

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2690 of 1999

Judgment Reserved on : 5.12.2017

Judgment Delivered on : 21.2.2018

1. Hemant, S/o Milan Ram, aged about 24 years, Resident of Village Khamtarai, Thana Aarang, District Raipur
2. Ram Bharose, S/o Kashi Ram, aged about 24 years, Resident of Village Khamtarai, Thana Aarang, District Raipur, M.P. (now Chhattisgarh)

---- Appellants

versus

State of M.P. (now Chhattisgarh) through District Magistrate, Raipur

--- Respondent

For Appellants	:	Smt. Indira Tripathi, Advocate
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 30.9.1999 passed in Sessions Trial No.366 of 1996 by the Second Additional Sessions Judge, Raipur convicting and sentencing each of the Appellants as under:

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

2. Facts of the case, in brief, are that the prosecutrix (PW18), aged about 16 years, was a mentally retarded girl. She was unable to speak properly. When Punitram (PW1), father of the prosecutrix

and Chhediabai (PW5), mother of the prosecutrix went to the agricultural field, the prosecutrix stayed alone at home. In the year 1993, as per the Hindu Calendar in the month of Agahan, stomach of the prosecutrix started swelling. She was avoiding to take food and began to vomit. On being asked by her mother Chhediabai (PW5), she told that when she stayed alone at home, sexual intercourse was done with her by accused Hemant, Rambharosa and Sewan Kumar. Thereafter, a village panchayat was called by the parents of the prosecutrix. In the panchayat, accused Hemant and Rambharosa confessed that they had committed sexual intercourse with the prosecutrix. It is alleged that one agreement (Ex.P4) was also signed by them in the panchayat. It is also alleged that accused Ghanshyam Prasad aborted the pregnancy of the prosecutrix by making her consume medicines without her consent. First Information Report (Ex.P1) was lodged by Punitram (PW1), father of the prosecutrix on 21.2.1994. During investigation, statements of the prosecutrix as well as other witnesses were recorded under Section 161 of the Cr.P.C. Regarding the age of the prosecutrix, Kotwari Register was seized vide Ex.P9. The aforementioned agreement (Ex.P4) was seized vide Ex.P3. The prosecutrix was medically examined by Dr. Kiran Agrawal (PW19). Her report is Ex.P14A in which she has opined that the prosecutrix was mature for doing sexual intercourse, but she was unable to give a definite opinion regarding recent abortion of the prosecutrix. Accused Rambharosa and Hemant were examined by Dr. S.C. Shrivastava (PW12) and his reports are Ex.P10 and P11 in which he found that both of the accused were capable to perform sexual intercourse. On completion of the investigation, a charge-sheet was filed against the accused for

offences punishable under Sections 376(2)(g), 313 and 315 of the IPC. Charge was framed under Section 376(2)(g) IPC against accused Rambharosa, under Section 376(2)(g) IPC against accused Hemant, under Section 376(2)(g) IPC against accused Sewan Kumar and under Sections 313 and 315 IPC against accused Ghanshyam Prasad.

3. To rope in the accused, the prosecution examined as many as 19 witnesses. Statements of the accused were also recorded under Section 313 Cr.P.C. in which they denied the circumstances appearing against them, pleaded innocence and false implication. Two witnesses have been examined in their defence.
4. After trial, the Trial Court acquitted accused Sewan Kumar and Ghanshyam Prasad of the charges framed against them, but convicted and sentenced the accused/Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants argued that the FIR was lodged after 10 months of the incident and delay in lodging the FIR has not been explained properly. There are contradictions and omissions in the statements of the witnesses. It was further argued that statement of the prosecutrix is not reliable. Her parents Punitram (PW1) and Chhediabai (PW5) have also not duly corroborated the case of the prosecution. It was further argued that there is nothing on record to establish that the prosecutrix was mentally retarded.
6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment.

7. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.
8. Punitram (PW1), father of the prosecutrix has stated that at the time of the incident the prosecutrix was aged about 13-14 years. He has further stated that the prosecutrix was mentally weak and was able to speak little. As per his statement, when he along with his wife Chhediabai (PW5) used to go to work in the agricultural field, the prosecutrix used to stay alone at home. When the prosecutrix left taking food and started vomiting, her mother took her to the doctor. At that time, it came to their knowledge that the prosecutrix was pregnant. He has further stated that on being asked, the prosecutrix told that the pregnancy was due to accused Hemant and Rambharosa. A panchayat was called. Both the accused were also called in the panchayat. They admitted in the panchayat that the prosecutrix became pregnant because of them. He has further stated that when the prosecutrix was taken to the doctor, she told that the prosecutrix was carrying a pregnancy of 2-3 months. Later on, her pregnancy was aborted. After that, he lodged the FIR (Ex.P1). The above statement of this witness has remained unchallenged. Not a single question was put to him during his cross-examination on behalf of the accused.
9. Chhediabai (PW5), mother of the prosecutrix has also stated that when they came to know that the prosecutrix was pregnant, on being asked the prosecutrix told that accused Rambharosa and Hemant had committed sexual intercourse with her. She has further stated that a village meeting was also called in this regard.
10. Rajuram (PW3), Jagdeo (PW4), Sukhdeo (PW6), Kashiram (PW7),

Kriparam (PW8), Ramlal (PW9) and Dhanushram (PW10) are the witnesses, who appeared in the said village panchayat. All these witnesses have appeared in the said panchayat yet Kashiram (PW7) has not supported the further story of the prosecution. But, the other above-named witnesses have categorically stated that in the village panchayat, in their presence, the prosecutrix named both the accused/Appellants and stated that both the Appellants had committed sexual intercourse with her.

