

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 730 of 2001

- Girija Shankar Patel, S/o. Tirath Ram Patel, Aged about 30 years, R/o. Village Dhimani, Police Station Kharsia, District Raigarh, Occupation Agriculturist

---- Appellant

Versus

- State of Chhattisgarh, Through District Magistrate Raigarh

---- Respondent

And

CRA No. 863 of 2001

- Ramavatar, S/o. Tekram Sidar, Aged about 29 years, Occupation Agriculture, R/o. Dimani P.S. Kharsiya, District Raigarh

---- Appellant

Vs

- The State Of Chhattisgarh, Through District Magistrate Raigarh

---- Respondent

For Appellants	: Smt. Indira Tripathi and Smt. Savita Tiwari, respective counsel for the appellants.
For Respondent/State	: Shri Avinash K.Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

Per Pritinker Diwaker, J.

24/08/2017

As these two appeals arise out of the judgment and order dated 15.06.2001 passed by the Second Additional Sessions Judge, Raigarh

in Sessions Trial No. 70/1997 convicting the accused/appellant in Cr. Appeal No. 730/2001 under Sections 363,366 & 376 IPC and sentencing him to undergo RI for five years with fine of Rs. 1,000/- on each count with default stipulation whereas convicting the appellant in Cr.A. No. 863/2001 under Section 363/34 and 366/34 IPC and sentencing him to undergo RI for five years with fine of Rs. 1,000/- on each count with default stipulation, they are being disposed of by this common judgment.

2. As per prosecution case, on 17.01.1997, at about 5.00 p.m. prosecutrix left her school, joined the company of appellant Girja Shankar Patel and had gone to the other village. In the village, appellant Ramavtar also joined them and from there they had travelled by truck to Bilaspur where she asked the accused/appellants to take back to her home but they threatened for life and then travelled to Korba by bus to the house of Gangabai, aunt of accused/appellant Ramavatar. As the prosecutrix did not return to her house, on the next date i.e. 18.01.97 missing report Ex.P-13 (C) was lodged by her father Gowrishankar (PW-7) and the entry was made in the *rojnamcha sanha*. On 25.01.1997 prosecutrix was recovered from the house of Ganga Bai (PW-5) from the possession of accused/appellant Girijashankar. On 26.01.97 FIR Ex.P-7 was lodged by the prosecutrix against accused No.1 under Sections 363, 366 & 376 IPC. She was medically examined vide Ex.P-1 by Dr. Lalita Rajnala (PW-1) and according to her the prosecutrix was carrying pregnancy of 14 weeks. Accused Girijashankar was examined vide Ex.P-5 by Dr.B.S. Chandel (PW-4) and has stated that he was found capable of performing sexual intercourse. After filing of charge sheet, trial judge has framed charge against accused Girijashankar under Sections 363,366 and 376 IPC

whereas against accused Ramavtar under Sections 363/34 and 366/34 IPC.

3. In order to establish the guilt of the accused/appellants, prosecution has examined 15 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case. This apart one defence witness has also been examined.

4. After hearing the parties, the trial Court by judgment impugned, has imposed the sentence of 5 years upon the accused/appellants for all the offences and considering this aspect of the case vide order dated 23.08.01, learned Single judge of this Court has issued notice to the appellant for enhancement of the sentence and therefore these appeals are tried by the Division Bench.

5. Contention of counsel for the appellants is that :

i) there is no legally admissible evidence showing the prosecutrix to be minor.

ii) prosecutrix left her village, joined the company of appellant Girijashankar and remained with him for about 8 days without offering any protest or resistance and thus she was a consenting party.

iii) that the conduct of the prosecutrix makes it clear that she roamed around different villages along with appellant Girijashankar.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellants

is strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Prosecutrix (PW-6) has stated that accused Girijashankar has forcibly took her by showing knife and therefore she sat on his vehicle and then had gone to the village Sirli where aunt of accused Ramavtar was residing and from there they left for Navagaon where after leaving the motorcycle over there, went by truck to Bilaspur. At Bilaspur when she asked the accused persons to take her home they threatened her for life and took her to Kosabadi, Korba where aunt of accused Ramavtar was residing. She has further stated that she stayed there for 6-7 days and during this period, she was subjected to physical relation by accused Girijashankar. It is relevant to note here that nowhere the prosecutrix gave the details of her date of birth nor has stated that she offered any protest or resistance. She has admitted the fact that she had enough opportunity to raise cries but she never resisted. Dr. Lalita Rajnala (PW-1) had medically examined the prosecutrix and noticed pregnancy of 14 weeks. She has not stated anything about the age of the prosecutrix and has merely stated that the same could be done by the radiologist. Dr.B.S.Chandel (PW-4) had medically examined the accused Girijashankar and according to him, he was capable of performing sexual intercourse. Ganga Bai (PW-5) is the aunt of accused Ramavtar from whose house the prosecutrix was recovered. Gowri Shankar (PW-7) is father of the prosecutrix. He too has not given the details of date of birth of the prosecutrix. He has merely stated that he signed the document Ex.P-10 which is a seizure memo of some document regarding the date of birth of the prosecutrix as 01.02.1979. It

is relevant to note that no such document has been produced and exhibited by the prosecution. H.C.Goutiya (PW-13) is the Investigating Officer who has done the investigation. R.S.Rajput (PW-14) and Chain Das (PW-15) have helped in the investigation.

9. Close scrutiny of the evidence makes it clear that the prosecutrix left her village of her own and remained in the company of accused Girijashankar for about 6-7 days without offering any protest or resistance. During this period she roamed around various places with the accused and she admitted that she had enough opportunity to raise cries but she never made any attempt. As per the medical report, the prosecutrix was carrying pregnancy of 14 weeks and it is thus apparent that even prior to the date of incident i.e. 07.01.1997 she might have had physical relation with someone. There is absolutely no reliable admissible evidence showing the prosecutrix to be minor. Even the prosecutrix and her father have not stated that on the date of commission of the offence the prosecutrix was minor and there is no documentary evidence on record to show her to be minor.

10. Taking the cumulative effect of the facts and circumstances of the case, we are of the view that the trial court has erred in law in convicting the accused/appellants. The prosecution has not been successful in proving the involvement of the accused/appellants in the crime in question. Further there is no evidence against accused/appellant Ramavatar in Cr.A. No. 863/2001 to connect him with the offence, his conviction under Sections 363/34 and 366/34 IPC is set aside as also the conviction of accused/appellant in Cr.A. No. 730/2001 under Sections 363,366 & 376 IPC is set aside and they are acquitted of the said charges.

11. Appeals are thus allowed. Appellants are reported to be on bail therefore no further order is required.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge