

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 280 of 2010

1. Pitambar, S/o Rajau Ram Halba, aged about 18 years, presently aged about 19 years, R/o Village Chikhlakasa, Police Station Rajhara, District – Durg (C.G.)
2. Hari Ram, S/o Jeevrakhan Halba, aged about 18 years, presently aged about 19 years, R/o Village Putarvahi, Police Station Dondi, District – Durg (C.G.)

---- Appellants

versus

State of Chhattisgarh, Through : Station House Officer, Police Station ;
Dondi, District : Durg (C.G.)

---- Respondents

For Appellants	:	Shri Omprakash Agrawal and Shri Viprasen Agrawal, Advocates
For Respondent/State	:	Shri Ravindra Agrawal, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

03.01.2017

1. This appeal by the two convicted accused is directed against the judgment dated 18.02.2010 passed by the Additional Sessions Judge (FTC) Balod, District Durg in Sessions Trial No. 44/2008, whereby he convicted and sentenced the accused as follows :

<u>Conviction</u>	<u>Sentence</u>
U/s 376(2)(g) of IPC	Rigorous Imprisonment for 10 years and fine of Rs. 5000/-, in default of payment of fine, RI for 6 months.
U/s 323 of IPC	Rigorous Imprisonment for 6 months.
U/s. 506 (Part II) of IPC	Rigorous Imprisonment for 1 year and fine of Rs. 500/-, in default of payment of fine, RI for 1 month.

2. The prosecution story, briefly stated, is that on 19.07.2008, the prosecutrix (name withheld), who at the relevant time, was student of Class X of B.S.P. Higher Secondary School, Dallirajhara, alongwith

her friend Chhagan Patel (PW-2) had gone on a motorcycle to Putarwahi forest. While they were sitting there, five persons came and accosted them. The prosecution story is that out of the five persons, at least four persons raped the prosecutrix, not once but twice. The report with regard to the incident was lodged five days later on 24.07.2008. Thereafter, investigation was carried out and the accused were arrested. During the course of investigation, it was found that three of the accused involved in the offence were juvenile and therefore, proceedings against them were taken separately and two accused i.e. the appellants were charged for gang rape. The police, after carrying out other investigation, filed a report under Section 173 CrPC against the accused and charged them of having committed offence of gang rape. They denied the charges and prayed for trial. After trial, the Appellants were held guilty and have been convicted and sentenced as aforesaid. Hence, this appeal.

3. I have heard learned counsel appearing for the parties.
4. The main argument of learned counsel for the Appellants is that the story of the prosecutrix is not believable. It is submitted that if the prosecutrix had been raped 8-9 times as claimed by her, she would have received serious injuries and since there are no injuries, her story should not be believed. It is further contended that even as per the story of the prosecution, the clothes of the prosecutrix were torn at the place of occurrence and thereafter her friend Chhagan Patel (PW-2) had called his friend Litesh Kumar Khare (PW-3), who brought clothes of his sister and thereafter the prosecutrix went home wearing the clothes of some other person. The version of the girl becomes suspicious since the complaint was lodged after five days and it shows that it is a concocted story. In the alternative, it is submitted that the accused who were young persons have already suffered sentence of

more than eight years and the punishment should be reduced to the period already undergone.

5. On the other hand, learned counsel for the State submitted that in this case, the version of the prosecutrix is fully supported by three witnesses i.e. her friend Chhagan Patel (PW-2), who accompanied her, and his friend Litesh Kumar Khare (PW-3) as well as mother of the prosecutrix Rabia Begam (PW-14). Statement of the prosecutrix is also corroborated by the medical evidence and hence, no interference is called for.
6. By now, the law is well settled that in case of rape, conviction can be based on the sole testimony of the prosecutrix. It is not even necessary that the statement of the prosecutrix needs corroboration. However, there is one very important caveat i.e. the statement of the prosecutrix should inspire confidence in the Court. If there is any reason to doubt the veracity of the statement of the prosecutrix, then the conviction cannot be based on the sole testimony of the prosecutrix.
7. The prosecutrix herself appeared as PW-9. In her statement, she stated that she had been friends with Chhagan Patel (PW-2) for about one year. She states that on 19.07.2008, at about 4:30 pm, they went to Putarwahi forest and were sitting on the side of the forest. At that time, five persons came to the spot. They first talked to the prosecutrix and her friend Chhagan Patel (PW-2) in a threatening manner and asked them why they had come to that area. They were also threatened that why should they indulge in immoral activities in that area. Thereafter, they asked Chhagan Patel (PW-2) to give money. Chhagan Patel (PW-2) was carrying only Rs. 50/- which he handed over to the accused. First these five persons went away but after sometime, they came back and demanded more money. Then her

friend Chhagan Patel (PW-2) said that he had no more money. Thereafter, two accused persons caught hold of her friend Chhagan Patel (PW-2) and three persons caught hold of her. While three persons caught hold of her, one by one four accused persons raped her. She has stated that out of the five accused, one small person who had only caught hold of her and did not rape her. The version of the prosecutrix is that thereafter the accused went away but soon returned and again she was raped by four persons. She states that thereafter Litesh Kumar Khare (PW-3) came there and her friend Chhagan Patel (PW-2) asked Litesh Kumar Khare (PW-3) to get some clothes. He then went back to his house and brought some clothes and these clothes were worn by the prosecutrix, thereafter she returned home. According to the prosecutrix, she did not inform anybody about this occurrence. She remained mum at home. She however did not go to school and also did not go to tuition. She remained depressed, upon which the family members asked her why she was depressed. Then on 24.07.2008, she informed her mother and paternal aunt about the occurrence and thereafter, the report was lodged.

