

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2448 of 1999

Judgment Reserved on : 16.1.2018

Judgment Delivered on : 11.4.2018

- 1. Shrawan Kumar, aged about 20 years, S/o Shri Ramput Sav, occupation Agriculturist, R/o Village Khogaro, P.S. Chalgali, District Surguja, M.P. (now Chhattisgarh)
- 2. Aditya Kumar, aged about 20 years, S/o Shri Hirachand Teli, R/o Village Betia, P.S. Chalgali, District Surguja, M.P. (now Chhattisgarh)

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellants	:	Ms. Savita Tiwari, Advocate
For Respondent/State	:	Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

- 1. This appeal is directed against the judgment dated 24.8.1999 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'), Surguja at Ambikapur in Special Criminal Case No.155 of 1998 convicting and sentencing each of the accused/Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(2)(g) of the Indian Penal Code	Rigorous Imprisonment for 10 years

2. Case of the prosecution, in brief, is that the prosecutrix (PW1), aged about 18 years, was a student of Xth Standard in High School, Village Chalgali. On 22.7.1998 at about 8:30 a.m., she had come out of her house situated at Village Amravatipur to go to school situated at Village Chalgali on a bicycle. At about 10:30 a.m., she reached near a hand-pump situated at Dongrokharapar. Both the accused/Appellants were standing by the side of the road with their bicycles. She moved ahead on her bicycle. Both the Appellants followed her and after climbing on the high of the big drainage, they started dragging her. Her bicycle and school bag fell down. Both the Appellants dragging her, took her towards the jungle. She screamed, but nobody was there. The Appellants committed rape with her one by one. Leaving her in the jungle, they fled from there. A written report (Ex.P1) was submitted by the prosecutrix (PW1) in Police Station Chalgali same day at about 11:30 a.m. On the basis of the written report (Ex.P1), a crime under Section 376(2)(g) of the Indian Penal Code was registered vide First Information Report (Ex.P2). The prosecutrix was medically examined by Dr. Subhadra Paikara (PW15). She gave her report (Ex.P18) in which she found that two fingers were being inserted in the vagina of the prosecutrix but with her complaint of pain. The doctor has stated in her report that sexual intercourse was done with the prosecutrix, but no definite opinion could be given regarding rape. Vide Ex.P4, skirt and underwear of the prosecutrix were seized in which sperm and blood like stains were present. Vide Ex.P12, a lady bicycle was seized from the spot. Vide Ex.P13, two gent bicycles and some books were seized from the spot. Vide Ex.P14, underwear of Appellant Shrawan and vide Ex.P17, underwear of Appellant Aditya were seized. 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 and Section 3(1)(xii) of the Act of 1989. Charges were framed against them under Section 376(2)(g) of the Indian Penal Code and Sections 3(2)(v) and 3(1)(xii) of the Act of 1989 and in the alternative under Section 3(1)(xii) of the Act of 1989 read with Section 34 of the Indian Penal Code.

3. To rope in the accused/Appellants, the prosecution examined as many as 18 witnesses. Statements of the Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them, pleaded innocence and false implication. No witness has been examined in their defence.
4. 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 argued that on the date of alleged incident, the prosecutrix was above 16 years of age and the evidence of Dr. Subhadra Paikra (PW15), who examined the prosecutrix, is that no definite opinion could be given about rape with the prosecutrix. If the offence was committed by two persons then it is expected that the prosecutrix should have received some injury on her person, but she had not received any abrasion or contusion on her person. Therefore, the Appellants have been falsely implicated in the case. The prosecution has

examined all the interested witnesses. Due to enmity, the Appellants have been falsely implicated. Statements of the prosecution witnesses are not reliable.

6. Per contra, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The prosecutrix (PW1) has stated that at the time of incident, she was studying in Xth Standard in the High School of Village Chalgali. On the date of incident at about 10:30 a.m., she was going to her school on her bicycle. On the way, near Village Dongarokharapara, the Appellants were standing. They followed her. Near the drainage, both of them caught her. Her school bag and bicycle fell down. She screamed, but nobody was there. Dragging her, they took her towards the jungle. After taking her in the jungle, they committed rape with her one by one. She has further stated that after the incident, they left her there and ran away. She straightway went to the police station and narrated about the incident. The Station House Officer went out of the police station for search of the Appellants. This fact was brought to the knowledge of the prosecutrix by the Police Constable present in the police station. She has further stated that after sometime, the Station House Officer returned to the police station and told her that the Appellants were not found. On being asked by the Station House Officer, she submitted a written report (Ex.P1) in the police

station. During cross-examination, she has stated that after the incident, when she was coming to the police station, on the way, she found some ladies working at Devaipara, but she did not disclose them about the incident. She has explained that she did not disclose them about the incident because they did not ask her. In paragraph 50, she has categorically stated that there was no caste related enmity between her family and the families of the Appellants. In paragraph 44, she has admitted that the written report (Ex.P1) was not written by her, but the same was signed by her.

