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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 722 of 2011**

(Arising out of judgment dated 5.7.2011 in ST No. 41/2011 of the learned Additional Sessions Judge, Balod, District Durg)

Judgment Reserved On : 09/09/2017

Judgment Delivered On : 31/10/2017

- Balgovind @ Govind S/o Khamhana Singh Gond, aged about 22 years, R/o Village Bhalukoonha, P.S.-Daundilohara, Distt.-Durg, C.G.

---- Appellant

Versus

- State Of Chhattisgarh, through In-charge Police Station Daundilohara, District Durg (CG)

---- Respondent

And

CRA No. 885 Of 2011

- Yashwant Kumar Rana S/o Jhalluram Rana, Caste Halba, aged about 20 years, R/o Bhalu Konha, P.S.-Dondilohara, Distt.-Durg, C.G.

---- Appellant

Vs

- State Of Chhattisgarh, through Police Station Dondilohara, District Durg (CG)

---- Respondent

For Appellants : Smt. Usha Chandrakar, Advocate.

For Respondent : Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

CAV JUDGMENT

1. The appellants have called in question their conviction under Sections 376 (2)(g), 363/34, and 366/34 of the IPC and sentence of RI for 10 years each under Section 376 (2)(g) and RI for 7 years each for 2 other offences as also fine of Rs.50/- each, in default thereof, additional RI for 3 months each.
2. Appellant Yashwant Kumar Rana is in jail since 29.1.2010 whereas appellant Balgovind was released on temporary bail for a period of one week in May, 2011.
3. The appellants have allegedly abducted the prosecutrix aged about 15 years at 11 pm on 17.1.2010, took her to nearby Katbandh forest of another village and committed gang rape. According to the prosecution, at about 9 am the prosecutrix's father called over mobile phone of neighbourhood boy Poonam on which the prosecutrix attended the phone call made by her father for about 5-10 minutes and came back to her house. When she reached to her house, she saw the appellants in an inebriated condition sitting on her doorstep. Appellant Yashwant Kumar Rana gagged her and both of them took her to Kothar of Poonam, tight her hand from behind and threatened her to kill if she raises alarm and thereafter they took her to nearby forest, fell her on the ground and both of

them committed forcible sexual intercourse one after another. After half an hour, they again repeated the act of forcible sexual intercourse and criminally intimidated her for not divulging the incident to anyone.

4. The prosecutrix informed her aunt Bhagwantin Bai in the next morning and called her parents who had gone to Beladila and also informed them. Her parents came back on 21.1.2010 whereafter the report was lodged after deliberations with family members and elderly members of the village.
5. In course of investigation, she was subjected to medical examination for which report (Ex.-P/14) was submitted. Her marksheet was seized vide Ex.-P/8 and spot map and Patwari map were also prepared vide Ex.-P/4 & P/5 respectively. Vaginal slide was prepared vide Ex.-P/12.
6. After filing of the charge sheet, the prosecution examined 15 witnesses to bring home the charges.
7. The incident is said to have occurred at 11 pm on 19.1.2010 for which FIR (Ex.-P/1) was lodged after 5 days i.e. at about 12.30 pm on 24.1.2010. Date of birth of the prosecutrix as mentioned in her marksheet (Ex.-P/8) is 5.9.95, therefore, as on the date of offence i.e. 19.1.2010, she was less than 16 years of age. She was

medically examined on 25.1.2010 for which report (Ex.-P/14) was submitted by (PW-12) Dr. Manjulata Gawde, who opined that she is habitual with further observation that no definite opinion could be given about recent sexual intercourse. The lady doctor did not find any external or internal injury over private part of the prosecutrix.

8. In her deposition, the prosecutrix, examined as PW-1, has supported the prosecution by clearly reiterating the contents of FIR and the act of commission of forcible sexual intercourse by both the accused persons. Her mother Suman Bai has been examined as PW-2. She supports the prosecution by stating that when her Devrani telephoned her and requested to come to the village, she came back from Beladila, on which the prosecutrix informed that she has been subjected to gang rape by the accused persons. She also says that the matter was discussed with Sarpanch and Patel of the village but they did not take any action and after 3 days, they suggested to take action as per their wishes and thereafter report was lodged. She denies the suggestion that the prosecutrix has physical relations with several other persons. She denies that her Devrani had informed her that the prosecutrix had stayed in the house of Poonam for the whole night.

9. The neighbourhood boy Poonam had been examined as PW-3, however, he has been declared hostile. This witness denies that the prosecutrix had stayed in his house throughout the night on 19.1.2010 and that he subjected her to sexual intercourse.
10. (PW-4) Bhagwantin is the aunt of the prosecutrix, who is referred by (PW-2) Suman Bai as her Devrani. She supports the prosecution case in her examination-in-chief by stating that when she had gone to search the prosecutrix in the house of Poonam, she was not available and in the next morning, the prosecutrix informed her about commission of gang rape. She has made contradictory statements during her cross-examination by stating that the prosecutrix had not informed her about the incident till 9 am in the morning and that she had not informed anything to the parents of the prosecutrix.
11. (PW-5) Anup Kumar Sahu is the Patwari who has prepared the map (Ex.-P/5). (PW-6) Nasibram is the cousin of the prosecutrix. He supports the prosecution by stating that the father of the prosecutrix had informed him about commission of gang rape by the appellants with his daughter. At this stage, the witness was declared hostile because he made evasive statement in respect of seizure memo (Ex.-P/8). (PW-10) Ghanshyam is the father of the

prosecutrix. He supports the prosecution.

12. From the material discussed above, it would appear that there was discussion in the village that during the intervening night of 19th/20th January, 2010, the prosecutrix had stayed in the house of Poonam and had come to her house at about 6 am, as stated by (PW-4) Bhagwantin in her cross-examination. It was also discussed that the appellants had seen the prosecutrix in an objectionable position with Poonam. (PW-6) Nasibram, cousin of the prosecutrix also supports this theory and would also state that about 10-15 days back from the date of the incident, the prosecutrix had gone to one Dharmendra, son of Punuram to become his wife on which she was pushed down by Dharmendra's mother whereupon father of the prosecutrix had sought suggestion but the villagers stated that since the prosecutrix is in the habit of staying with several persons at different point of time, they would not suggest anything and he may do so as he desires. Coupled with this, Bhagwantin would also state that she had never informed the parents of the prosecutrix about the incident.
13. Moreover, the medical evidence also would not support the prosecution. The FIR is delayed by about 5 days, therefore, the prosecution case is under intense cloud and when there is doubt as

to the prosecution story, benefit must go to the accused.

14. For the foregoing, I am of the considered view that the appellants are entitled to benefit of doubt. Therefore, the impugned judgment of conviction and sentence is set aside and the appellants are acquitted of the charges. They be set at liberty forthwith unless required to be detained in any other case.

15. The Appeals are accordingly allowed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve