

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.3055 of 1998

Judgment Reserved on : 17.7.2018

Judgment Delivered on : 9.10.2018

- 1. Kamlesh Naik, aged 22 years, son of Kartik Ram, Student --- **His appeal has abated vide order dated 18.6.2018,**
 - 2. Rishi Naik, aged 34 years, son of Daulal, Cultivator,
 - 3. Madho Prasad, aged 28 years, son of Ram Krishna Verma,
 - 4. Hukum Singh, aged 20 years, son of Chouwaram Naik, Student,
- All residents of Village Kodwa, P.S. Dharsinwa, District Raipur, M.P. (now Chhattisgarh)

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellants	:	Shri Arun Kochar, Advocate
For Respondent/State	:	Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 5.12.1998 passed by the 7th Additional Sessions Judge, Raipur in Sessions Trial No.213 of 1998 convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(2)(g) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.1,000/- with default stipulation
Under Section 450 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.500/- with default stipulation
Under Section 506 Part II of the Indian Penal Code	Rigorous Imprisonment for 2 years The jail sentences are directed to run concurrently

2. During pendency of the instant appeal, Appellant No.1, Kamlesh died and, therefore, the appeal, so far as it relates to him, has abated vide order dated 18.6.2018.
3. Facts of the case, in brief, are that on the date of alleged incident, the prosecutrix (PW1), who was a married woman and mother of 3 children, was aged about 30 years. Her eldest daughter Mona (PW2) was aged about 11 years. On 6.4.1998, the prosecutrix lodged First Information Report (Ex.P1) in Police Station Dharsinwa alleging that in the night of 8.3.1998 at about 11:00 p.m., she was at her home with her children only. Her husband was not present in the village. After taking dinner, she had slept along with her children. While they were sleeping, all the four Appellants came there and some person called the name of her daughter Mona. At that time, she, thinking that her husband had returned, opened the door. As soon as she opened the door, the Appellants threatened her that she will be killed if she shouts and they took her inside the room of her house and thereafter they committed rape with her one by one. They, at the time of going out of her house, threatened her that if she tells the incident to anyone, she will be killed. Therefore, she kept mum and slept. It is further alleged that next day, i.e., on 9.3.1998 also, at about 9:00 a.m., when she was alone at her house and cooking food in kitchen, Ramkrishna (not made accused by the prosecution), son of Chatur Singh and father of Appellant Madho Prasad, came her house and he also, after threatening her, committed rape with her. Since she was threatened, she did not disclose the incident to anyone. On 5.4.1998, when her husband returned home, she disclosed the incident to him. Thereafter, she lodged the FIR (Ex.P1) on

6.4.1998. She was medically examined by Dr. Suniti Manglurkar (PW6). Her report is Ex.P4 in which she did not find any injury over any part of the body of the prosecutrix. She found the prosecutrix to be habitual to sexual intercourse. No definite opinion could be given regarding recent sexual intercourse with the prosecutrix. During the course of investigation, underwears of Appellants Rishi, Kamlesh, Madho Prasad and Hukum Singh were seized vide Ex.P6, P7, P8 and P9, respectively and petticoat of the prosecutrix was seized vide Ex.P3. Spot-maps (Ex.P2 and P10) were also prepared. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed only against the present four Appellants for offence punishable under Sections 376(2)(g), 450 and 506 Part II of the Indian Penal Code followed by framing of charges against them under the same provisions.

4. To bring home the offence, the prosecution examined as many as 12 witnesses. Statements of the Appellants were also recorded under Section 313 Cr.P.C. in which they denied the guilt and pleaded innocence. 5 witnesses have been examined in their defence.
5. The Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for the Appellants argued that the FIR was lodged belatedly. No justified reason has been assigned by the prosecutrix for the delay in lodging the FIR. After the alleged incident, the prosecutrix did not disclose the incident to her *jeth*

(brother-in-law) Domar Singh (PW5), who was residing adjacent to her house. She also did not disclose the incident to her *jethani* (sister-in-law) Saroj (PW3) with her she was meeting daily after the incident. The story put-forth by the prosecution is unnatural. The alleged rape does not appear to be possible because when the incident allegedly took place, at that time, 3 children of the prosecutrix were also present inside the house and as stated by Mona (PW2), the eldest daughter of the prosecutrix, she witnessed the whole incident. But, the FIR does not state about witnessing of the incident by her. The character of the prosecutrix appears to be doubtful because whenever her husband used to go out, he had been alarming his brother Domar Singh (PW5) to keep an eye on his wife (the prosecutrix). Statements of the prosecutrix (PW1) and her eldest daughter Mona (PW2) are not reliable. The Appellants have falsely been implicated in the case due a previous enmity.

7. Per contra, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
9. The prosecutrix (PW1), in her Court statement, has stated that at about 11:00 p.m., when she was sleeping along with her 3 children at her house, somebody called her daughter Mona (PW2). She opened the door thinking that her husband had reached. On opening the door, all the four Appellants came at the door and threatened her of life and took her inside the room. They asked her to switch on the light and after causing her to fall down on a cot, they committed rape with her one by one. At the time of going

out, the Appellants threatened her that if she discloses the incident to any villager, they will kill her. Therefore, she did not disclose the incident to anyone and keeping mum she slept. She has further deposed that next day, when she was going to tell about the incident to the villagers, at that time, Ramkrishna, father of Appellant Madho Prasad entered her house and committed rape with her in the kitchen and he went out threatening her that if she discloses the incident to anyone, he will kill her. She did not disclose the incident to anyone due to fear. On 5.4.1998, when her husband returned home, she lodged the FIR on 6.4.1998. In paragraph 7 of her cross-examination, she has admitted the fact that her house and the house of her *jeth* (brother-in-law) Domar Singh (PW5) are situated adjacent to each other and both the houses are parted by a wall only. She has further deposed that total 5 members were residing in the house of her *jeth*. Ramkrishna, Hukum Singh and Kamal Singh were residing nearby her house. In paragraph 14 of her cross-examination, she has also stated that at the time of incident, she and her all the 3 children were sleeping on a same cot. In paragraph 19, she has stated that at the time of going out, the Appellants had threatened her of life, therefore, after closing the door of her house, she kept mum and slept along with her children. In paragraph 20, she has stated that after the incident, her children went out to attend the call of nature, but she did not disclose about the incident to any of her children. In paragraph 29, she has also admitted that the Appellants reside nearby her house, but after the incident, she did not visit their wives or parents to make them any complaint about the incident. In paragraph 34, she has further stated that she did not disclose about the incident to her *jeth* Domar Singh (PW5) and her *jethani*

Saroj (PW3) till her husband returned home. She has further admitted that she herself did not go to her husband to tell him about the incident.

- 10.** Mona (PW2), aged about 11 years, the eldest daughter of the prosecutrix, has stated that she was sleeping in the room along with her 2 brothers and mother (the prosecutrix). Having heard the shouts of her mother, she woke up and saw that the Appellants were dragging her mother by her hair towards inside the room and thereafter they committed wrong act with her mother. At that time, Appellant Hukum threatened her (Mona) that if she shouts he will kill her. She has further stated that her mother had not seen her that she had woken up and was witnessing the incident. Her mother saw her after the incident when the Appellants had gone out. In paragraph 6, this witness has stated that when her father returned home, her mother told him about the incident. At that time, she was sleeping. Next day, in the morning, when her father verified about the incident from her then she told him about the incident. In paragraph 8 of her cross-examination, she has also admitted that she also did not disclose about the incident till her father returned home, i.e., for a period of about one month. In paragraph 13, this witness has stated that next day, in the morning, she and her two brothers had gone out to attend the call of nature. At that time, her mother was sleeping. She has further stated that she used to go to school daily at about 10:00 a.m., but on that day, she did not go to school and her both the brothers also stayed at home.

- 11.** Dahabar Singh (PW4), husband of the prosecutrix has stated that on 8.3.1998, he had gone to Village Rawan. On 5.4.1998, he

returned home. On his return, her wife (the prosecutrix) told him about the incident. Thereafter, he verified about the incident from his daughter Mona (PW2). Mona narrated him about the incident. In paragraph 6, he has stated that at Village Rawan, he had taken a room and was residing there and his wife (the prosecutrix) was also aware of the fact that he was employed in a factory at Village Rawan, but she did not come to him at Village Rawan to inform him about the incident. In paragraph 7, he has also admitted that whenever he used to go to Village Rawan, he had been asking his brother Domar Singh (PW5) and Saroj (PW3), wife of Domar Singh to keep an eye on his wife (the prosecutrix).

12. Saroj (PW3), wife of Domar Singh (PW5) and *jethani* of the prosecutrix has stated that on 5.4.1998, the prosecutrix had told about the incident to her husband Domar Singh (PW5) and she came to know about the incident from her husband Domar Singh. In paragraph 3 of her cross-examination, she has admitted the fact that even after 8.3.1998, she used to visit the house of the prosecutrix and she had observed that the behaviour of the prosecutrix and her children was normal. She has also admitted the fact that she and the prosecutrix were close friends and they used to talk to each other while they were sitting on a *chabutara* (a platform) constructed in front of their houses, but the prosecutrix did not disclose her anything about the incident.
13. Domar Singh (PW5), *jeth* of the prosecutrix has stated that on 5.4.1998, in the night, his brother Dahabar Singh (PW4) (husband of the prosecutrix) came to his house and told him about the incident. In paragraph 3, this witness has admitted the fact that whenever Dahabar Singh (PW4) used to go out, he had been

asking him to keep an eye on his wife (the prosecutrix). In paragraph 6, this witness has also admitted the fact that between him and Ramkrishna, father of Appellant Madho, a land dispute was going on.