9. Janeshwari (PW3), mother of the prosecutrix has stated that at about 8:00 a.m., her daughter (the prosecutrix) had gone out of home for going to school. At about 10:00 – 11:00 a.m., a boy of the village came to her house and informed that the prosecutrix had not reached the school. Her school bag and bicycle and two other bicycles were lying near the drainage. She has further stated that she went to Police Station Chalgali along with her husband on his motorcycle. On reaching the police station, they found that the prosecutrix was weeping there. On being asked that why was she weeping, she replied them that she had been raped by the Appellants. In paragraph 12 of her cross-examination, she has admitted that her husband is Sarpanch of the village and the Appellants used to oppose him and, therefore, there was an enmity between them.
10. Phoolchand (PW5), father of the prosecutrix has supported the above statement of his wife Janeshwari (PW3) and has stated that when a boy of the village came and informed that school bag and

bicycle of the prosecutrix had fallen down and two other bicycles were standing near the drainage, he along with his wife went to the police station where they found that the prosecutrix was weeping. The prosecutrix told about the whole incident to her mother. During cross-examination, he has admitted that the prosecutrix had written a report which was illegible and was difficult to be understood, then a report was got written by a Police Constable which was signed by the prosecutrix.

11. Phoolkunwar (PW4), a student of the same school where the prosecutrix was studying, has stated that when she was going to the school, Appellant Shrawan was standing with a bicycle near a hand-pump and he asked her whether the prosecutrix was coming or not. Thereafter, she went to the school. After sometime, she came to know that some boys had caught the prosecutrix and taken away.
12. Narendra Kumar (PW7) has stated that on the date of incident, when he reached near the drainage, he saw that a lady bicycle was lying down on the road and two gent bicycles were standing nearby and some books had fallen down nearby. Ambika Prasad (PW16) had also accompanied him. At that time, Baijnath Gupta (PW9), a teacher of the High School, Chalgali also reached there. He has further stated that when they picked up the books lying there, they found that name of Appellant Shrawan was written in one of the books. On being opened the books kept in the school bag hanging with the lady bicycle, they found that name of the prosecutrix was written in one of the books. He has further stated that the matter was informed to the Headmaster by teacher

Baijnath Gupta. After some time, Headmaster Toppo and some school boys reached the spot and they moved ahead for making search. In paragraph 25, on being suggested, he replied that it is true that when the Station House Officer asked the prosecutrix where had she gone, the prosecutrix told him that the Appellants had caught her and taken away.

13. Ambika Prasad (PW16) has also supported the above statement of Narendra Kumar (PW7) and has stated that near the culvert two bicycles were standing and 3-4 books were lying down nearby. He has not further supported the remaining statement of Narendra Kumar and has been declared hostile. Ramesh (PW8) has not supported the case of the prosecution and has been declared hostile. Baijnath Gupta (PW9), teacher of the High School Chalgali, has stated that at about 10:15 a.m., he reached the spot on his motorcycle. He saw that three bicycles had fallen down on the spot and Narendra Kumar (PW7), Ambika Prasad (PW16) and 2-4 other persons were standing there. He has further stated that he informed Headmaster Vijay Toppo (PW12) about the incident and after sometime Vijay Toppo also reached there. After sometime, Vijay Toppo went to the police station and informed about the incident. Vijay Toppo has supported the above statement and stated that after receiving information from Baijnath Gupta (PW9), he reached the spot and saw that bicycle of the prosecutrix with school bag had fallen down on the way and two more bicycles had fallen down there. Apprehending some untoward incident, he went to the police station and informed about the incident which was recorded in Rojnamcha Sanha (Ex.P16).

- 14.** Dr. Subhadra Paikra (PW15), who examined the prosecutrix on 23.7.1998, has stated that two fingers were being inserted in the vagina of the prosecutrix but with her complaint of pain. White liquid was also present inside the vagina of the prosecutrix. She has further stated that no injury was present on the private part of the prosecutrix. She has further stated that she found that sexual intercourse was done with the prosecutrix recently. Her examination report is Ex.P18. She has also examined skirt and underwear of the prosecutrix in which she found four white stains on the skirt and one brown stain on the underwear of the prosecutrix. Her report in this regard is Ex.P19. She advised for chemical examination of the clothes of the prosecutrix, but no FSL report is available on record.
- 15.** Station House Officer of Police Station Chalgali, namely, R.C. Nishad (PW11) has stated that on the basis of the written report (Ex.P1), he registered First Information Report (Ex.P2), seized clothes of the prosecutrix vide Ex.P4, seized a lady bicycle from the spot vide Ex.P12 and also seized two gent bicycles and some books from the spot vide Ex.P13. He has further stated that he recorded the information given by Vijay Toppo (PW12), Headmaster in Rojnamcha Sanha (Ex.P16). In cross-examination, he has further stated that after recording the report of Vijay Toppo vide Ex.P16, he had gone out of the police station for search of the Appellants and the prosecutrix, but he did not find any of them. He has further stated that when he returned to the police station, the prosecutrix was already present there. He has further stated that he asked the prosecutrix to submit a written report. At that time, teachers Rajaram and Baijnath Gupta (PW9) were also present in

