

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2240 of 1998

Judgment Reserved on : 10.8.2018

Judgment Delivered on : 2.11.2018

1. Ramkrishna, S/o Baigaram, age 18 years, Occupation Agriculture,
2. Lalchand, S/o Jageshwarram, age 21 years, Occupation Agriculture,
- Both residents of Village Kanthi, P.S. Darima, District Surguja, M.P.
(now Chhattisgarh)

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh) through Police
Station Darima, District Surguja

--- Respondent

For Appellants

For Respondent/State

:

Smt. Savita Tiwari, Advocate
Shri Neeraj Kumar Sharma,
Deputy Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 18.9.1998
passed by the Sessions Judge, Surguja at Ambikapur in Sessions
Trial No.126 of 1998 convicting and sentencing each of the
Appellants as under:

Conviction	Sentence
Under Section 376(2)(g) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.2,500/- with default stipulation

2. Facts of the case, in brief, are that the prosecutrix (PW2) is a
married woman aged about 18 years and at the time of incident,

she was residing at her maternal village. On 5.3.1998 at about 6:30 p.m., she had gone to a nearby field situated in some outer area of the village. When she was returning from the field, both the Appellants met her and stopped her. It is further alleged that the Appellants pushed her away. She fell down. Appellant No.1, Ramkrishna dragged her to a nearby field of wheat crop. Appellant No.2, Lalchand also followed them and thereafter both the Appellants committed forcible sexual intercourse with her one by one. After hearing her noise, Ramu (PW3) and Siya (not examined) reached there and both of them saw the Appellants running away from the spot. She told about the incident to Ramu and Siya. She also told them names of the Appellants. After her return to home, she told the incident to her mother Bhagwatibai (PW4). On the date of incident itself, i.e., 5.3.1998 at 11:30 p.m., she lodged First Information Report (Ex.P3). She was medically examined by Dr. Smt. S.P. Jaiswal (PW1). Her report is Ex.P1 in which she did not find any injury over any part of the body of the prosecutrix. Two fingers were easily being inserted into the vagina of the prosecutrix. She was found to be habitual to sexual intercourse. No definite opinion could be given regarding recent sexual intercourse with her. Blouse, saree and underwear of the prosecutrix were seized vide seizure memo Ex.P4. Some broken pieces of bangles of the prosecutrix, one locket and one chain were seized from the place of occurrence vide Ex.P10. Both the Appellants were medically examined by Dr. O.P. Shrivastava (PW6). His reports are Ex.P8A and P9A in which he found the Appellants to be capable of performing sexual intercourse. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a

charge-sheet was filed against the Appellants for offence punishable under Section 376(2)(g) of the Indian Penal Code. Charge was framed against them under Section 376(2)(g) of the Indian Penal Code.

3. To bring home the offence, the prosecution examined as many as 6 witnesses. Statements of the Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt, pleaded innocence and false implication. No witness has been examined in their defence.
4. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants submitted that the statement of the prosecutrix is not supported by the medical evidence. As stated by the prosecutrix, the incident took place in a field where *mitti ke dhele* (mud covers) were lying. In her Court statement also, the prosecutrix has stated that her back had peeled, but no injury was found over any part of her body in her medical examination. It was further argued that as stated by the prosecutrix, when the Appellants had caught her, she had shouted loudly for saving her, but nobody had come there. But, Ramu (PW3), who had first reached at the spot, has stated that he did not reach the spot on having heard the shouts of the prosecutrix. It was further argued that Ramu (PW3) has not supported the case of the prosecution and he has been declared hostile. Another witness Siya has not been examined by the prosecution. Statement of the prosecutrix is not reliable. There are material

contradictions and omissions in her statement. From the evidence, it seems that she was a consenting party. Ramu (PW3) and Siya had seen her in a compromising position with the Appellants and, therefore, false report (Ex.P3) was later on lodged by her.

6. On the contrary, Learned Counsel appearing for the State opposed the arguments advanced by Learned Counsel appearing for the Appellants and supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. Dr. Smt. S.P. Jaiswal (PW1) has stated that she medically examined the prosecutrix (PW2) on 6.3.1998 and gave her report (Ex.P1) in which she did not find any injury over any part of the body of the prosecutrix. Two fingers were easily being inserted into the vagina of the prosecutrix. She was found to be habitual to sexual intercourse. No definite opinion could be given regarding recent sexual intercourse with her.
9. The prosecutrix (PW2) has stated that on the date of incident at about 2:00 p.m., she had gone to her field. At about 5:00 p.m., she was returning home. At that time, on the way, both the Appellants met her. Appellant Ramkrishna asked her to listen him, but she did not stop. Thereafter, Appellant Ramkrishna dragged her towards the field of wheat crop and asked Appellant Lalchand to follow him. After taking her in the field, Appellant Lalchand removed her underwear and Appellant Ramkrishna gagged her mouth. Thereafter, Appellant Lalchand committed forcible sexual

intercourse with her and after him, Appellant Ramkrishna also committed forcible sexual intercourse with her. She was weeping. At that time, Ramu (PW3) and Siya (not examined) reached there. When they asked her about who were those persons, the Appellants ran away from there. She told them the names of the Appellants. Thereafter, weeping, she returned her home and stated her mother about the incident. Thereafter, she along with her father and brother went to the police station and lodged the First Information Report (Ex.P3). In her cross-examination, she has stated that she was dragged, therefore, her back had peeled and at the place of incident some mud covers were also lying below her back. She has also stated that when Appellant Ramkrishna caught her, she shouted loudly, but nobody reached there. She has further stated that at the time of incident, her bangles had broken, but no injury was suffered by her due to breaking of the bangles. A suggestion was made to her that at the time of Holi festival, the Appellants had made some mockery with her husband and this had hurt her husband and, therefore, a false report (Ex.P3) was lodged by her, but she has denied the suggestion and has categorically stated that the Appellants had not made any mockery and they had committed forcible sexual intercourse with her.

10. Ramu (PW3) is the witness who first reached at the spot. He has only stated that he reached at the spot on being called by the prosecutrix. At that time, a *potli* (packet) of peas was kept in the agricultural field to which he picked up and gave to the prosecutrix. At that time, he had not seen any of the Appellants at the spot. This witness has been declared hostile.

11. Bhagwatibai (PW4) is mother of the prosecutrix. She has stated that the prosecutrix returned home from the field weeping and told her about the incident. In her cross-examination, she has also stated that in the night itself, her son-in-law reached their house and he went along with them to lodge the report.
12. Investigating Officer Assistant Sub-Inspector C.S. Sharma (PW5) has stated that he investigated into the offence in question. He recorded the FIR (Ex.P3). He seized underwear, blouse and saree of the prosecutrix from her vide Ex.P4. He also seized one chain, one locket and broken pieces of bangles from the spot vide Ex.P10. He also recorded statements of witnesses under Section 161 of the Code of Criminal Procedure.
13. Dr. O.P. Shrivastava (PW6) is the witness who examined both the Appellants on 8.3.1998. He has stated that his reports are Ex.P8A and P9A in which he opined that the Appellants were capable to perform sexual intercourse. He has also stated that 1 abrasion was found on the left side of the cheek below the eye of Appellant Lalchand and 4 abrasions were also found on his back. He has admitted the fact that he had not mentioned in his report about the period of abrasions of Appellant Lalchand, but in his Court statement he has explained that those abrasions were 1-2 days old.
14. A minute examination of the above evidence makes it clear that the prosecutrix (PW2) has categorically stated that at the time of incident when she was returning from the field, both the Appellants stopped her and thereafter she was dragged to a field of wheat crop and thereafter they committed forcible sexual intercourse with

her one by one. The prosecutrix has remained firm during her cross-examination. Though no injury was found on her back, she has categorically stated that the blouse, saree and underwear, which she had worn at the time of incident, were seized from her vide Ex.P4. At the spot, mud covers were lying. Since she had worn saree at the time of incident, if any injury was not suffered by her on her back, it is natural. Bhagwatibai (PW4), mother of the prosecutrix has stated that the prosecutrix had returned home weeping and she had immediately told her about the incident. Same day, in the late night, i.e., without delay, the FIR (Ex.P3) was lodged by the prosecutrix. There is nothing on record to suggest that there was any enmity between the prosecutrix and the Appellants. From the statement of Dr. O.P. Shrivastava (PW6), it is clear that at the time of examination, abrasions were found on the cheek and back of Appellant Lalchand, which were suffered by him 1-2 days before the date of medical examination. The medical examination of the Appellants was conducted on 8.3.1998 and the incident had taken place on 5.3.1998. In his statement recorded under Section 313 of the Code of Criminal Procedure, Appellant Lalchand has not given any explanation about the abrasions suffered by him. Thus, it is clear that he would have suffered those abrasions at the time of incident. It was the argument of Learned Counsel appearing for the Appellants that as stated by the prosecutrix, first Appellant Lalchand and thereafter Appellant Ramkrishna committed rape with her, but in the FIR, it is mentioned that first Appellant Ramkrishna and thereafter Appellant Lalchand committed rape with her. Therefore, the statement of the prosecutrix is not reliable. But, I find no substance in this argument because the prosecutrix has remained firm on the point that both

the Appellants committed forcible sexual intercourse with her. In these circumstances, even if the prosecutrix has stated incorrect sequence of commission of rape with her by the Appellants, this will not adversely affect the case of the prosecution. It was also argued that the prosecutrix was a consenting party because Ramu (PW3) and Siya had seen her in a compromising position and, therefore, a false report was lodged by her. From the evidence, it is clear that there is nothing on record to suggest that with any of the Appellants, the prosecutrix had any previous affair. From the statement of Ramu (PW3), it is also clear that he had not seen the prosecutrix with the Appellants in compromising position and from the statement of Bhagwatibai (PW4), who is mother of the prosecutrix, it is also clear that the prosecutrix had returned home weeping and she had told her about the incident immediately and the report (Ex.P3) was lodged immediately in the night itself. Therefore, the prosecutrix was a consenting party is not established. Thus, the finding of conviction arrived at by the Trial Court is in accordance with law. The sentence imposed upon the Appellants is also just and proper and does not warrant any interference.

15. Consequently, the appeal is dismissed. The judgment of conviction and sentence under challenge is affirmed.
16. 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