

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 248 of 2011**

(Arising out of judgment dated 31-1-2011 passed by the Third Additional Sessions Judge, Bastar at Jagdalpur in S.T.No.119/09)

- Chhotu @ Ramesh S/o Sukman Aged About 19 Years R/o Nakapara, Geedam, Distt. Dantewada Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Kodenar, Distt. Bastar Chhattisgarh.

---- Respondent

And**CRA No. 285 Of 2011**

- Hani @ Anil Kumar Markam S/o Budhru Ram Aged About 20 Years Caste Madiya, R/o Kaditi Para Gidam, Ditt. Dantewada Chhattisgarh.

---- Appellant

Vs

- State Of Chhattisgarh Through Police Station Kodenar, Distt. Jagdalpur Chhattisgarh.

---- Respondent

For Appellant in CRA No.248/11	Shri Raghvendra Verma, Adv. appears on behalf of Ms. Hamida Siddiqui, Adv.
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For Appellant in CRA No.285/11	Ms Laxmi Tondey, Advocate
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For Respondent/State	Shri Shashank Thakur, Govt. Adv.
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Hon'ble Shri Justice Prashant Kumar Mishra
Judgment on Board

09/09/2017

1. Appellant Chhotu @ Ramesh in CRA No. 248 of 2011 has been convicted under Sections 363 and 366-A of the Indian Penal Code (for short 'the IPC') and sentenced to undergo R.I. for 3 years & 7 years, respectively with usual default stipulations.
2. Appellant Hani @ Anil Kumar Markam in CRA No. 285 of 2011 has been convicted under Sections 363, 366-A & 376 of the IPC and sentenced to undergo R.I. for 3 years, 5 years & 7 years respectively with usual default stipulations.
3. It is not in dispute that the appellant Chhotu @ Ramesh remained in jail for three months during pendency of trial and thereafter from the date of impugned judgment i.e. 31.01.2011. Similarly appellant Hani @ Anil Kumar Markam is in jail from the date of his arrest i.e. 31.08.2009. Thereafter, the appellants were never released on bail and, as such, they have undergone the entire jail sentence including the default sentence.
4. In CRA No.248 of 2011 Shri Raghvendra Verma, Advocate, would appear on behalf of Ms Hamida Siddiqui, Advocate, appointed by the High Court Legal Aid Committee, however, no one appears for the appellant in CRA No.285 of 2011.

5. This Bench has been constituted by Hon'ble the Chief Justice on a Saturday for expeditious disposal of matters filed through Legal Aid/Jail Appeals, therefore, instead of adjourning the matter for want of counsel in CRA No.285 of 2011, this Court would appoint the counsel who is in the panel prepared by the High Court Legal Aid Committee. Ms Laxmi Tondey, Advocate, who is in the panel prepared by the High Court Legal Aid Committee, is present in the Court. She is appointed to argue the appeal of appellant Hani @ Anil Kumar Markam (CRA No. 285 of 2011). This Court allowed one hour time to Ms Laxmi Tondey, Advocate, to examine the record for addressing the Court.
6. It is argued by the learned counsel appearing for the appellants that the prosecution case is full of material contradictions and omissions, therefore, on the basis of such sketchy and inconsistent evidence, the appellants have wrongly been convicted. They would submit that the story projected by the prosecution is wholly unbelievable apart from being exaggerated.
7. Learned Govt. Advocate appearing for the State, *per contra*, would submit that the girl was recovered from the possession of the accused persons; the FIR is prompt; and medical

report about the commission of rape is positive, therefore, the prosecution has proved its case beyond reasonable doubt.

8. Learned counsel appearing for the parties would read out the evidence, in support of their respective stand.
9. I have heard learned counsel appearing for the parties at length and perused the record.
10. On the date of incident the prosecutrix was aged about 12 years. She was student of class 5th at the Ashram School, Jamgaon. For attending the school she boarded a bus and got down at Bastarnar at about 2.00 pm and was going on foot towards Jamgaon. At this point of time, the present appellants along with third accused Vijay Kumar, who has not preferred any appeal, picked the prosecutrix; made her to sit on the bicycle; abducted and taken her to Gumda Dam, near Geedam and started flirting and behaving obscenely with her. When she tried to escape, they again made her to sit on motor cycle and was taken to Hiram where she was held in captivity for two days. The appellant Hani, thereafter, took her to the house of his brother-in-law namely; Sanju at village Fundli Bodhli and committed forcible sexual intercourse with her in the night. On 27-08-2009

Ashram Superintendent Kashyap and father of the prosecutrix came to village Fundli Bodhli and recovered/released her from the captivity. The First Information Report (FIR) (Ex.P/7) was lodged on 30.08.2009 and after completion of investigation charge sheet was filed.

11. The evidence available on record would indicate that the prosecutrix, examined as PW-4, has fully supported the prosecution case. Her statement is also supported by the medical evidence in form of Ex.P/2 submitted by Dr. (Smt.) S.Thakur (PW-2), who has clearly found and deposed that the prosecutrix was subjected to sexual intercourse within seven days from the date of examination. The prosecutrix was medically examined on 31.08.2009 and the approximate date of commission of sexual intercourse is in the intervening night of 25/26-08-2009, therefore, the time period mentioned in the medical report is fully consistent with the prosecution story.
12. Sukdo (PW-5), father of the prosecutrix, has also stated that when the village Sarpanch informed him that a boy has abducted his daughter, he tried to search & locate the girl and eventually she was recovered from village Fundli Bodhli from the possession of the accused persons. According to Sukdo (PW-5),

the Sarpanch immediately identified all the accused persons and intimidated him. On this basis their names have been revealed to the police in the FIR itself.

13. The appellants have examined Shashi Bai (DW-1) in support of their defence of false implication projecting that the family of Anil has shoddy relation with the parents of the prosecutrix, therefore, a false report has been lodged against Anil, however, when the father of the prosecutrix was examined as (PW-5) no such suggestion has been made to this witness that he has shoddy relation with the family members of the appellant Anil, therefore, they have lodged a false report. It appears the defense witness has been examined by developing a wholly new story, which is not even suggested to the prosecution witnesses.
14. Considering the material available on record, this Court does not find any ground to interfere with the impugned judgment. Accordingly, both the appeals are liable to be and are hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Gowri