

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 946 of 2013

1. Sanat Kumar Dhritlahare, S/o . Dauwaram, aged about 27 years, R/o Tuta, P.S. Abhanpur, Civil And Rev. Distt. Raipur (C.G.)
2. Santosh Sahu S/o . Rajaram Sahu, aged about 30 years, R/o Vill. Rakhi, P.S. Mandir Hasud, Civil And Revenue District Raipur C.G.
3. Narad Sai Tode S/o . Tamsu Aged About 25 Years R/o. Vill. Dudhwara, P.S. Magarlod, Civil And Rev. Distt. Raipur C.G.
4. Kanhaiya Patel @ Kanha S/o Jagdish Patel, Aged About 30 Years, R/o. Vill. Tuta, P.S. Abhanpur, Civil And Revenue District : Raipur C(G)

---- Appellants

Versus

- State Of Chhattisgarh Through SHO, Police Station Abhanpur, Civil And Revenue District Raipur (CG)

---- Respondent

For Appellants	:	Shri V.P. Singh, Advocate
For Respondent	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgement

P. Diwaker, J

27/01/2018

1. The appellants have preferred this criminal appeal being aggrieved with the judgment dated 7.8.2013 passed by the learned Additional Sessions Judge (FTC) Raipur in S.T. No.249/2011 whereby accused/appellants No.1, 2 & 4 have been convicted for the offence punishable under Sections 376 (2) (g) (on two counts), 506 Part II & 392 of the Indian Penal

Code (for short 'the IPC') and each of them has been sentenced to undergo life imprisonment and to pay a fine of Rs.1000/- (on two counts); RI for 2 years and RI for 2 years & fine of Rs.1,000/-, with default stipulations, respectively. Appellant No.3 has been convicted only under Section 392 of IPC and sentenced to undergo R.I. 2 years and fine of Rs.1,000/-, with usual default clause.

2. As per prosecution case, on 15.7.2011 the prosecutrix, aged about 15 years, lodged a complaint in Police Station Mandirhasaud alleging in it that on that day at about 10.30 a.m. she left for her school but instead of going to school, she went to the clinic of doctor and when she reached near the clinic, one boy who had covered his face with gamchha, caught hold of her and made her to sit forcibly on the motorcycle. Another boy sitting behind her on the motorcycle gagged her mouth with a scarf as a result of which she could not raise alarm. They took her to a forest where all the accused persons committed rape with her one after another by undressing her. It is further alleged that they have also looted her golden earrings which she was wearing and threatened her by saying that if she would disclose the incident to anyone, they will kill her. Based on this report, the offence under Section 376 (2) (g) & 506 Part II of IPC was registered against unknown persons. The prosecutrix was sent for medical examination which was done by Dr. Vijay Laxmi Anand (PW-12) and she noticed that secondary sex characters of prosecutrix were fully developed, there was no matting on pubic hairs, there was no injury in the thigh region, any external injury was also not present on the body, hymen had been ruptured freshly, her vagina was admitting two fingers with difficulty. Three vaginal smear slides were prepared and handed over to the police for chemical examination. The prosecutrix was also referred to the radiologist for determination of her age. As per opinion of the doctor,

forcible sexual intercourse was performed with the prosecutrix within 18-24 hours of the examination. Her report is Ex.P-25. On 21.7.2013 test identification parade of accused/appellants No.1 to 3 was conducted vide Ex.P-6, whereas test identification parade in respect of accused/appellant No.4 was conducted on 25.7.2013 vide Ex.P-5 and the prosecutrix has correctly identified all the accused persons. During the course of investigation, it was noticed by the prosecution that territorial jurisdiction would be of Police Station Abhanpur, District Raipur, therefore, the case was transmitted to there where FIR came to be registered vide Ex.P-23. Accused/appellants were medically examined by the doctor vide Ex.P-28, P-30, P-32 & P-34 respectively and all of them were found capable of performing sex.

3. After completion of investigation, the challan was filed by the police against the accused persons under Sections 376 (2) (g), 506 & 384 of the IPC. However, the trial Court framed the charges under Section 376 (2) g), 506 Part-II & 392 of the IPC against the accused/appellants. The prosecution in order to prove its case has examined 17 witnesses in support of its case. Statements of accused/appellants were also recorded under Section 313 of the CrPC in which they denied their guilt and pleaded innocence and false implication in the case.
4. After hearing the parties, the trial Court, by the impugned judgment, has convicted and sentenced the accused/appellants in the manner as described above.
5. Learned counsel for the appellants submits that;-
 - according to the prosecutrix, she was raped by three persons but there was no mark of any external injury on her body which makes her version unreliable and untrustworthy.
 - the prosecutrix had gone to meet her boyfriend (PW-14) and to

suppress this fact from her parents, she cooked-up a story of gang rape and thereafter falsely implicated the appellants by identifying them in the identification parade.

- the trial Court awarded imprisonment for life to accused/appellants No.1, 2 & 4 which is on very higher side, therefore, considering the age of the appellants, some leniency may be shown.

6. On the other hand, learned counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the trial Court convicting and sentencing the accused/appellants as described above are strictly in accordance with law and there is no illegality or infirmity in the same. He further submits the prosecutrix has duly supported her version given to the police and her testimony is duly corroborated by PW-14, who was present with her at the time of incident, and medical evidence. He further submits that there is nothing on record suggestive of the fact that the prosecutrix or her family members had any animosity against the accused persons to get them falsely indicted in the crime in question. He also submits that absence of marks of external injuries on the person of prosecutrix by itself is not sufficient to draw an inference of innocence of accused persons.

7. We have heard learned counsel for the parties and perused the evidence available on record.

8. The prosecutrix has been examined as PW-1. She has deposed that on 15.7.2011 he along with Dhaneshwar Sahu (PW-14) had gone to 'Muktangan' where they were sitting in a shade and talking with each other. All of a sudden, four persons came there, encircled them and demanded Rs.10,000/- else threatened that they would inform their parents. She has further stated that the accused persons took their nude photographs and threatened that if Rs.10,000/- is not given to them, they

will get it published in the newspaper. On being asked by them, she gave her golden earrings to them. After pointing towards accused Kanhaiya Patel, she has stated that he took her under a tree and committed forcible sexual intercourse with her. Thereafter accused Sanat Dhritlahare committed bad work with her. Accused Sanath & Kanhaiya again committed forcible sexual intercourse with her one after another. She has further stated that about 6 in the evening they released her and said Dhaneshwar Sahu and told that if the incident is disclosed by them to anyone then they would publish the photographs in the dailies (press). Thereafter, she was dropped at her friend's house by Dhaneshwar (PW-14) and by that time her parents had also reached there searching her. On being asked, she disclosed to her mother that two persons have forcibly taken her and one person had done bad work with her. Thereafter, she along with her parents went to the police station and lodged report of the incident. She had given consent for her medical examination. The clothes which she was wearing at the time of incident were seized vide seizure memo Ex.P-4. In the cross-examination she has stated that test identification parade was conducted by the Tahsildar vide Ex.P-5 & P-6 respectively and in which she had identified all the four accused persons. She has denied the suggestion that prior to participating in TIP, all the accused persons were shown to her and that the police officials directed her to identify these very accused persons. She has admitted that though initially all the accused persons had covered their faces with cloth but subsequently they uncovered their faces. The prosecutrix was subjected to lengthy cross-examination but nothing could be elicited to dislodge the creditworthiness of her testimony in examination-in-chief.

9. Manju Sahu (PW-2), friend of prosecutrix, did not support the prosecution

case and turned hostile.

10. Amit Sahu (PW-3) is the witness of memorandums (Ex.P-8 & P-10) and seizure memo Ex.P-9 & P-11, but he has not supported the prosecution and therefore declared hostile by the prosecution.
11. Nemichand Kosle (PW-4) is the witness of seizure memo Ex.P-14 and arrest memo Ex.P-15, but he has not supported the prosecution case and as such declared hostile.
12. Hirendra Sahu (PW-5) is the Patwari who prepared the spot map (Ex.P-7).
13. Dukhiram Sarkar (PW-6) is the person from whom earrings of prosecutrix was seized. He has stated that he has paid Rs.2,300/- to accused/appellant Sanath against a golden earrings.
14. Aarti Mayti (PW-7), mother of prosecutrix, did not support the prosecution case and turned hostile. However, in answer to leading questions put to her by the prosecution, she has admitted that her daughter disclosed to her that she was subjected to gang rape by three boys.
15. Santosh Chandrakar (PW-8) is the police person who assisted in the investigation. Lalita Sinha (PW-9) did not support the prosecution case and turned hostile.
16. Brijnath Sai (PW-10) is the Tahsildar who conducted test identification parade of accused/appellants vide Ex.P-6 & P-5. He deposed that he had hold the TIP on 25.7.2011 at 12.45 p.m. of accused/appellants No.1 to 3 in the Panchayat Room of Mandirhasaud. He has further stated that accused/ appellants were brought to Panchayat Room after the identifying witnesses were made to sit in a separate room. After the appellants were brought, they were taken to the room where the parade was to be held and were made to stand amongst six dummies. All the three accused persons were correctly identified by the prosecutrix. Likewise, the prosecutrix has duly identified accused/appellant No.4. In the cross-

examination this witness has denied the suggestion that the accused persons were shown to the prosecutrix before commencement of parade.

17. D.K. Netam (PW-11) is the police inspector who at the relevant point of time was posted in Police Station Mandirhasaud and registered the FIR.
18. Dr. Vijay Laxmi Anand (PW-12) is the doctor who medically examined the prosecutrix. She did not find any external injury on the body of prosecutrix. She had noticed that there was clotted blood on both the sides of vagina. Hymen was ruptured freshly. According to her, the prosecutrix was not habitual to sexual intercourse but she was subjected to forcible sexual intercourse within 18-24 hours of her medical examination. She advised for radiological examination for determining the age of the prosecutrix.
19. Sapan Mayati (PW-13), father of prosecutrix, did not support the prosecution case and as such declared hostile.
20. Dhaneshwar Sahu (PW-14) is the friend of prosecutrix along with whom she had gone to Mukangan. According to him, they were sitting in Mukangan and talking to each other. All of a sudden, four persons came there and after getting them undressed, they took their nude photographs. They were saying that they will show these photographs in his school. Thereafter the accused persons closed his eyes and tied him with a tree by means of a cloth. He has further stated that accused persons started demanding money from him and they have snatched earrings of the prosecutrix. He has further stated that accused Santosh, Sanath & Kanhaiya have committed forcible sexual intercourse with the prosecutrix. This witness has been subjected to lengthy cross-examination but in spite of detailed and lengthy cross-examination nothing material has been brought out to discard his evidence.
21. Dr. Mukesh Kumar (PW-5) is the doctor who medically examined the accused/appellants vide Ex.P-28, P-30, P-32 & P-34 and found them

capable of performing sex.

22. Umesh Mishra (PW-16) is the investigating officer who has duly supported the prosecution. P.L. Sahu (PW-17) is police person who assisted in the investigation.

23. Close scrutiny of the evidence on record makes it clear that the prosecutrix has stated in categorical terms that on the date of incident, she had gone to Mukangan along with her friend Dhaneshwar Sahu (PW-14) and when they were sitting under a shade and talking with each other, the accused/ appellants came there, got them undressed, took their nude photographs and demanded Rs.10,000/- else threatened to get published their nude photographs. They have also taken her golden earring. Thereafter, accused/appellants No.1, 2 & 4 committed rape with the prosecutrix one by one. It was further stated by her that aforesaid accused have again committed rape with her, for the second time. Testimony of Dhaneshwar Sahu (PW-14), with whom the prosecutrix had gone to Mukangan, fully corroborates the evidence of the prosecutrix and establishes the truthfulness of the prosecutrix's version. Medical evidence also corroborates version of the prosecutrix so far as the act of sexual intercourse is concerned. The medical examination of the prosecutrix indicates that there was a fresh rupture to the hymen and she was subjected to forcible sexual intercourse within 18-24 hours of her medical examination. Nothing has been suggested by the defence in cross-examination of the prosecutrix, as to why she should not be believed or why she would falsely implicate the appellants and put her reputation at stake.

That apart, in a test identification parade (Ex.P-5 & P-6) conducted by Tahsildar Brijnath Sahu (PW-11) the prosecutrix has duly identified the present appellants as the persons who committed rape with her. This

apart, in the Court also the prosecutrix identified the appellants, which has not been challenged by the defence in the cross-examination. Brijnath Sahu (PW-10) gave details of both the test identification parades including the steps taken for maintaining secrecy and the fact that both the witnesses i.e. prosecutrix and Dhaneshwar (PW-14), had successfully identified all the accused. The Tahsildar (PW-10) being independent witness holding high position had no reason to depose against the accused persons. Thus, from the overall statement of the prosecutrix, PW-10 & PW-14, there is no reason for us to disbelieve the evidence of identification parade.

24. Submission of learned counsel for the appellants that there was no injury on the person of the prosecutrix which shows that her evidence is false, is also not acceptable to us. In the present case, as noticed above, the prosecutrix has clearly stated that it is the accused/appellants who committed rape upon her twice, one by one. She has further stated that the accused/appellants had taken her nude photographs and threatened her to get it published in the dailies (press). Thus, it is apparent that a threat was in force against the prosecutrix due to which no possible resistance shown by the prosecutrix when the appellants were committing the offence of rape and therefore there was no mark of external injuries on the person of the prosecutrix. The medical evidence also corroborates version of the prosecutrix so far as the act of sexual intercourse is concerned. It is settled that absence of injuries on the person of victim is not fatal in each case. In **Sheikh Zakir v. State of Bihar** reported in **AIR 1983 SC 911**, it was held by the Hon'ble Supreme Court as follows;-

"The absence of any injuries on the person of the complainant may not by itself discredit the statement of the complainant. Merely because the complainant was a

helpless victim who was by force prevented from offering serious physical resistance she cannot be disbelieved."

25. In **State of Rajasthan v. N.K. (Accused)** reported in **AIR 2000 SC 812** it was held by the Hon'ble Apex Court thus

".....Absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of crime. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of evidence or evidence of consent on the part of the prosecutrix. It could depend on the facts and circumstances of each case. In the present case, the prosecutrix had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm."

26. In **Balwant Singh v. State of Punjab** reported in **(1994) SCC Suppl.(2)**, the victim girl was raped by four persons. There was absence of injuries on the back of prosecutrix. It was held by the Supreme Court that absence of injuries on back of prosecutrix does not make the prosecution case unreliable. The evidence of prosecutrix that she was raped by accused persons one after another was supported by other evidence and the conviction was upheld. Therefore, failure of the prosecution to examine the doctor to prove the injuries on the person of prosecutrix and absence of injury on back of prosecutrix is not fatal in the instant case.

27. As regards the quantum of sentence, the appellants are not only lusty brutes but had no consideration for the chastity of the prosecutrix by their lustful acts. The appellants spoiled the future life of a young girl. To show

any leniency in such rape cases would amount to compromising injustice which we refuse to do. But, this Court cannot forget the fact that the appellants are in their youth who were led away by the lure of lust. It is also their first offence and if they are gaoled for life imprisonment then their role of future life is likely to be affected. Accordingly, we are of the opinion that ends of justice would be served if the sentence of life imprisonment awarded to appellants No.1, 2 & 4 is reduced to 12 years' rigorous imprisonment.

28. In the result;

- Conviction and sentence of accused/appellant No.3 Narad Sai Tode under Section 392 of IPC are hereby affirmed.
- Conviction and sentence of accused/appellant No.1, 2 & 4 under Sections 506 Part-II & 392 of IPC are also hereby affirmed. However, while maintaining conviction of accused/appellants No.1, 2 & 4 under Sections 376 (2)(g) {on two counts}, the sentence of life imprisonment imposed on them is reduced to RI for 12 years each. Since the appellants concerned are already in jail, no direction regarding their surrender etc. is needed.

Sd/-
(P. Diwaker)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

roshan/-