the police station. He has further stated that since the prosecutrix was weeping, he had asked Rajaram to write a report on behalf of the prosecutrix and submit after getting her signature thereon. Thereafter, Rajaram had written the report on behalf of the prosecutrix and the same was signed by the prosecutrix. Rajaram has not been examined by the prosecution.

16. S.D.O. (Police) B.P. Rajbhanu (PW18) is the witness who made further investigation into the offence in question.
17. A minute examination of the evidence available on record makes it clear that the prosecutrix was a resident of Amravatipur and was a student of Xth Standard of High School Chalgali. As per her Court statement, on the date of incident, at about 10:30 a.m., both the Appellants had chased her near the drainage. After catching her, they took her towards the jungle wherein they committed rape with her one by one. As per her statement, her school bag and bicycle and bicycles of the Appellants were lying down near the drainage. From the statement of Phoolkunwar (PW4), a student of the same school where the prosecutrix was studying, it is also clear that she had seen Appellant Shrawan with a bicycle near the hand-pump and Shrawan had asked her whether the prosecutrix was coming or not. Narendra Kumar (PW7) has also supported the above fact and as per his statement, he also found that a lady bicycle had fallen down on the spot and two gent bicycles were standing there and some books had also fallen down there. This was also seen by Baijnath Gupta (PW9). Headmaster Vijay Toppo (PW12) has also supported the above fact and he informed the police station about the incident which was recorded in Rojnamcha Sanha

(Ex.P16). As per medical examination report (Ex.P18) of the prosecutrix given by Dr. Subhadra Paikra (PW15), though no injury was found on the body of the prosecutrix yet symptoms of recent sexual intercourse with her were found. As per the statement of the prosecutrix, the sexual intercourse was committed with her by the Appellants forcefully in the jungle. Immediately after the incident, she reached Police Station Chalgali and the matter was reported by her. Though the written report (Ex.P1) has not been written by her yet the same was signed by her. No suggestion that contents of the written report (Ex.P1) were incorrect was put to her nor has any argument been advanced in this regard. Immediately after the incident, father and mother of the prosecutrix reached the police station where they found that the prosecutrix was weeping. The prosecutrix immediately told her mother about the incident. Bicycles of the Appellants were seized from the spot along with the bicycle and school bag containing school books of the prosecutrix from the spot, but no explanation has been offered by the Appellants in this regard in their statements recorded under Section 313 of the Code of Criminal Procedure.

18. From the above discussion of the evidence available on record, it is established that the Appellants had committed rape with the prosecutrix and their offence is proved beyond reasonable doubt. Therefore, the finding of conviction arrived at by the Trial Court is just and proper and the same does not warrant any interference. Hence, the conviction imposed upon the Appellants is affirmed.
19. It was argued on behalf of the Appellants that during trial, the Appellants remained in jail for about 1 year and during pendency of

this appeal they remained in jail for about 2 years and 6 months, that is to say, the Appellants remained in jail for a total period of about 3 years and 6 months. At the time of commission of offence, the Appellants were young boys. They were released on bail by this Court in the year 2002. Looking to the above facts and circumstances, it would not be appropriate to send them back to jail again for undergoing the remaining sentence. Therefore, they may be sentenced with the period already undergone by them. On the contrary, it was contended by Learned State Counsel that minimum sentence prescribed for the offence under Section 376(2)(g) of the Indian Penal Code is 10 years' rigorous imprisonment. Therefore, the Appellants have rightly been sentenced by the Trial Court. It was further submitted that no special reason has been urged on behalf of the Appellants to sentence them with the period already undergone by them.

20. Having regard to the facts and circumstances of the case, particularly, the fact that on the date of commission of gang rape by the Appellants with the prosecutrix, she was an 18 years school going girl, I am of the considered opinion that the sentence awarded to the Appellants by the Trial Court is just and proper and the same does not call for any interference. The Appellants do not deserve leniency on the sentence part. Hence, the sentence awarded to them is also affirmed.

21. Consequently, the appeal is dismissed.

22. The bail bonds of the Appellants are cancelled and they are

directed to surrender before the Trial Court or they shall be taken into custody forthwith for undergoing the remaining part of the sentence imposed upon them.

- 23.** 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