

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 638 of 2009**

1. Raju Suryawanshi S/o Amritlal Suryawanshi, Aged 21 years.
2. Nandkumar Suryawanshi S/o Sampat Suryawanshi, aged 25 years.

Both are resident of village Junadih (Jhilmili) PS Pamgarh, District Janjgir Champa, Chhattisgarh.

---- Appellants

versus

State of Chhattisgarh, Through the Station House Officer, PS Pamgarh, District Janjgir-Champa, Chhattisgarh.

---- Respondent

For Appellants : Shri R.K.Bhagat, Advocate.
 For Respondent/State : Shri Arun Sao, Deputy Advocate General.

Hon'ble Shri Deepak Gupta, Chief Justice**Judgment on Board****27/01/2017**

1. This appeal by the convicted accused-Appellants is directed against the judgment dated 12.08.2009 delivered by the learned Additional Sessions Judge, Janjgir, District Janjgir-Champa, in Sessions Trial No. 20 of 2009, whereby the Appellants have been convicted for having committed an offence punishable under 376(2)(g) of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for 10 years with fine of Rs. 500/- each. In default of payment of fine, the Appellants were ordered to undergo further rigorous imprisonment for three months.

2. Briefly stated facts of the case are that on 01.10.2008 at about 10:30 am, the First Information Report (Exhibit P/7) was lodged at the instance of the prosecutrix (name withheld). In this FIR, the prosecutrix complained that on

01.10.2008 itself, when she was returning from near the pond after answering the call of nature, she was accosted by Raju Suryawanshi and Nand Kumar Suryawanshi near the house of Kamal Suryawanshi. Nand Kumar caught hold of her hands and took her behind the house of Kamal. Raju took off her Salwar and lifted her Kurta, forcibly made her to lie down on the ground and committed forcible sexual intercourse with her. At that time, Nand Kumar had caught hold of her both hands. She tried to scream but Nand Kumar had covered her mouth and prevented her from screaming. After she was raped, both Raju and Nand Kumar went towards the pond. She went weeping towards her house and reported the matter to her mother. Thereafter, the mother consulted some other ladies and finally the prosecutrix alongwith her mother and maternal grandfather went to police station where the FIR was lodged. The police investigated the matter and as per the police, the prosecutrix was got medically examined by Dr. Rashmi Dahire (PW-7). Thereafter, the accused were charged for having committed an offence of gang rape upon the prosecutrix. The accused denied the charges and prayed for trial. After trial, they have been held guilty and have been convicted and sentenced, as aforesaid. Hence, this appeal.

3. I have heard learned counsel for the Appellants.

4. The main grounds raised are that, (i) the medical evidence does not support the version of the prosecutrix. It is stated that in fact both the prosecutrix and her mother state that she was never medically examined and therefore, no reliance can be placed on the medical evidence; (ii) there is no evidence of rape and it is a false case made out against the accused; (iii) the prosecutrix is more than 16 years of age, and lastly; (iv) assuming that there was sexual intercourse, the same was consensual in nature. In this regard, it is urged that the place of occurrence is supposed to be a house under construction with no doors and windows which was situated within the village itself and the fact that no alarm was raised itself indicates that this is a case of consent.

5. First I shall take up the issue with regard to the age of the prosecutrix. The prosecutrix has stated that she was 14 years of age but when cross-examined,

she has stated that she has not studied and does not know her age and she has given her age by approximation. The mother of the prosecutrix appeared as PW-6 and she also could not give any age of the prosecutrix. In fact, the mother states that when she had got the girl admitted in the school, she had got the date of birth verified from the Kotwar. However, no record under the Birth and Death Registration Act has been produced, that is the primary evidence. Only school record from the school has been produced but the school record is based on the record which was produced by the Kotwar and that is the primary piece of evidence. No reliance can be placed on the school record, till the prosecution proves on what basis entry was made in the school record. Therefore, in my view, the prosecution has failed to prove that the prosecutrix was below 16 years of age at the time of occurrence.

6. Having held so, the question is whether the statement of the prosecutrix is to be believed or not. The law is by now well settled that in case of rape, conviction can be maintained even on the basis of sole testimony of the prosecutrix. However, there is an important caveat which is that the testimony of the prosecutrix must inspire confidence and the Court must be sure that the statement of the prosecutrix is reliable and that intrinsic reliance can be placed on the same. There is no need of any corroboration.

7. Here is a case where the FIR is lodged within four hours of the occurrence. There was no time to build up a false case. Though, a suggestion has been put to the prosecutrix and other witnesses that there was some prior enmity between the parents of the prosecutrix and the accused but in support of this suggestion, not even one document or evidence has been examined. Even otherwise, it is not easy to believe that in a country like India where the victim of rape is actually treated like a criminal, where the victim of rape is ostracized from society, where the victim of rape becomes a social pariah, where the victim of rape cannot raise her head in the society, the parents would lodge a false case against some person they have enmity with and the extent of enmity is not even proved.

8. In fact, the statement of the mother is most revealing. This is a case where the mother of the victim has turned hostile. In examination in chief, she has resiled from her statement under Section 161 CrPC. She has gone to the extent of saying that when the prosecutrix came home, she was crying but did not complain about rape. According to the mother, when the accused boys came home and beat up the prosecutrix, then they went to the police station. However, the report which was lodged with the police, which has been proved by the prosecutrix, totally belies the statement of the mother. What is even more shocking is that when the mother was cross-examined by the Public Prosecutor, she admitted all the allegations that her daughter had made in the complaint. But I am not relying upon that portion because she is a hostile witness. But even what is more important is that this witness states that the accused and their family members again and again were approaching her for a compromise. She also admits that they (family members of the prosecutrix) also feel that whatever has happened, has happened and therefore, they should compromise the matter. Most importantly, she admits that in the course of this compromise, the family members of the accused had transferred 50 decimals of land in the name of the prosecutrix and also gave Rs. 20,000/- in cash and therefore, she has made this statement. It would be pertinent to mention that as far as this portion of the statement of the mother of the prosecutrix is concerned, there is no cross-examination whatsoever on the part of the accused. This by itself shows that something serious had happened for which the prosecutrix and her family were being compensated.

9. We are dealing with a case where it is more than obvious that the prosecutrix belongs to that class which is poorest of the poor. Does she have no rights? In my view, as a citizen of this country, she has the same rights as any other citizen. This young girl at least had the courage to come to the Court and stick by what she has stated even though, she must have been pressurized by her mother and other family members to tell the untruth.

10. After going through the entire records, I am convinced that the prosecutrix is telling only one lie and that lie is that she was never examined by the Doctor. Her other statement is a truthful statement having a ring of truth to it. She had no reason to falsely implicate the accused with commission of such heinous crime.

11. As stated by me above, this FIR was lodged within four hours of the occurrence having taken place. The learned trial Court after appreciating the evidence has convicted the accused. I see no reason to differ with the judgment of the learned trial Court.

12. In view of the above discussion, the judgment of the learned trial Court is upheld and the appeal is dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE