

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 145 OF 2001

1. Dhaniram alias Dhaniya, S/o Shobharam, aged about 30 years.
 2. Chhattar Sai, S/o Banshdhari, aged about 26 years.
- Both are R/o Village- Jamdei, P.S.H.- Jainagar, District Surguja (C.G.)

... Appellants

Versus

State of Chhattisgarh, through P.S.H. Officer, P.S.H. Jainagar, District Surguja (C.G.)

... Respondent

For Appellant	:	Mr. Aditya Khare, Advocate.
For Respondent-State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

14/02/2017

1. Each of the two Appellants stand convicted under Section 376(2)(g) of IPC and sentenced to undergo R.I. for 10 years and to pay fine of Rs.1000/- in default of payment of which, to undergo additional R.I. for 5 months, as ordered on 29.1.2001 by the Additional Sessions Judge, Surajpur, in Sessions Trial No. 169 of 1994.

2. Case of the prosecution in brief is that an FIR (Exhibit P-1) was lodged by the Prosecutrix on 18.12.1993 at Police Station Jainagar, District Surguja, alleging that on the previous night, i.e., 17.12.1993, when she had accompanied her father, PW-2 Telash Ram, for purchase of cattle and were returning home en route since the cattle went inside the forest, her father (PW-2) is said to have gone to catch the cattle, meanwhile the Prosecutrix proceeded towards her house and en route near the bush the Appellants is said to have caught hold her and Appellant No.1 is said to have committed sexual intercourse with her and while Appellant No.1 was committing the said act, the Appellant No.2 is said to have caught hold of her. Meanwhile, the Prosecutrix is said to have raised an alarm when PW-3 Atwaru and PW-

4 Santram accompanied by another person who were travelling by the same route, hearing the alarm went towards the Prosecutrix and saw the Appellants running away from the place of incident and thereafter the father (PW-2) also came from behind and joined the group where the Prosecutrix is said to have disclosed them as to what had transpired. Subsequently, an FIR was lodged and the matter was investigated upon. In due course of time, the matter was put to trial before the Court of Additional Sessions Judge, Surajpur, District Surguja, where the case was registered as Sessions Trial No. 169 of 1994.

3. In the course of evidence, in all, there were 10 witnesses examined on behalf of the Prosecution and no witnesses were examined on behalf of the defence. After conclusion of the trial, the Court below vide impugned judgment found the Appellants to be guilty of having committed the offence under Section 376(2)(g) of IPC and on convicting them, each of them was sentenced to undergo R.I. for 10 years and to pay fine of Rs.1000/- with default stipulation.

4. It is this judgment which is under challenge in the present appeal.

5. Shri Aditya Khare, learned Counsel for the Appellants, appointed by the Court from among the panel of lawyers of the High Court Legal Aid Cell, submits that from the perusal of the statement of the Prosecutrix as well as the other witnesses there does not seem to be a case under Section 376(2) (g) of IPC made out against the Appellants. According to him, the story made out by the Prosecutrix in respect of the commission of the offence seems to be highly improbable. It was also contended by him, that the total facts and circumstances if taken into consideration in its proper perspective it would reveal that at best the offence which could be said to have been committed by the Appellants would be one under Section 354 of IPC and

cannot be one under Section 376(2)(g) of IPC. He also submits that it is a case where the prosecution has not been able to establish the commission of the offence from the medical evidence which has been obtained, inasmuch as the Doctor who has examined the Prosecutrix has given a categorical statement of the Prosecutrix being habitual to sexual intercourse and that there was no sign of a recent sexual intercourse having been committed and it was also stated by the Doctor that she could not find any injury either on the body or on the private part of the Prosecutrix, which renders the medical evidence of no use for the prosecution. Thus, the judgment of conviction passed against the Appellants is not tenable and deserves to be set aside.

