

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 15 OF 2001

1. Mohandas S/o Kanwaldas, aged 38 years, R/o Village Udekela, P.S. Chhal, District Raigarh (C.G.)
2. Jyoti Prakash Toppo, S/o Nayman Toppo, aged 32 years, R/o Village Kansabel, P.S. Pathalgaon, District Jashpur Nagar.
3. Ibadat Ali, S/o Bholi Rai, aged 26 years, R/o Village Kunkuri, District Jashpur Nagar.

... Appellants

Versus

State of Chhattisgarh

... Respondent

For Appellants	:	Mr. S.P. Sahu, Advocate.
For Respondent-State	:	Mr. V.K. Tekam, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

05/01/2017

1. At the outset, it is necessary to mention here that as there was no representation on behalf of the Appellants or by the Counsel engaged by them, for the whole week, considering the seniority of the case particularly, the incident being of the year 1993 and in view of the judgment of the Supreme Court rendered in the case of **Surya Baksh Singh v. State of Uttar Pradesh** [2014 (14) SCC 222], the appeal has been taken up for hearing with the assistance of Shri S.P. Sahu, a Lawyer in the Panel of High Court Legal Services Authority.

2. Shri Sahu, appearing for the Appellants, has meticulously taken us through the judgment under appeal, the evidence and the exhibits on record which has facilitated us in consideration and adjudication of the appeal on merits.

3. Each of the Appellants stands convicted and sentenced under Section 376(2)(g) of IPC for 10 years rigorous imprisonment and to pay fine of Rs.500 with default sentence of 2 months rigorous imprisonment,

under Section 506(B) of IPC for 3 years rigorous imprisonment and under Section 342 of IPC for 3 months rigorous imprisonment, as ordered on 20.12.2000 by the Special Judge (Atrocities), Bilaspur in Special Criminal Case No. 135 of 1996.

4. Facts of the case in brief are that, on 17.7.1993 at around 12:00pm the Prosecutrix was travelling in Dashmesh Bus, bearing Registration No. MP26/8755. Appellant No.1 Mohandas was the Conductor, Appellant No.2 Jyoti Prakash was the Driver and Appellant No.3 Ibadat Ali was the Helper in the said Bus. The Prosecutrix was to go to Budhwari Bazar at Korba and therefore she boarded the said Bus which was going from Dharmjaigarh to Korba. When the Bus reached Korba the Prosecutrix asked the Appellants to let her get down but she was told that Budhwari Bazar was quite far, then the Bus reached Balco bus-stand where all the other passengers alighted from the Bus, but the Appellants told the Prosecutrix not to get off the Bus as the place where she wanted to go was quite far and they would drop her en-route. After all other passengers got off, the Appellants took the Bus to a remote area towards Putka Road and there it is alleged that the Driver (Appellant No.2) and the Helper (Appellant No.3) caught hold of the Prosecutrix and the Conductor (Appellant No.1) is said to have raped the Prosecutrix and thereafter the Driver (Appellant No.2) also is said to have committed rape with her and she went unconscious and regained consciousness at around 3:00am. Thereafter, the Appellants is said to have dropped the Prosecutrix at Budhwari Bazar in the morning and then she went to her brother's residence and informed him immediately about the incident. An FIR was lodged by the Prosecutrix on 18.7.1993 at around 1:40pm at Police Station Balco Nagar vide Crime No. 152 of 1993. In due course of time, after conclusion of the investigation and enquiry, the matter

was put to trial before the Court of Special Judge (Atrocities), Bilaspur where the case was registered as Special Criminal Case No. 135 of 1996.

5. During the course of trial, the prosecution examined as many as 10 witnesses in support of its case. In defence, one Sukhbir Singh was examined as DW-1. After the conclusion of the trial, the Court below vide impugned judgment dated 22.12.2000 reached to the conclusion that the prosecution has in fact been able to establish its case beyond all reasonable doubts and thus convicted the Appellants for the offence punishable under Sections 376(2)(g), 506(B) and 342 of IPC and sentenced them for the period as mentioned in the first paragraph of this judgment.

6. Counsel appearing for the Appellants, Shri Sahu, submits that it is a false and fabricated case inasmuch as the entire case of the prosecution is highly improbable. According to Shri Sahu, it is a case where the Prosecutrix might have been subjected to rape by some other persons but the Appellants have been made a scapegoat and have been falsely implicated in the case. According to him, the conduct of the Prosecutrix itself is highly suspicious. The fact that the Prosecutrix remained in the Bus all along in spite of all the passengers getting off of the Bus at the termination point, itself creates a doubt in the mind as to what her intentions were. It is also submitted by Shri Sahu that the fact that after she had regained consciousness, she herself states that she was dropped back by the Appellants to the place where she wanted to go, also gives rise to a doubt as to whether there was any forceful act on the part of the Appellants, or else the Prosecutrix would not have waited for the Appellants to drop her. Another aspect towards which Shri Sahu drew the attention of this Court is the fact that, the Prosecutrix has stated of regaining consciousness at around 3:00am and she continued to remain in

