

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 135 of 2006

- Baigaram, S/o Charan Ram, aged 20 years, R/o village Kaskela, P.S. Jainagar, District Surguja.

---- Appellant

Versus

- State Of Chhattisgarh

---- Respondent

CRA No. 130 of 2007

- Kuwar Sai @ Khau S/o Jadu Ram Kanwar, Gram Kaskela, Tahsil-, District- Surguja.

---- Appellant

Versus

- State Of Chhattisgarh, through District Magistrate, Dist. Surguja (CG)

---- Respondent

CRA No. 191 of 2006

- Pawan Ram, S/o Dukhan Ram, agd about 50 years, Occupation- Service, R/o Village Kaskela, P.s. Jainagar, Dist. Surguja (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through P.S. Jainagar, Dist. Surguja (CG)

---- Respondent

For Appellants	:	Smt. Savita Tiwari, Smt. Kiran Jain & Shri Pragalp Sharma, Advocates.
For Respondent	:	Shri Ravindra Agrawal, Govt. Advocate.

Judgement by Hon'ble Shri Justice P. Diwaker

06/02/2018

1. Since the above criminal appeals arise out of the same incident, they are being heard together and decided by this common judgment.
2. Challenge in the above appeals is to the judgment of conviction and order of sentence dated 19.1.2006 passed by the learned 2nd Additional Sessions Judge (FTC), Surajpur, District Sarguja in S.T. No.71/2005 whereby each of the accused has been convicted under Section 376 (2) (g) & 506 of IPC and sentenced to undergo RI for 10 years with fine of Rs.2,000/- and RI for 1 year with fine of Rs.500/-, with default stipulations, respectively.
3. As per case of the prosecution, on 28.9.2004 when the prosecutrix, aged about 25 years, was returning home from the house of her friend, the accused/appellant met her on the way, took her forcibly to a nearby field and committed forcible sexual intercourse with her one after another. FIR (Ex.P-2) was lodged by the prosecutrix on 30.9.2004 under Section 376 (2) (g) & 397 of IPC. While lodging the FIR, the prosecutrix disclosed the name of accused/appellant No.2 Kunwar Sai. The prosecutrix was sent for medical examination which was done by Dr. Snehlata Tirkey (PW-2) vide Ex.P-1. She did not notice any external or internal injury on the person of the prosecutrix, her hymen was absent and vaginal orifice was admitted two fingers easily. The doctor found that the prosecutrix was habitual to sexual intercourse but no definite opinion regarding recent sexual intercourse with the prosecutrix could be given by her. Accused No.1 & 2 were also medically examined by Dr. Kamlesh Kumar Tamrakar (PW-15) vide Ex.P-22 & P-23 respectively and found them capable of performing sex.

4. On completion of investigation, charge sheet was filed against the accused/appellants under Sections 376 (2) (g) & 392 of IPC. The trial Court framed the charges under Sections 376 (2) (g), 506B & 394 of IPC. The prosecution in order to bring home the charges levelled against accused/appellants examined 15 witnesses in all. Statements of the accused/appellants were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
5. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, convicted & sentenced the accused/appellants as described above.
6. Learned counsel for the accused/appellants submits that the appellants have already suffered the jail sentence imposed upon them and therefore they are not interested in prosecuting these appeals. They pray that the appeals may be dismissed as not pressed.
7. On the other hand, learned counsel for the respondent/State submits that even if the appellants had served out the entire sentence and they are not interested to prosecute this appeal then also the appeal is required to be decided on merits.
8. I have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court including the statements of the prosecution witnesses.
9. Admittedly, the appellants are not interested in challenging the judgment impugned as they have already served out the entire jail sentence. However, there is no provision in the Code of Criminal Procedure permitting withdrawal of an appeal filed against any judgment and order of the lower Court whether it has ended in acquittal or conviction of the

accused. The Supreme Court in catena of its judgment has also held that the criminal appeal must be considered and disposed of on merits irrespective of the fact whether the appellant or his counsel is present or not. Even if the appeal is disposed of in their absence, the decision must be after consideration on merits. Accordingly, we propose to examine the evidence which was adduced by the prosecution on record to find out whether the trial Court was justified in holding the accused/appellants guilty under Sections 376 (2) (g) & 506B of IPC?

10. The prosecutrix (PW-1) has deposed that on the date of incident she was returning home from her friend's house, the accused persons met her on the way, caught hold of her, gagged her mouth with hands and took her forcibly to nearby well and committed sexual intercourse with her one after another. She further stated that first of all it is accused/appellant Pawan who ravished her and thereafter remaining accused persons took their turn. She has further stated that at the time when the forcible sexual intercourse was being performed by accused/appellant Pawan, her legs and arms were caught hold by the others and thus she was prevented from offering the resistance. She has further stated that after having committed sexual intercourse, the accused persons fled from there. She has further stated that due to fear, she did not go anywhere and stayed in the house of her sister during night. Next morning she went to the police station and lodged the report of incident. The prosecutrix was subjected to very lengthy cross-examination, but nothing favourable to the accused/appellants could be elicited in her cross-examination.
11. Dr. Snehlata Tirkey (PW-2) is the person who medically examined the prosecutrix vide Ex.P-1. She has stated that the prosecutrix was a grown-up lady and her secondary sexual character were fully developed. She did not notice any marks of injury on the person of the prosecutrix. She

has further stated that the prosecutrix was habitual to sexual intercourse and no definite opinion could be given regarding recent sexual intercourse with her. She has further stated that definite opinion regarding recent sexual intercourse will be given after receipt of the chemical examiner from the preserved swab and slide.

12. Thuru Sai (PW-3), Triveni (PW-4) & Smt. Manju Singh (PW-5), Smt. Munna Bai (PW-7), Smt. Urmila Bai (PW-8), Bhakkad (PW-10), have not supported the prosecution and as such declared hostile by the prosecution.
13. Baijnath (PW-6), Dhananjay Pathak (PW-11), Ram Dev Paikra (PW-12) are the police persons who assisted in the investigation. William Toppo (PW-9), is the investigating officer who has duly supported the prosecution case. Mohammed Shamim Ansari (PW-13) is the Patwari who prepared the spot map Ex.P-13.
14. Close scrutiny of the evidence of the prosecutrix makes it clear that on the fateful day while she was returning home, the accused/appellants met her on the way, caught hold of her, took her near a Well and after giving threat to her, they committed rape upon her. She has further stated that at the time when the forcible sexual intercourse was being performed by the accused persons, the prosecutrix was prevented from raising shouts and her legs & arms were caught hold of by the others besides the accused performing the intercourse and thus she was prevented from offering the resistance. Statement of the prosecutrix gets corroboration from the promptly lodged FIR (Ex.D-2) in which the prosecutrix had not only given vivid description of incident but also mentioned name of accused/appellant Kunwar stating that he is one of the accused who committed rape upon her. Furthermore, the prosecutrix in her testimony before the trial Court

has specifically identified accused Pawan & Baiga Ram as the other two persons who had committed rape upon her. Since the prosecutrix is a married lady, the corroboration of her statement by way of medical evidence cannot be expected to be a necessity. It is settled law that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than an injured witness. Statement of prosecutrix itself is sufficient to sustain the findings of conviction recorded by the trial Court. In this case the prosecutrix has given a vivid account of the entire episode as to how the accused/appellants sexually assaulted her which being fully reliable and trustworthy needs no corroboration from any other source. Moreover, nothing has been elicited by the defence as to why the appellants have been falsely implicated in this case and thus the stand of false implication taken by accused/appellants is also not worth acceptance. Thus, conviction of the accused/appellants under Section 376 (2) (g) & 506 of IPC suffers from no illegality and the same is hereby maintained.

15. Resultantly, the appeals filed on behalf of the appellants have no substance, the same are liable to be dismissed and are hereby dismissed.

Sd/-
(P.Diwaker)
Judge

roshan/-