6. Ms. M. Asha, learned Counsel appearing for the State, opposing the appeal submits that the case of the prosecution in the instant case stands proved beyond all reasonable doubts. According to her, the statement of the Prosecutrix itself is sufficient to uphold the conviction of the Appellants. She further submits that the statement of the Prosecutrix has been corroborated by her father (PW-2) and the other witnesses PW-3 and PW-4 and thus it is a case where the prosecution has been able to lead sufficient evidence to bring home the offence under Section 376(2)(g) of IPC and there being no merits in the appeal which deserves to be rejected.

7. Having considered the rival contentions put forth on either side and on perusal of the records, what is undisputed, is the fact that the FIR (Exhibit P-1) was lodged promptly, inasmuch as the incident is said to have taken place in the evening of 17.12.1993 and the FIR was lodged on the next day morning at Police Station Jainagar. What is also not in dispute, is the fact that the allegations levelled in the FIR have been supported by the Prosecutrix in the Court statement also, inasmuch there does not seem to be any improvement, contradiction or omission in the statement of the

Prosecutrix made before the Court. Likewise, also the statements of the independent witnesses i.e. PW-3 Awtaru and PW-4 Santram, who are the two persons who have reached the spot/place of incident immediately on hearing the alarm raised by the Prosecutrix. This Court perused the statement recorded under Section 161 of CrPC and compared the same with the statement before recorded before the Court and from the statement of PW-4 Santram it clearly reflects that there is not much of contradiction or improvement in the statement made by these independent witnesses that they had made before the Court.

8. Further, from the evidence which have come on record including the cross-examination of the prosecution witnesses, the Appellants have not been able to establish the fact as to why the Prosecutrix would falsely implicate them for the commission of such heinous offence. It is also not a case of consent which is being raised by the Appellants, as the Prosecutrix was accompanied by her father (PW-2) to the market and incidentally he had gone to a different direction to catch the cattle which had run away in the jungle and in the process the Prosecutrix was moving towards her home and taking advantage of the location being bushy the Appellants is said to have overpowered her and forced her on the ground and committed the offence. From the evidence which have come on record, this Court does not find any good ground raised by the Appellants for disbelieving the Prosecutrix or prosecution story.

9. Further, there is also no evidence of any previous animosity between the Prosecutrix or her family with the Appellants which could be alleged to be a ground for false implication. In addition, there is no reason why independent witnesses particularly PW-4 Santram evidence should be disbelieved, as he has in a very specific terms stated in the statement recorded under Section 161 of CrPC and which has been consistently

maintained in his court statement. At one instance they found the Appellants running away from the scene and they were informed by the Prosecutrix of the Appellants having committed rape, whereas in the Court statement he says that he reached the spot when he saw the Appellant No.1 committing rape. So far as they being informed by the Prosecutrix and at the same time the Appellants running away from the spot is concerned, the said facts are present both in the statement under Section 161 of CrPC as well as in the Court statement, which itself is sufficient indication of the establishment of the case of the prosecution.

10. In one of the recent decisions rendered by the Hon'ble Supreme Court in the case of *Mohd. Ali alias Guddu v. State of Uttar Pradesh* [2015 (7) SCC 272], it has been held as under:

“21. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. ... True it is, the grammar of law permits the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness...”

11. A perusal of the statement of the Prosecutrix and the evidence of other witnesses examined during the course of the trial, clearly inspires much confidence on the testimony of the prosecution witnesses more particularly, the testimony of the Prosecutrix. There is not much which the defence has been able to extract from the cross-examination of these prosecution witnesses, by which it could be said that the prosecution case is doubtful or hard to believe. In the instant case, though the medical evidence does not prove favourable to establish the commission of the offence but there is no reason to disbelieve the statement of the Prosecutrix and other independent witnesses moreover when the statement of the

independent witnesses under Section 161 of CrPC was recorded on the same date on which the date FIR was lodged and there is a great element of consistency in the statement under Section 161 of CrPC with that of the statement made before the Court.

12. Thus, for the foregoing reasons, this Court does not find any strong case for interfering with the impugned judgment of conviction and the appeal being devoid of merit the same is accordingly dismissed.

13. The Appellants are on bail. Their bail-bonds stand cancelled and they are directed to surrender forthwith and/or be taken into custody for serving out the remaining period of their sentence.

14. The appeal stands accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge