

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2545 of 1999

Order reserved on :29.06.2018

Order passed on : 29.08.2018

1. Shutul, S/o. Jewala Bargah, Aged about 25 years,
2. Ludgu @ Rajkumar, S/o. Samaru Bargah, Aged about 21 years,

Both labourer and residents of Village Dhorpur, Police Station Dhorpur, District Sarguja (M.P.) (now C.G.)

---- Appellants

Versus

State of M.P. Through Police Station Dhorpur, District Sarguja (M.P.) now Chhattisgarh

-----Respondent

For Appellants : Mr. Aditya Chopra, Advocate with
Mr. D.N. Prajapati, Advocate

For Respondent : Mr. Adhiraj Surana, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Judgment

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 31.08.1999 passed by the Second Additional Session Judge, Ambikapur Sarguja (C.G.) in Sessions Trail No. 296 of 1998, whereby learned Second Additional Sessions Judge convicted the appellants for the offence punishable under Sections 376 (2) (g) and 341 of the Indian

Penal Code and sentenced them to undergo rigorous imprisonment for 10 years, fine of Rs. 200/- in default of payment of fine further undergo RI for 1 year and Simple Imprisonment for 1 month.

2. Case of the prosecution, in brief, is that the on 15.09.1998 the prosecutrix (PW-1) lodged a report in Police Station Dhaupur mentioning therein that on 10.09.1998. She was returning from her brother's house at Dhaupur to Jatasemar, at about 12.00 noon, when she reached near Tilbadva hill, then the accused/appellants came there behind her and caught hold her hands, dragged her and pushed aside on the ground. Thereafter, the appellants committed forcible sexual intercourse with her one by one. On account of gang rape she become unconscious. The appellants leaving her on the spot and fled from there. After long time, when she became conscious she reached her village Jatasemar and informed about the incident to her husband, mother-in-law and her mother. After recording of FIR (Ex.P-1), the prosecutrix (PW-1) was examined by Dr. Shipra Shrivastava (PW-11). She gave her report (Ex.P9). The accused/Appellants was also examined.
3. After completion of the investigation, charge-sheet was filed before the trial Court wherein the trial Court framed charges as mentioned above to which the appellants did not plead guilty. The trial Court conducted the trial and after completion of evidence of the prosecution side, statement of the appellants

under Section 313 of the Cr.P.C. were recorded and after completion of trial, the trial Judge considering the material available on record by the impugned judgement convicted and sentenced the appellants as mentioned above.

4. To hold the appellants guilty, the prosecution examined the prosecutrix (PW-1), Ramsundar (PW-2) father of the prosecutrix, Mangri Bai (PW-3) grand mother of the prosecutrix, Sangani Bai (PW-4) mother-in-law of the prosecutrix, Sanmet Bai (PW-5) mother of the prosecutrix, Vijay (PW-6) is the seizure witness, Jhagruram (PW-7) is the hearsay witness, Dr. K.P. Vishwakarma (PW-8), Arvind Singh (PW-9) patwari, Constable Ramsundar Ram (PW-10), Dr. Shipra Shrivastava (PW-11) and Sub Inspector P. S. Mahlane (PW-12) who has examined the prosecutrix. The appellants did not examine any witnesses in their support.
5. Mr. Aditya Chopra, learned counsel for the appellants has argued that the trial Court has not properly appreciated the evidence available on record. The independent witnesses have not supported the case of the prosecution. The statements of the witnesses recorded before the Court below are of the interested witnesses. She further argued that the FIR had been lodged belatedly by the prosecutrix and the medical evidence also does not support the case of the prosecution. The conduct of the prosecutrix (PW-1) discloses that she was a consenting party. Therefore, it is not safe to rely upon the sole testimony of the prosecutrix (PW-1) for convicting the appellant. Hence, she

prayed that the appellant be acquitted of the charge framed against him.

6. On the other hand, Shri Adhiraj Surana Dy. Govt. Advocate appearing for the State/ respondent supporting the impugned judgment has submitted that the conviction and sentence awarded by the learned Additional Sessions Judge does not call for any interference by this Court.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment.
8. Prosecutrix (PW-1) is the sole witness in this case. The touchstone for recording a conviction in a rape case is that the testimony of the prosecutrix must be reliable and inspires confidence and should be worthy of credit. It should not render it unworthy of credence. Prosecutrix (PW-1) stated that she has informed the incident to her mother-in-law (PW-4) Sangni Bai and grand mother (PW-3) Mangri Bai but they have not supported the case of the prosecution.
9. Prosecutrix (PW-1) deposed in her deposition that she has received injuries in her body. Dr. Shipra Shrivastava (PW-11) who has examined the prosecutrix (PW-1) deposed that she has not found any internal or external injury in the body of the prosecutrix (PW-1). The doctor has further clarified in her cross-examination that the prosecutrix (PW-1) was habitual to sexual

intercourse. Thus, the medical evidence has not supported the case of the prosecution. The prosecution could not file any FSL report in this regard. This witness has also not supported the case of the prosecution.

- 10.** The Investigating Officer Sub Inspector P. S. Mahlane (PW-12) has admitted this fact that the prosecutrix (PW-1) has stated about the injuries sustained by her. He further stated that no injuries were found at the time of loading of the FIR.
- 11.** The prosecutrix (PW-1) stated in paras 3 and 7 of her deposition that there was some anemically relationship between her parents and the appellants' family on some old land dispute. That the incident had happened on 10.09.1998 at about 12.00 noon and the FIR was lodged on 15.09.1998. No reasonable explanation has been given by the prosecutrix (PW-1) for delay in lodging the FIR. She has stated that she was sick and because of pain she could not lodge the FIR in time. When the prosecutrix(PW-1) could cover a distance of 12 KM from the place of incident to her home without taking any assistance of anyone, there is no reason as to why she did not go to Police Station to lodge the FIR which is at a distance of 15 KM from her village.
- 12.** After minute and careful examination of the evidence of the prosecutrix (PW-1), Ramsundar (PW-2), Sangani Bai (PW-4) it reveals that the prosecutrix (PW-1) was a consenting party to the commission of sexual intercourse with her. Therefore, the

conviction of the appellants cannot be based on the evidence of the prosecutrix (PW-1).

- 13.** On the basis of the aforesaid discussion, I am of the considered view that the learned trial Court has committed an error in convicting the appellants for the offence punishable under Sections 376 (2) (g) and 341 of the IPC. Hence, the impugned judgment of conviction and sentence is not sustainable.
- 14.** In the result, the appeal is allowed. The impugned judgment convicting and sentencing the appellants for the offence under section 376 (2) (g) and 341 of the IPC is set aside. The appellants are acquitted of the charge framed against them.
- 15.** It is reported that the appellants are on bail. Their bail bonds are not discharged at this stage and the same shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

Sd/-

(Vimla Singh Kapoor)
JUDGE