NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 930 of 2011

1. Narbada S/o Sundarlal Aged About 24 Years R/o Village Parsagadhi, Police Station Manendragarh, District Koriya Chhattisgarh.
2. Dharmpal S/o Ramdas R/o Village Parsagadhi, P.S. Manendragarh, Distt.-Koriya, C.G.

---- Appellants

Versus

State Of Chhattisgarh Through: Arakshi Kendra Jharkhand, District Koriya, C.G.

---- Respondent

For Appellant No.1 : Shri Atanu Ghosh, Advocate.
For Appellant No.2 : Shri Basant Kaiwartya, Advocate.
For the Respondent/ State: Shri Neeraj Sharma, Deputy G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

16.09.2017

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 30.6.2011 passed by the Learned Second Additional Sessions Judge, Manendragarh, District Koriya, Chhattisgarh in Sessions Trial No. 47 of 2010, whereby and whereunder the learned Second Additional Sessions Judge has convicted the appellants/ accused persons under Sections 376 (2)(g) and 506 part II of the Indian Penal Code (for short 'the IPC') and sentenced them to undergo rigorous imprisonment for 10 years and RI for 3 years and to pay fine of Rs.1,000/- and Rs.500/- to each of the appellants, in default of payment of fine, to further undergo RI for three months and two months, respectively.

2. The case of the prosecution, in brief, is that on 23.2.2010, when the prosecutrix (PW-3) had been to forest to collect firewood at about 10:30 am, two unknown persons, aged about 24-25 years and 40-45 years came there and they outraged her modesty and the younger one forcefully raped her; and thereafter, threatened her with dire consequences, if she narrates this incident to anybody.

3. Prosecutrix (PW-3) immediately fled from the spot by train to Manendragarh, P.S. Labri and informed about the incident. Thereafter, the prosecutrix along with Constable – Dinesh Kumar Yadav (PW-7) and Constable – Mahendra Kumar Singh (PW-8) went to the spot of incident and identified the accused persons present there as the culprits. The First Information Report (Ex. P/7) was recorded on the same day in police station Ghagarakhand.

4. On completion of the investigation, the appellants were charge-sheeted for the offences punishable under Sections 376 (2) (g) and 506 of the IPC. On denial of charges, trial was conducted and the impugned judgment was passed, in which the appellants have been held guilty, convicted and sentenced, as mentioned above.

5. The grounds of the appeal are, that the learned trial Court has erroneously appreciated the evidence of the prosecution witnesses; the medical report did not support the prosecution case and the statement of the prosecutrix (PW-3) herself is not believable. Hence, the appellants may be acquitted of the charges in this case.

6. Learned counsel for the appellants submit that the prosecution has failed to establish the case against the appellants. The evidence of the prosecution witnesses is full of contradictions, omissions and improvements. The medical report also does not support the prosecution case. Hence, the appellants are entitled for acquittal.

7. On the other hand, learned State counsel has opposed the grounds raised in this appeal and the arguments submitted on behalf of the appellants.

8. I have heard learned counsel appearing for the parties at length and also perused the material on record.

9. Considering the grounds of the appeal and the submissions made by both the sides, the question for determination in this appeal before this Court is simply that whether the conviction and sentence recorded by the trial Court is sustainable.

10. The only witness to this incident is the prosecutrix (PW-3). She stated that when she was picking firewood in the forest, both the appellants came to the spot and appellant No.1 – Narbada forcefully raped her while the other accused/ appellant No.2 – Dharmpal caught hold her hands to facilitate this incident. She came to Police Station Labri and informed about this incident to the police officer. Thereafter, she alongwith Constable – Dinesh Kumar Yadav (PW-7) and Constable – Mahendra Kumar Singh (PW-8) went to the spot there she identified the accused persons, who were arrested. However,

she stated that Dharmpal was not one of two persons, who were arrested. In cross-examination, she stated that she did not know the appellants/ accused persons by name and neither she had in acquaintance with them nor she never seen them before. Further, she admitted that appellant No.2 – Dharmpal did not rape her, but he caught hold of her hands to facilitate the incident. The FIR Ex. P/7 was recorded against two unknown persons while in statement before the Court, the prosecutrix has stated that she knew the appellants. In cross-examination, she stated that she named the accused persons while recording FIR, but no such name is there in the FIR Ex. P/7. Her statement in recording the act of the appellants has remained un-rebutted in the cross-examination.

11. Constable Dinesh Kumar Yadav (PW-7) and Constable Mahendra Kumar Singh alongwith the prosecutrix went to the spot and on identification made by the prosecutrix, they caught hold of the accused persons who disclosed their names as Narbada and Dharmpal and this statement has remained unrebutted in cross-examination. Omprakash Dubey, ASI has recorded the FIR Ex. P/7 and conducted the investigation. In cross-examination, he admitted that the prosecutrix did not mention the names in the FIR while recording the same. No question was put to this witness as to why Test Identification Parade was not conducted in this case.

12. In the peculiar circumstances of this case, the non-performance of TIP Parade does not seem to be fatal, as it was at the instance of the prosecutrix the appellants were caught hold of on the spot by the police, hence, the identification was made by the prosecutrix on the spot.

13. The medical evidence by Dr. S.N. Chawda (PW-14) proves the report Ex. P/18. According to this report, some injuries, such as scratches and pain were found on the body of the prosecutrix although there was no definite opinion about the rape committed.

14. This case is based only on the evidence of the prosecutrix (PW-3) and no reason has been found to disbelieve her statement when she has categorically identified the appellants on the spot soon after the incident and thereafter recorded the FIR immediately after the incident. Although, the medical report is not clear on the aspect of sexual intercourse, but there is presence of injuries on her body which somehow supports the prosecutrix's version. As it is not necessary that the injuries should be found on the private parts of the prosecutrix, the reason being that the prosecutrix is aged about 50 years and also that she has no reason to struggle because one of the accused was holding her by pinning her down while the other accused committed rape.

15. For the aforesaid reasons, the finding recorded by the trial Court cannot be said to be without any substance and there is no reason to interfere with the conviction and sentence passed by the trial Court.

16. Accordingly, this appeal is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi