

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 440 of 2011

(Arising out of judgment/order dated 12.5.2011 in Sessions Trial No.7 of 2011 passed by learned Additional Sessions Judge, Dhamtari (CG))

1. Hemant Pandariya, S/o Deenu Pendariya, aged about 21 years, R/o Marathapara, Dhamtari, District Dhamtari (CG)
2. Ravi Nirmalkar S/o Ajayram Nirmalkar, aged about 21 years, R/o Marathapara, Dhamtari, P.S. & Distt.-Dhamtari, C.G.

---- Petitioner

Versus

- State Of Chhattisgarh, Through P.S. Dhamtari, District Dhamtari (CG)

---- Respondent

And

CRA No. 544 Of 2011

- Surajbhan, S/o Nanduram Kewarth, Aged about 35 years, R/o Village Danitola, P.S. Dhamtari, Tahsil Dhamtari, District Dhamtari (CG)

---- Petitioner

Vs

- State Of Chhattisgarh, Through the Incharge Officer, P.S. Dhamtari, Tahsil Dhamtari, District Dhamtari (CG)

---- Respondent

And

CRA No. 876 Of 2011

- Heera Dhruv, S/o Dwarika Dhruv, aged about 22 years, R/o Marathapara, Dhamtari, District Dhamtari (CG)

---- Petitioner

Vs

- State Of Chhattisgarh Through: S.H.O., P.S. Dhamtari, Distt.- Dhamtari, C.G.

---- Respondent

And

CRA No. 628 Of 2012

- Suresh Bhore S/o Triyambak Bhore Aged About 32 Years R/o Danitola, Dhamtari C.G.

---- Petitioner

Vs

- State Of Chhattisgarh Through - The SHO, P.S. Dhamtari, Distt. Dhamtari C.G.

---- Respondent

For Respective Appellants	Mr. D.N. Prajapati, Advocate, Mr. Santosh Sahu and Mrs. Usha Chandrakar, Advocates
For State/respondent	Mr. P.K. Bhaduri, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

9/9/2017

1. Heard.
2. These appeals have been preferred challenging the conviction under Section 376 (2)(g) of the IPC and sentence of RI for 10 years to each of the accused persons. The offence has been committed by 6 accused persons, out of which, one was juvenile, therefore, the present appeals are by remaining 5 accused persons.
3. In Criminal Appeal Nos.440 of 2011 and 628 of 2012, the appellants are represented by Mr. D.N. Prajapati, Advocate; in

Criminal Appeal No.876 of 2011, the appellant is represented by Mr. Santosh Sahu, Advocate; and in Criminal Appeal No.544 of 2011, Counsel for the appellant is not present, therefore, I requested Mrs. Usha Chandrakar, Advocate, who is in the panel of the advocates of the High Court Legal Aid Committee, to assist this Court.

4. Since Mrs. Usha Chandrakar, Advocate, agreed, she is appointed by this Court to argue the matter on behalf of the appellant in Criminal Appeal No.544 of 2011. The matter was then taken up after an hour enabling Mrs. Chandrakar to peruse the record and prepare the case.
5. The prosecution case, in short, is that at about 7 p.m. on 28.1.2011, the prosecutrix and PW-2 Ramesh Sahu were going from Kurud to Dhamtari on a motorcycle through the canal road. As it was getting late in the evening, the prosecutrix wanted to inform her uncle PW-3 Salik Ram Dewangan, for which, she requested PW-2 Ramesh Sahu to call her uncle on his mobile phone. When Ramesh was connecting to the uncle of the prosecutrix, the accused persons came over there and started manhandling, abusing and assaulting Ramesh Sahu, seeing which, the prosecutrix became frightened and raised alarm. After separating Ramesh from the prosecutrix and sending him to a distance of about 40-45 ft, the accused persons committed forcible sexual intercourse one after another with the prosecutrix. As Ramesh had already informed PW-3 Salik Ram Dewangan about the threat, flirt, mishandling and misbehaviour

and taking him away to some distance, PW-3 Salik Ram came to the place of occurrence along with the policemen. However, by that time, the accused persons ran away from the place of occurrence. The report was thereafter lodged at 9:00 pm vide Ex.P/1 and the accused persons were arrested on the next date ie. 29.01.2011. After sending the prosecutrix for medical examination, making recovery of the undergarments of the prosecutrix as well as the accused persons, obtaining the report of chemical analyst and submitting the accused persons to identification parade, the charge sheet was filed against all the accused persons except the juvenile.

6. In the course of trial , the prosecution examined the prosecutrix (PW-1), Ramesh Sahu (PW-2), Salik Ram Dewangan, Uncle of the prosecutrix (PW-3), Urmilabai Dewangan (Mother of the prosecutrix (PW-4), Prakash Tandon, the Naib Tehsildar (PW-6), who conducted the TI parade, Rajesh Kumar Sahu (PW-7), Dr. Smt. Madhuri Wankhede (PW-8) and Dr. RK Soni (PW-9). The appellants abjured the guilt, but did not examine any defence witnesses.
7. Assailing the conviction, Mr. Mr. D.N. Prajapati, Mr. Santosh Sahu and Mrs. Usha Chandrakar, learned counsel for the respective appellants, would submit that PW-2 Ramesh Sahu was found in an objectionable and compromising position with the prosecutrix and the appellants threatened them to lodge report against them, therefore, Ramesh Sahu and the prosecutrix have concocted and framed the appellants in the present offence.

According to them, mere fact that PW-8 Dr. Smt. Madhuri Wankhede has submitted negative medical report about commission of rape should be sufficient to hold that the appellants have been falsely implicated. They would point out the contradictions and omissions in the prosecution case.

8. Per contra, Mr. P.K. Bhaduri, learned Government Advocate for the State, would submit that the present is an open and shut case in favour of the prosecution. According to him, the prompt FIR, Chemical Analysis report-Ex.P/35, memo of TI Parade -Ex.P/6 and the statement of the prosecutrix duly corroborated by other prosecution witnesses is sufficient enough to sustain the impugned conviction.
9. I have heard learned counsel for the parties and perused the record.
10. It appears, the prosecutrix had gone to Kurud for repayment of the loan in a Bank and for that purpose, she had sought assistance from her brother-in-law (Devar) PW-2 Ramesh Sahu. From the statements of the prosecutrix and PW2- Ramesh Sahu, it would be clear that the officers being not available in the Bank till 5:00 p.m., they were late in completing the work of repayment of loan and by the time they were returning back to Dhamtari through the canal road, it became late in the evening, therefore, the prosecutrix wanted to inform her uncle PW-3 Salik Ram Dewangan about this delay. However, when they have reached about 100-150 metres away from the liquor shop and were in the process of communicating to her uncle, the

accused persons came over there, abused, manhandled and assaulted PW-2 Ramesh Sahu and subsequently committed sexual intercourse with the prosecutrix one after another. The version put-forth by the prosecutrix and PW-2 Ramesh Sahu is duly corroborated by PW-3 Salik Ram and PW-4 Urmilabai Dewangan mother of the prosecutrix.

11. As a matter of fact, PW-2 Ramesh Sahu is as good as an eye-witness, because, he was present only at a distance of 40-45 ft. away from the place of occurrence. The prosecutrix being a lady of about 29 years, absence of signs of recent sexual intercourse would not bely her prompt FIR, positive Chemical Analysis Report and the vivid description given by her in the Court statement, which is neither inconsistent nor contradicting the contents of the FIR.
12. It is the settled law that the conviction under Section 376 of IPC can rest solely on the testimony of the prosecutrix, even if it is not supported by the medical evidence, but is otherwise credible and trustworthy.
13. Having gone through the entire record, it appears to this Court that there is no such contradiction and omission in the prosecution evidence, which would disbelieve the prosecution case.
14. Ex.P/35-the Chemical Analysis report of the vaginal slide, the Banyan, underwear and tea shirt respectively of each of the accused persons have been found to have marks of seminal fluid

and human sperm. Recovery of these articles were made on the very next day of the incident, therefore, it cannot be said that since the recovery is being made after few days of the incident, the same could have been concocted.

15. Despite giving anxious consideration to the arguments raised by learned counsel for the appellants, I am not persuaded to hold that the appellants have been falsely implicated. It is more so because a married lady would not put at stake her reputation by making false allegation of rape for a trivial reason as projected by the appellants.

16. It is not a case where the accused persons were having a serious long standing enmity with the prosecutrix or her family. Only because, the prosecutrix and PW-2 Ramesh Sahu were found in an objectionable position and the appellants threatened them of lodging a report against them, would not compel the prosecutrix to lodge false report. The defence of false report has, therefore, no foundational evidence.

17. Considering the nature and quality of evidence available on record, I do not find any ground to interfere in the impugned judgment.

18. For the foregoing, the appeal fail and are hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)