11. Dhanushram (PW10) has further stated that both the Appellants also admitted in the said panchayat the allegation levelled against them. They were fined also by the panchayat. Rajuram (PW3) has also supported the above statement of Dhanushram (PW10) and stated that both the Appellants were fined by the panchayat and they have also deposited the fine amount. Jagdeo (PW4) has also admitted that in the said panchayat, both the Appellants, on being asked, had admitted committing sexual intercourse with the prosecutrix and for that one agreement (Ex.P4) was also executed by both the Appellants. The said agreement has been seized vide Ex.P3. Rajuram (PW3) has supported the above fact. All the above witnesses have deposed that an agreement was executed and they have remained firm during their cross-examination. Raghu (PW16) and Rajuram (PW3) have admitted that the said agreement was seized in their presence.
12. Though the prosecutrix (PW18) has not been able to speak about the incident in detail during her examination before the Court yet she has stated that by mounting over her wrong act was done with her.

- 13.** Sukhnandan (PW11) is the witness before whom Kotwari Register was seized vide Ex.P9. Dr. S.C. Shrivastava (PW12) has examined the Appellants and has given his reports (Ex.P10 and P11) in which he has stated that the Appellants were found capable of committing sexual intercourse. Sitabai (PW14) has not stated anything about the incident and has been declared hostile. Station House Officer Pramod Naidu (PW15) is the witness who recorded the FIR (Ex.P1) as per the oral report of Punitram (PW1). During investigation, he also recorded statements of the parents of the prosecutrix Punitram (PW1) and Chhediya Bai (PW5) under Section 161 Cr.P.C. Assistant Sub-Inspector D.P. Bhoi (PW17) has stated that the agreement (Ex.P4) was seized and Kotwari Register was seized vide Ex.P9. He did the further investigation into the offence in question. Dr. Kiran Agrawal (PW19) examined the prosecutrix.
- 14.** On minute examination of the evidence adduced by the prosecution, it is found that though the prosecutrix (PW18) has not been able to state about the incident in detail during her examination before the Court yet her father Punitram (PW1) and mother Chhediya Bai (PW5) have categorically stated that when they came to know, on being asked, the prosecutrix told the names of the Appellants. In the village panchayat also, the prosecutrix took the names of the Appellants. Statements of the parents of the prosecutrix have remained unchallenged before the Court. Rajuram (PW3), Jagdeo (PW4), Sukhdeo (PW6), Kashiram (PW7), Kriparam (PW8), Ramlal (PW9) and Dhanushram (PW10) have also categorically stated that the prosecutrix had taken the names of both the Appellants before the panchayat. Rajuram (PW3), Jagdeo (PW4), Dhanushram (PW10) have further stated that both

the Appellants had admitted the charges levelled against them before the said panchayat. During cross-examination, these statements have not been challenged by the Appellants. Further, it is also clear that in the said panchayat, one agreement (Ex.P4) was also executed by the Appellants which was later on seized vide Ex.P3. From perusal of the said agreement (Ex.P4) also, it reveals that both the Appellants had admitted their guilt before the village panchayat.

- 15.** Regarding the age of the prosecutrix, Kotwari Register was seized vide Ex.P9. In the Kotwari Register, the date of birth of the prosecutrix is mentioned as 1.11.1974. The incident was of the year 1993. Thus, as per the entry of the Kotwari Register, the age of the prosecutrix, on the date of incident, was above 16 years is established. From the evidence adduced by the prosecution, it is also clear that both the Appellants had committed sexual intercourse with the prosecutrix. Though on the date of incident she was above 16 years of age yet from the evidence of the prosecution it is well established that the mental condition of the prosecutrix was not sound. It is true that there is no document or medical evidence on record regarding mental condition of the prosecutrix, but from the statements of the prosecution witnesses, it is clear that her mental condition was not sound. Therefore, she cannot be legally held to be able to give consent for the sexual intercourse done with her. Thus, since the prosecutrix was not able to give consent for the sexual intercourse, the act of the Appellants certainly falls within the category of rape.

- 16.** In view of the foregoing, I find that the prosecution has duly proved

its case against the Appellants beyond doubt. The finding of the Trial Court is just and proper and the same does not warrant any interference by this Court.

17. Consequently, the appeal is dismissed. The judgment under challenge is affirmed.
18. 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