

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1672 of 2000

- Dilip S/o. Jolphon Hens Tirki, Aged 18 years, By Caste Uraon, Occupation Cultivation,
- Jolson, S/o. Jaymanush Minj, Aged 18 years, Occupation Cultivation
- Suman Minj, S/o. Libi Minj, Aged 18 years

All R/o. Village Khudera, P.S.Kansabel, District Jashpur Nagar (MP)

---- Appellants

Versus

- State of M.P. (now CG) Through District Magistrate Jashpurnagar

---- Respondent

For Appellants : Smt. Kiran Jain and Shri Rajendra Tripathi, Advocates
For Respondent/State : Shri Ravindra Agrawal, G.A.

Hon'ble Shri Justice Pritinker Diwaker

Judgement on Board

07/02/2018

This appeal has been preferred against the judgment and order dated 27.4.2000 passed by the Additional Sessions Judge, Jashpurnagar in Sessions Trial No. 153/99 convicting the accused/appellants for the offence punishable under Section 376 (2) (g) IPC and sentencing each of them to undergo rigorous imprisonment for ten years with fine of Rs. 5,000/- with default stipulation.

2. As per prosecution case, on 5.03.1999 at about 5.30 p.m. when prosecutrix was grazing the cattle along with Santosh (PW-2) Baimati, Ramvati and Sanat Ram accused persons came there, caught hold of the prosecutrix, took her near the canal and committed forcible sexual

intercourse one after another. Santosh (PW-2) who is the couhsin brother of the prosecutrix tried to save her but was asked to go away extending threat. On the next day i.e. 6.3.1999 FIR Ex.P-17 was lodged by the prosecutrix against the appellants under Section 376(2)(g),366 and 34 IPC. Prosecutrix was medically examined on 7.3.1999 vide Ex.P-16 by Dr. Smt. Jyoti Minj (PW-16A) and according to her, there was no injury or scratches over the body and no complaint of pain any where on the body. It was opined that prosecutrix was habitual to sexual intercourse. But no definite opinion can be given about recent sexual intercourse. Slides of the prosecutrix and accused persons were prepared and sent to FSL. As per "FSL report Ex.P-20 seimen was found on the underwear of the prosecutrix and vaginal slide of the prosecutrix. As per ossification test Ex.P-13 conducted by Dr.M.D.Joshi (PW-9), age of the prosecutrix was between 15-16 years. Accused persons were also medically examined vide Ex.P-10, 11and 12 by Dr. Ashok Kumar Sanyal (PW-8) and according to him, they were found capable of performing sexual intercourse. While framing the charge, trial judge has framed charge against the accused persons under Section 376(2)(g) IPC.

3. In order to establish the guilt of the accused/appellants, prosecution has examined 16 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that though the appellants were granted bail by this court vide order dated 04.04.02 and subsequently the said order was modified but on account of poor financial condition of the appellants they could not furnish the bail and after serving the entire jail sentence they have already been set free and as such they are not interested to prosecute the appeal.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellants is strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Prosecutrix (PW-1) while supporting the case has stated that on the date of incident i.e. about 5-6 months prior, in the evening when she was grazing the cattle along with Santosh, Baimati, Rambati and Sanat Ram accused persons came there caught hold of her despite protest by other persons and took her to the nearby pit and committed rape on her one after another. She has stated that at first she was subjected to rape by accused/appellant Dilip and thereafter the other two accused persons have also committed the offence. In cross-examination but for minor contradictions she remained firm and she has reiterated as to in which manner she was subjected to rape by the accused/appellants. Santosh Kumar (PW-2) is the cousin brother of the prosecutrix, has stated that when he was gazing the cattle the accused persons took the prosecutrix along with them and as he was threatened he could not do anything. He has stated that on account of fear he returned back to his house and narrated the incident to the

brother of the prosecutrix. He has stated that thereafter he along with the brother of the prosecutrix tried to trace the accused persons but they they did not find them and in the evening prosecutrix informed him as to the manner in which she was subjected to rape. Goverdhan (PW-3) is the brother of the prosecutrix to whom the incident was informed by Santosh and later by the prosecutrix. Sanat Ram (PW-4) has also supported the prosecution case and has stated that on the date of incident, prosecutrix was taken by the accused persons. Sajjan Sai (PW-5) father of the prosecutrix has not stated anything against the appellants and has turned hostile. Firan Tirkey (PW-6) is the Sarpanch of the village before whom extra judicial confession was made by the accused persons. Chandan Sai (PW-7) has assisted in the investigation. Dr. Ashok Kumar Sanyal (PW-8) has medically examined the accused persons vide Ex.P-10,11 & 12 and according to him, they were found capable of performing sexual intercourse. Dr. M. D.Joshi (PW-9) has conducted the ossification test and opined that age of the prosecutrix was between 15-16 years. He has categorically denied the fact that the prosecutrix was 18 years of age. Dr. Smt. Jyoti Minj (PW-10) has medically examined the prosecutrix and according to her, there was no injury or scratches over the body and no complaint of pain any where on the body. It was opined that prosecutrix was habitual to sexual intercourse. But no definite opinion can be given about recent sexual intercourse. Slides of the prosecutrix and accused persons were prepared and sent to FSL. As per "FSL report Ex.P-20 seimen was found on the underwear of the prosecutrix and vaginal slide of the prosecutrix. Jagat Raj Singh (PW-11) assisted in the investigation. Rohitas Pandey (PW-13) is the patwari who prepared spot map. Mukut Narayan Patel (PW-14) is a witness to

seizure before whom the underwear of the accused/appellants and the prosecutrix, has turned hostile. Samarjit Chand (PW-16) is a hearsay witness.

9. Close scrutiny of the evidence in particular the statement of the prosecutrix and her brother Santosh (Pw-2) it is clear that she was subjected to rape by the accused persons one after another. As per medical report, she was between 15-16 years of age and the medical report of the accused persons also confirms that they are capable of performing sexual intercourse. As per FSL report, seimen was found on the underwear of the prosecutrix. Further statement of the prosecutrix has also been supported by the other witnesses in particular Santosh (PW-2).

10. Considering all the facts and circumstances of the case, in particular the statement of the prosecutrix which appears to be trustworthy and inspires confidence of this court. There is no reason to disbelieve the statement of the prosecutrix and the findings recorded by the court below are strictly in accordance with law. Thus the conviction of the accused/appellants under Section 376(2)(g) IPC is in accordance with law and there is no infirmity in the same. Accordingly the conviction part of the appeal is maintained. Appeal filed on behalf of the appellants has no substance, the same is liable to be dismissed and is hereby dismissed.

Sd/-
(Pritinker Diwaker)
Judge