as a motive with the appellants to commit this offence.

11. True it is that as per medical evidence no injury, external or internal, was noticed on the person of the prosecutrix but that alone is not sufficient to discard the otherwise reliable evidence of the prosecutrix. It has come in the unrebutted evidence of the prosecutrix that the place of occurrence was grassy and further, PW-9 Shyamlal Mishra, Patwari, who prepared the spot map has also stated in cross-

examination that no stones were there on the place of occurrence. Even otherwise, according to the prosecutrix, while she was being subjected to rape by appellants No. 1 & 2, appellant No.3 had inserted a piece of cloth in her mouth and as such, she was not in a position to resist the offence. This apart, vaginal slides of the prosecutrix (Articles C1 & C2), her petticoat (Article A) and underwear of accused/appellant Laxman (Article B) were also seized and sent to FSL and as per unexhibited FSL report, spermatozoa was found on all these articles. However, no explanation has been offered by appellant Laxman in this regard in his statement under Section 313 of Cr.P.C.

12. Admittedly, appellant No.3 Rama has not committed forcible sexual intercourse with the prosecution, but he was actively facilitating the other appellants in commission of the offence. As per Section 376(2)(g), 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. Being so, conviction of the appellant No.3 Rama under Section 376(2)(g) is also in accordance with law.

13. As regards conviction of the appellants under Sections 363 & 366 of IPC is concerned, from the unchallenged oral and medical evidence available on record, it is evident that on the date of incident the prosecutrix was minor, aged in between 14 & 16 years. The defence has not adduced any evidence, either by way of suggestions in cross-examination or by filing any documents in relation to age of the prosecutrix, which could suggest otherwise. Thus, their conviction under the aforesaid sections is also based on proper appreciation of

the evidence and needs no interference by this Court.

14. In the result, the appeal fails and is, accordingly, dismissed. The appellants are reported to be on bail, therefore, their bail bonds stand cancelled and they are directed to be taken into custody forthwith to serve out the remaining part of the sentence.

Sd/

(Pritinker Diwaker)
Judge

Khan