8. The prosecutrix has been cross-examined at length. The suggestions put to her are that she was indulged in sexual intercourse with her friend and this was objected by the villagers and the people who were working in the fields. A further suggestion put to her is that when her parents pressurized Chhagan Patel (PW-2) to marry her, then a false case of rape was concocted.
9. The version of Chhagan Patel (PW-2) by and large fully corroborates the version of the prosecutrix. He also states that after they went to the forest, first five persons came and demanded money. He further states that after he had given them money, he rang up his friend, Litesh Kumar Khare (PW-3) on the mobile stating that he had been

surrounded by five persons and asked him for help. Thereafter, five accused returned and four of them raped the prosecutrix one by one. Then they went back and this time they took his mobile phone also.

10. The discrepancy between the two witnesses is that, according to Chhagan Patel (PW-2), on the second occasion, accused-Pitambar alone raped the prosecutrix for the second time, whereas according to the prosecutrix, she was again raped by all the four person. According to this witness, it was only accused-Pitambar who raped the prosecutrix for the second time also.
11. The version of Litesh Kumar Khare (PW-3) also supports the case of the prosecution. He went to the spot. He was a witness who reached the spot immediately after the occurrence. He saw the prosecutrix virtually in a semi nude state and her clothes were torn. He then went home and brought the clothes of his sister. Thereafter, he took the prosecutrix and his friend Chhagan Patel (PW-2) on his motorcycle to their house.
12. No doubt, the FIR has been lodged after five days of the occurrence. However, in my opinion, the delay in lodging the FIR is not at all fatal to the prosecution. One must put oneself into the shoes of the prosecutrix. The prosecutrix is a young girl aged about 14-15 years who goes for an outing with her boyfriend. She is ruthlessly raped by four persons. Thereafter, she comes home and decided not to tell anybody about the occurrence but she remains in a depressed state and it is only after her mother and aunt ask her as to why she did not go to school and why she is in a state of depression that she informs them about what has happened. One must realize that unfortunately, in our country the victim of rape is actually treated as an offender by the society. It is the victim who is ostracized. It is the victim who is shunned by society. It is the victim, whom nobody would marry after

she has been raped. In such a society, for a girl to remain quiet is nothing unusual. This young girl of tender age who had undergone such an ordeal decided to keep quiet and there is no reason why her statement should be disbelieved.

13. Thankfully, her friend Chhagan Patel (PW-2) has not abandoned the prosecutrix and has stood by her. At least this young boy had the courage to say that he had taken the prosecutrix on his motorcycle. He also faced five persons but could not protect the prosecutrix who was raped. I do not see what more evidence is required in a case of rape. There was no previous enmity between the parties and why should this young boy and the prosecutrix implead the two Appellants and the three juveniles if they were not actually involved. Even if there is any corroboration needed, that is provided by the the statement of Litesh Kumar Khare (PW-3) who clearly stated that he got a mobile phone call from Chhagan Patel (PW-2). He then went to the forest where he saw a girl of 15 years age in a semi nude state wearing the clothes of her boyfriend and his friend Chhagan Patel (PW-2) was not wearing any clothes. PW-3 then goes to his home and got the clothes of his sister and the prosecutrix wore those clothes.
14. It is argued by learned counsel for the Appellants that had the prosecutrix gone to her house wearing the clothes of some other person, she would have been questioned by her parents. This argument does not appeal to me. A girl who had suffered such an ordeal, in all would have come home surreptitiously. It is only because of the trauma she faced that the prosecutrix could not go to the school or could not go for tuition and when she was questioned by her family members, she came out with the truth.
15. Further corroboration is given by the evidence of the doctor. It is not a

case where the prosecutrix was habituated to sex. It may be true, as argued by learned counsel for the Appellants that the injuries on the person of the prosecutrix are minor. It has been very forcefully argued that if a girl is raped eight times, the injuries should be more serious. This contention has been made only to be rejected. The prosecutrix was caught hold by two persons and her friend Chhagan Patel (PW-2) was also caught hold by two persons and as such, she was not in a position to struggle and if there is no struggle, there would be no serious injuries. Merely because there is no serious injury, it does not mean that she has not been raped. In fact, there are four-five injuries on her breast and other parts of the body which are in the nature of bruises and five days old from the date of examination which also corroborates the prosecution story.

16. In view of above, the learned trial Court was fully justified in convicting the Appellants. As far as quantum of sentence is concerned, the accused have been let off very lightly. The Appellants should have been imposed with a harsher sentence, however, since there is no appeal by the State, I cannot increase the sentence.
17. Accordingly, the appeal is dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE