

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Appeal No. 284 of 2009**

- Murari Yadav s/o. Late Gopal Yadav, aged about 40 years, r/o. Village Alakhdiha (Khodropara), P.S. Rajpur, District Surguja (CG).

----Appellant.

Vs

- State of Chhattisgarh through PS Rajpur, District Surguja (CG).

---Respondent

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Criminal Appeal No. 270 of 2009

- Murari Yadav s/o. Late Gopal Yadav, aged about 40 years, r/o. Village Alakhdiha (Khodropara), P.S. Rajpur, District Surguja (CG).

----Appellant.

Vs

- State of Chhattisgarh through the District Magistrate Surguja (CG).

---Respondent

(Criminal Appeals under Section 374(2) of the Cr.P.C.)

Present:

Mr. Vimlesh Bajpai, counsel for the appellant in Cr.A.No.284/2009
 Mr. Ajay Mishra, counsel for the appellant in Cr. A. No. 270 of 2009
 Mr. Surya Kant Mishra, Panel Lawyer for the State.

JUDGMENT on Board

(27-03-2017)

1. Despite several calls none appeared on behalf of the appellant in Criminal Appeal No. 270 of 2009 nor any representation is made, therefore, Mr. Ajay Mishra, Advocate who is present in the court is appointed as Advocate through legal aid service and he has taken up the matter.
2. Since Criminal Appeal No. 284/2009 and Criminal Appeal No. 270 of 2009 filed by the same appellant which are arising out of common judgment of conviction and order of sentence dated 3-2-2009 passed by the Special Session Judge, Surguja in Special Session Trial No. 77 of 2008 (Criminal Appeal No. 284 of 2009) and Special Session trial No. 76 of 2008 (Criminal Appeal No. 270 of 2009), they are heard analogously and they are being disposed of by this common judgment.
3. By these appeals, the appellant has challenged legality and propriety of the judgment of conviction and order of sentence dated 3-2-2009 passed by the Special Session Judge, under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Ambikapur, District Surguja in Special Session Trial No. 77 of 2008 and 76 of 2008, whereby learned Special Sessions Judge after holding the appellant guilty for commission of offence, convicted him under Section 376 (2)(f), 377, 366 and 363 of the I.P.C. and sentenced him to undergo RI for ten years and to pay fine of Rs.200/-, in default of payment of fine to undergo further RI for one month, RI for there years and to pay fine of Rs.200/-, in default of payment of fine to undergo additional RI for one month, RI for five years and to pay fine of

Rs.200/-, in default of payment of fine to undergo additional RI for one month and RI for three years and to pay fine of Rs.200/-, in default of payment of fine to undergo additional RI for month. All the sentences are directed to run concurrently.

4. As per case of prosecution, on 28-5-2018 at 1.00 pm, when prosecutrix PW-1 (R) who is minor girl aged about ten years was coming from Anganbadi along with her friend who is also another prosecutrix PW/3 (J) aged about nine years, when they reached near the village Alakhdiha (Brdhipa) the appellant met them and told them that an eagle has caught hen and offered to take the hen. Hearing the same, the victim girls followed the appellant and when they reached near pit, at that time the appellant extended threat that if they raise alarm they would be assaulted, took out undergarments of the prosecutrix PW/1 (R) and committed rape on her and thereafter also committed unnatural sexual intercourse with her. After doing the same with PW/1 (R), same incident was committed with another prosecutrix PW/3 (J). Subsequently, the appellant extended threat to them that if they disclose the incident to anyone, they will be cut into pieces. After coming back to the house, the prosecutrix disclosed about the incident to their mother upon which a report was lodged against the appellant.
5. During course of investigation, the victim girls were sent for medical examination to Dr. Rajesh Bhajgabali (PW/10) and Dr. Smt. Kiran Bhajgabali (PW/9) who have given their reports vide Ex.9-C and Ex.8-C wherein it is stated that the victim girls were

subjected to rape and hymen was ruptured as also rectum mouth was also had an injury.

6. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'Code') and after completion of investigation, charge sheet was filed before the Chief Judicial Magistrate, who in turn committed the case to the Court of Special Sessions Judge, Sarguja, from where learned Special Sessions Judge, received the case on transfer for trial.
7. In order to prove the guilt of the accused/appellants, prosecution examined as many as 11 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code where he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.
8. After affording an opportunity of hearing to the parties, learned Special Sessions Judge, convicted the present appellant under Section 376(2)(f), 377, 366 and 363 of the IPC.
9. Learned counsel for the appellant vehemently argued that the appellant has been falsely implicated in these cases, there is no direct evidence to connect the appellant with the crime in question. Statements of the prosecutrix are not trustworthy. The trial court while convicting the appellant has not considered the relevant aspects of the matter and thereby committed illegality, therefore, the judgment of conviction and order of sentence passed by the trial Court is bad-in-law and same deserves to be set aside.

10. On the other hand, learned State counsel opposed the appeals and argued that it is a case of brutal rape committed by the appellant and the trial Court after evaluating the entire evidence has rightly convicted and sentenced the appellant as aforementioned.
11. I have heard Mr. Vimlesh Bajpai and Mr. Ajay Mishra, counsel for the appellants and Mr. Suryakant Mishra, Panel Lawyer for the respondent/State, perused the judgment impugned and record of the trial Court and also the statements of the witnesses.
12. In order to appreciate the arguments advanced on behalf of the parties, I have examined the evidence adduced on behalf of the parties.
13. In criminal appeal No. 284 of 2009 arising out of Sessions Trial No. 77 of 2008, prosecutrix has been examined as PW/1 (R) wherein she has stated that when she was coming from Anganbadi along with her friend, who is another prosecutrix PW/3 (J), at that time the appellant Murari Yadav met them and told them that the eagle has caught hen and he offered to take the hen. Both the victim girls followed the appellant and when they reached near village Alakhdiha (Bardikpa), the appellant gagged her mouth, took out her undergarments and thereafter committed rape on her and subsequently committed unnatural intercourse. Other prosecutrix (J) who was also there was crying and thereafter the appellant caught hold of other prosecutrix (J) and committed rape on her and told them that if they disclose about the incident to anyone, they will be cut into pieces.

Thereafter, when she came to her house, she disclosed about the incident to her mother. In entire cross-examination of these witnesses, factum of commission of offence has not been diluted. In these cases Dr. Rajesh Bhajgabali (PW/10) and Dr. Smt. Kiran Bhajgabali (PW/9) have been examined and their statements were also supported by another prosecutrix who is examined as PW/3 (J). The mother of the prosecutrix (PW/2) Smt. Saphina Tigga has also supported the fact that her daughter disclosed about the incident to her.

14. Perusal of the statements of Dr. Rajesh Bhajgabali (PW/10) and Dr. Smtr. Kiran Bhajgabali (PW/9) who have medically examined the prosecutrix would show that the age of the prosecutrix PW/1 (R) was around ten years and after examination it was found that hymen was ruptured and libia minora was also ruptured. Cross-examination of these witnesses also do not dilute happening of the incident.
15. Likewise, in Criminal appeal No.270 of 2009, prosecutrix was examined as PW/1(J). The same incident has been narrated by her that the appellant allured her and told that hen was caught by an eagle and offered to take hen and when she followed the appellant to get the hen, she was subjected to rape along with her friend. She was also examined by the doctors and she was shown to be nine years old. Cross examination of this witness also does not dilute the factum of commission of offence. Likewise other prosecutrix was also examined as PW/3 (R) in S.T.No. 76 of 2008. In this case also she has graphically

corroborated the incident and nothing appears to be incorrect. In S.T.No. 76 of 2008 Doctor Smt. Kiran Bhajgabali has been examined as PW/9. After examination she found that the age of the prosecutrix PW/3 (J) was nine years. She has given her report vide Ex.8-C wherein it is stated the prosecutrix PW/3 (J) was subjected to rape. The doctor has also corroborated the statement of the prosecutrix, therefore, reading of the statements of both the victim girls would show that on the date of incident i.e., 28-5-2008, they were minor girls aged about ten and nine years and were subjected to rape by the appellant Murari Yadav. The case of the prosecution regarding subject of the two victim girls to rape has also been corroborated by the doctor who medically examined them and there appears to be no infirmity in the same. In the present case, the victims girls were abducted by the present appellant as he offered them hen by saying that the eagle had caught the hen and consequently they followed the appellant with curiosity to get the hen which resulted into the incident.

16. On close scrutiny of the evidence and considering the aforesaid facts and circumstances of the case, I do not find any illegality or infirmity in the judgment impugned warranting any interference. Consequently, the appeals being devoid of merit are liable to be dismissed and are hereby dismissed.

Sd/-

(GOUTAM BHADURI)
Judge