the Bus along with the Appellants till the break of the day and then the Appellants is said to have taken her to her destination. This also gives rise to a great element of doubt on the conduct of the Prosecutrix. Shri Sahu also refers to the statement of the prosecution witnesses particularly, PW-4 Pyari Ekka, and submits that there are material contradictions, omissions and discrepancies in the contents of the statement of the Prosecutrix when compared to the statement of PW-4 Pyari Ekka, who is the sister-in-law of the Prosecutrix, and the benefit of which ought to have been given to the Appellants. It was further contended by Shri Sahu that, even if the entire prosecution evidence is taken as it is, it does not disclose the Appellant No.3 to have committed rape with the Prosecutrix. Neither in the FIR lodged by her nor in her court statement she has disclosed the fact that she was raped by Appellant No.3 and, therefore, the Appellant No.3 cannot be punished for the offence under Section 376(2)(g) of IPC. Shri Sahu thus prayed for the setting aside of the impugned judgment of conviction and for acquittal of the Appellants.

7. Counsel for the State, Shri Tekam, however, opposing the appeal, submits that it is a case where the prosecution case has been established beyond all reasonable doubts. He further submits that the statement of the Prosecutrix itself inspires sufficient confidence establishing the guilt of the Appellants. He also submits that the Prosecutrix has been consistent and the commission of the offence also stands established from the medical evidence that has come on record and thus he prayed for the rejection of the appeal.

8. Having considered the rival contentions put forth on either side and on perusal of the records, what clearly reflects is that on 18.7.1993 an FIR was lodged in respect of the Prosecutrix being gang raped by the three Appellants herein in the intervening night of 17th & 18th July, 1993. There

appears to be a prompt lodging of the FIR. In the FIR itself the Prosecutrix has implicated the three Appellants herein as accused. Thus there does not appear to be a false implication of the Appellants as an afterthought. In the FIR itself, she had narrated the over-act on the part of each of the Appellants and therefore there is no reason to doubt the prosecution story. Further, what also reflects to take note of is the fact that, none of the Appellants have proved their case to establish any sort of animosity between the Prosecutrix or her family members with any of the Appellants, which led to the filing of the false complaint. Furthermore, if we look into the evidence particularly, the medical evidence that of PW-7 Dr. (Smt) Rashmi Singh, who had examined the Prosecutrix on the date of lodging of the FIR itself, i.e., on 18.7.1993, she has given a positive report of the Prosecutrix being subjected to sexual intercourse immediately prior to the conducting of the medical examination. PW-7 also found that there was swelling at the private part of the Prosecutrix which all the more suggests of her being ravished. Another vital fact which further becomes incriminating against the Appellants, is the fact that the Prosecutrix (PW-1) in her evidence before the Court below has specifically identified the three Appellants and has also given the description of the nature of work that they were discharging, i.e., one being the Driver and other being Conductor and the third being the Helper in the Bus. That the defence has not been able to extract much from the cross-examination to doubt her statement both so far as the factual matrix is concerned and also in respect of the identification part so as to look at the statement of the Prosecutrix with doubt. The statement of the Prosecutrix also has been fully corroborated with the evidence of PW-2 Vinod Kumar Ekka, the brother of the Prosecutrix, and from whose cross-examination also the defence has not been able to extract much by which a suspicion or a doubt can be generated.

9. So far as the contention of the Appellants' Counsel in respect of Appellant No.3, Ibadat Ali, not having committed the act of rape is concerned, the same would not be of any advantage as there is a specific averment by the Prosecutrix both in the FIR as well as in the court statement that of the three Appellants having caught hold of the Prosecutrix while the other was committing rape on her. It is also the statement of the Prosecutrix that after she was ravished by two of the Appellants she had got unconscious and therefore what transpired thereafter is not known to anybody. In any case, Appellant No.3 has also undoubtedly played an active role in at-least catching hold of the Prosecutrix and also gagging her mouth so that she does not raise an alarm, which is sufficient to implicate the Appellant No.3 for the offence under Section 376(2)(g) of IPC.

10. In the case of a gang rape by a group of persons acting in furtherance of their common intention, each of them is said to have committed gang rape within the meaning of sub-section. It is not necessary for the Prosecutrix to adduce clinching evidence of a complete act of rape by each of the accused. Where the testimony of the Prosecutrix is found to be trustworthy and also stands corroborated it is immaterial that a complete act of rape on the part of each of the gang members even if not narrated, but the fact that they have taken an active participation would definitely bring the act within the meaning of a gang rape.

11. For all the aforesaid reasons and also from the evidence which has come on record, this Court has no hesitation in holding the Appellants to be guilty of having committed the offence. Accordingly, the impugned judgment of conviction stands affirmed and the appeal thus being devoid of merits the same is dismissed.

12. It has been informed by the Counsel for the State that Appellants No. 1 and 2 have already been released from jail after undergoing the entire jail sentence and there is only Appellant No.3 who is on bail. Therefore, the bail-bonds of Appellant No.3 stand cancelled and he is directed to surrender forthwith and/or be taken into custody for serving out the remaining period of his sentence.

/sharad/

Sd/-
(P. Sam Koshy)
Judge