14. Dr. Suniti Manglurkar (PW6), who examined the prosecutrix on 7.4.1998, has stated that her report is Ex.P4 in which she did not find any injury over any part of the body of the prosecutrix. She found the prosecutrix to be habitual to sexual intercourse. No definite opinion could be given regarding recent sexual intercourse with the prosecutrix.
15. Dr. R.S. Thakur (PW9) has stated that he examined all the Appellants on 7.4.1998 and found them to be capable of performing sexual intercourse. His reports are Ex.P11, P12, P13 and P14. Patwari Sadhram (PW8) has stated that he prepared spot-map (Ex.P10).
16. Assistant Sub-Inspector Hemchand Verma (PW12) was the Investigating Officer of the offence in question. He has stated that he investigated the offence. He recorded the FIR (Ex.P1). He seized petticoat of the prosecutrix and underwears of the Appellants. He recorded statements of the witnesses under Section 161 of the Code of Criminal Procedure.
17. Kotwar Sagundas (DW2) has stated that on 11.3.1998, Domar Singh (PW5) was abusing in front of the house of Appellant Madho. On this, he had prevented Domar Singh. Ganesh Ram (DW3) and Kejuram (DW4) have also stated that on 11.3.1998, a quarrel had taken place between Domar Singh (PW5) and Appellant Madho.

- 18.** A minute examination of the above evidence makes it clear that though the prosecutrix (PW1) has deposed that on 8.3.1998, in the night, the Appellants came her house and committed rape with her one by one and this statement is also corroborated by Mona (PW2), her eldest daughter, from the evidence it is clear that till 5.4.1998, neither the prosecutrix nor her daughter Mona disclosed the incident to anyone. They had ample opportunity to disclose the incident between 8.3.1998 and 5.4.1998. As stated by Saroj (PW3), she and the prosecutrix were close friends and they used to meet with each other daily and have a talk, but the prosecutrix did not disclose her about the incident. The prosecutrix was aware of the fact that her husband was residing in other Village Rawan and he was employed there in a factory, but she did not try to go to him at Village Rawan and tell him about the incident. As stated by the prosecutrix, on 9.3.1998 also, Ramkrishna, father of Appellant Madho had committed rape with her at her house. At that time, she was alone at her house and her children had gone out. But, Mona (PW2), the eldest daughter of the prosecutrix has categorically stated that on 9.3.1998, she and her both the brothers had stayed at home along with their mother (the prosecutrix) and none of them had gone out for the whole day. In the circumstances, the statement of the prosecutrix that on the next day also, i.e., on 9.3.1998, a rape was committed with her is doubtful. From the evidence, it is also clear that neither in the FIR nor in her Court statement, the prosecutrix (PW1) has stated that the incident was witnessed by her eldest daughter Mona (PW2). On the date of incident, Mona (PW2) was a child of 11 years' age. Looking to the facts and circumstances of the case, there is a possibility that Mona would have been tutored about her

deposition. From the evidence, it is also clear that Domar Singh (PW5) is jeth (brother-in-law) of the prosecutrix and he was residing in the house situated adjacent to the house of the prosecutrix and both the houses were parted by a wall only. As per the Court statement of Mona (PW2), she had woken up due to having heard the shouts of her mother (the prosecutrix) and the threatenings being given by the Appellants to her mother. If it was so, Domar Singh (PW5) and his family members, who were residing adjacent to the house of the prosecutrix, would have also heard the same, but they did not hear so, which appears to be unnatural. From the statement of Domar Singh (PW5) and Dahabar Singh (PW4), it is also clear that whenever Dahabar Singh used to go out, he had been asking Domar Singh to keep an eye on his wife (the prosecutrix). From the statement of Mona (PW2) also, it is clear that on return of her father Dahabar Singh (PW4), the prosecutrix had told him about the incident. But, next day, Dahabar Singh first verified the same from his daughter Mona (PW2) and thereafter the FIR was lodged. Thus, it is clear that Dahabar Singh was having suspicion over the character of his wife (the prosecutrix) and even after disclosing about the incident to him by his wife, he did not directly proceed for lodging of the FIR, but first verified from his daughter Mona (PW2) and then the FIR was lodged.

19. From the above discussion, it is clear that statements of the prosecutrix (PW1) and her daughter Mona (PW2) do not inspire confidence of this Court. Their statements are unnatural. The FIR was also lodged belatedly. The reason for delay explained by the prosecutrix in lodging the FIR is not acceptable. From the

statement of Domar Singh (PW5), it is also clear that there was a land dispute between him and Ramkrishna, father of Appellant Madho and as stated by Kotwar Sagundas (DW2), Ganesh Ram (DW3) and Kejuram (DW4), on 11.3.1998, an abuse and a quarrel had taken place between Domar Singh (PW5) and Appellant Madho. In these circumstances, there appears possibility of false implication of the Appellants in the instant case. Looking to the evidence on record, in my considered opinion, the offence alleged against Appellants No.2, 3 and 4 under Sections 376(2)(g), 450 and 506 Part II of the Indian Penal Code is not proved beyond reasonable doubt. Therefore, they are entitled to get benefit of doubt.

20. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. Appellants No.2, 3 and 4 are acquitted of the charges framed against them.
21. It is reported that Appellants No.2, 3 and 4 are on bail. Their bail bonds shall continue for a further period of six months from today in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
22. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE