

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 712 of 2006

- Mukesh Singh Rathor, Aged about 40 years, S/o. Shri Ramcharan Singh Rathore, Agriculturist and Resident of Maalgujar MOhalla Keshkal, Police Station Keshkal, District Bastar (CG).

---- Applicant

Versus

1. State Of Chhattisgarh, Through The District Magistrate, Bastar (CG)
2. Mohd. Amin Meman, aged about 36 years, S/o. Balli Mohd. Meman, Resiodent of Maszid Para Keshkal, Police Station Keshkal, District Bastar (CG)
3. Mohd. Shahid, aged about 24 years, Son of Abdul karim, Resident ofMaszid para Keshkal, Police Station Keshkal District Bastar (CG)
4. Mohd. Mujib, aged about 25 years, Son of Abdul Habib, Resient of Pakiza Para Keshkal, Police Station Keshkal, District Bastar (CG)
5. Aaftab Usmani, aged about 23 years, S/o. Abdul Gaffar, Resident of Harrapadav Surdongar, Police Station Keshkal, District Bastar (CG)
6. Mohd. Junaid, aged about 23 years, Son of Mohd. Afzal Meman, Resident of Main Road Keshkal, Police Station Keshkal, District Bastar (CG)
7. Mehrab Ali, aged about 28 years, Son of Late Ramzan Ali, Resident of In front of Hamid Mam Patila Market, Tikrapara, Raipur District Raipuyr (CG)

---- Respondents

For Applicant	: Shri Avinash Mishra, Advocate
For Respondent No.1/State	: Shri Adil Minhaj, P.L.
For Respondents 2 to 7	: Shri Praveen Tulsyan, Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

10/07/2017

Challenge in the present revision is to the judgment and order dated 08.09.06 passed by the Second Additional Sessions Judge (FTC) Jagdalpur in S.T. No. 393/2005 acquitting the respondent No.6 of the offences under Section 363,366 and 376 IPC and rest of the respondents for the offences under Sections 363/34 and 366/34 IPC.

2. As per prosecution case, in the intervening night of 17-18.07.05, accused persons abducted the prosecutrix from her house at Keshkal and taken her from one place to other i.e. Dhamtari, Bhilai, Nagpur and Cuttack. According to the prosecution case, respondent No.6/Mohd. Junaid who was having affair with the prosecutrix and rest of the accused persons helped Mohammed Junaid in taking the prosecutrix to several places. On 19.07.05 FIR Ex.P-2 was lodged by the applicant Mukesh (PW-7) against Mohd. Junaid under Sections 363 and 366 IPC. On 21.07.05 written report Ex.P-7 was also lodged by the applicant against Mohd. Junaid and also against Mohd. Ameen and Mohd. Shahid for facilitating him in taking the prosecutrix. On 21.07.05 another complaint was lodged by the applicant. From Cuttack the prosecutrix was recovered by *Baramdadgi Panchnama* Ex.P-6 on 28.07.05 and thereafter she was brought back to her village. In the meanwhile After being brought back to Keshkal prosecutrix was medically examined on 29.07.05 vide Ex.P-5 by Dr. Rajni Thakur (PW-5) and according to her, no external or internal injury was found on the body of the prosecutrix and there was no sign of struggle. After filing of the charge sheet, trial judge has framed the

charge against the accused/respondent Mohd. Junaid under Sections 363,366 and 376 IPC whereas against the other respondents charge was framed under Sections 363/34 and 366/34 IPC.

3. Prosecution has examined 10 witnesses in support of its case. Statements of the respondents/accused were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded false implication in the case.

4. After hearing the parties, the trial Court, vide its judgment dated 08.09.2006 has acquitted the respondents/accused of all the offences. Hence the present revision on behalf of the father of the prosecutrix assailing the impugned judgment.

5. Counsel for the applicant submits that

i) the Court below has erred in law in acquitting the accused persons on the ground that age of the prosecutrix has not been proved.

ii) during investigation the applicant had provided all the relevant documents to the prosecution and those documents were made part of challan, yet the prosecution has not proved those documents as a result of which the accused persons could get the benefit of the same.

iii) the medical report of the prosecutrix clearly establish the fact that she was subjected to rape by Mohd. Junaid and therefore he ought to have been convicted for commission of rape.

iv) the trial court has taken a lenient view while acquitting the respondents/accused.

6. On the other hand, supporting the impugned judgment it has been argued on behalf of the respondents/accused that the acquittal of the respondents/accused is in accordance with law and there is no infirmity in the same. It has been further argued that the prosecution has utterly failed to prove the age of the prosecutrix and therefore the question of conviction of the accused persons under Sections 363 and 366 IPC does not arise. In relation to the acquittal of respondent No.6 Mohd. Junaid under Section 376 IPC is concerned, it has been argued that there is no evidence that the prosecutrix was minor and considering her conduct where she visited several places along with Mohd. Junaid without offering any protest or resistance and further considering the fact that she stayed with him for about 10 days and never tried to escape from the clutches of accused Junaid, his acquittal is in accordance with law and there is no infirmity in the same. He further argues that the scope of interference in a criminal revision against acquittal is very limited, the view taken by the trial court appears to be one of the possible view and therefore also interference by this court is not called for.

7. State counsel has duly assisted this Court.

8. Prosecutrix (PW-6) in her statement has stated that in the intervening night of 17-18.07.05 two persons came, gagged her mouth and forcibly took her in a Maruti car to Dhamtari. After dropping her along with the accused at Dhamtari she was taken by respondent No.6 Mohd. Junaid to Bhilai where she was subjected

to rape and after staying there for three days she was taken to Nagpur and from there to Cuttack. Evidence further reflects that she had every opportunity to come out of the clutches of accused Junaid but she did not make any attempt. Thus it can safely be held that the prosecutrix was a consenting party. So far as the evidence relating to the age of the prosecutrix is concerned, according to the prosecutrix, her date of birth is 7.12.1987 but no document has been exhibited by the prosecutrix at the time of recording her statement. Mukesh Singh Rathore, revisioner herein, is the father of the prosecutrix, has also been examined as PW-7. He has stated that the date of birth of the prosecutrix is 7.12.1987 and that when the prosecutrix went missing she was searched out and later on he has come to know that she had been abducted by the accused persons. He has stated that he lodged a written report at the police station. Dr. Rajni Thakur (PW-5) has medically examined the prosecutrix and according to her, the prosecutrix was subjected to intercourse but she has not noticed any external injury on her body. B.N. Sharma (PW-10) is the Investigating Officer who has done the investigation.

9. True it is that certain documents are there on record which shows that the date of birth of the prosecutrix is 7.12.1987 which on the date of incident comes to 17 years but none of these documents have been exhibited by the prosecution. Even when the applicant had the opportunity to adduce evidence in the court, he has not made any effort to get any of the documents exhibited showing the date of birth of the prosecutrix and the said fault can directly be attributed to the prosecution but had the applicant

would be vigilant in the court these documents could have been exhibited and subjected to scrutiny. It appears that the point of not exhibiting any document relating to the date of birth of the prosecutrix was never raised anywhere and even in the memo of the revision, this point has not been raised. After a lapse of about 12 years, we find it difficult to permit the prosecution to fulfill the *lacunae*. The conduct of the prosecutrix where she remained along with the accused Junaid at several places for about 10 days clearly shows that she was a consenting party.

10. In view of above, this Court is of the considered opinion that the impugned order and judgment of the Court below is in accordance with law and there is no perversity in the same. Moreover, the present is a case against acquittal where law is well settled in relation to cases against acquittal. In a revision against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of acquittal by the appellate Court taking the other possible view into consideration is not permissible in law, this Court is of the view that the judgment impugned acquitting the accused/respondents of the offence as alleged against them is just and proper having no room for interference in this revision. Revision is accordingly dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge

