

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**(Judgment closed on 11.09.2018)****(Judgment delivered on 20.09.2018)****CRA No. 938 of 2013**

1. Rupesh Kumar aged about 25 years, son of Shiv Kumar Jaiswal, R/o Village Indra Colony, Fokatpara, PS Kasdol, District Baloda Bazar, CG

--- Appellant**Versus**

1. State of Chhattisgarh through SHO Police Station Kasdol, District Baloda Bazar, CG

--- Respondent**CRA No. 1009 of 2013**

1. Ashok Kumar son of Sadaram Sahu, aged about 19 years, R/o Indira Colony, Phokatpara, PS Kasdol, Civil & Revenue District Baloda Bazar, CG

--- Appellant**Versus**

1. State of Chhattisgarh through SHO Police Station Kasdol, District Baloda Bazar, CG

--- Respondent**CRA No. 1234 of 2013**

1. Krishna Kadra son of Shiv Kadra, aged about 22 years
2. Rajeshwar alias Lalu son of Ganesh Ram Sahu, aged about 22 years,

Both R/o Indira Colony, Phokatpara, PS Kasdol, Civil & Revenue District Baloda Bazar, CG

--- Appellants**Versus**

1. State of Chhattisgarh through SHO Police Station Kasdol, District Baloda Bazar, CG

--- Respondent

AND

CRA No. 1074 Of 2018

1. Smt. Sonkunwar W/o Govind Das, aged about 45 years,
R/o Indira Colony, Fokatpara, PS Kasdol, Civil & Revenue
District Baloda Bazar, CG

Versus

1. State of Chhattisgarh through SHO Police Station
Kasdol, District Baloda Bazar, CG

For Appellants	:	Shri Adil Minhaj, Shri Hemant Gupta & Shri C.R. Sahu, Advocates
For Respondent/State	:	Shri Anil Pillay, Dy. AG

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Smt. Justice Rajani Dubey

CAV Judgment

As the aforesaid four Criminal Appeals arise out of the same judgment dated 19.09.2013 passed by Special Judge (Atrocities) Raipur in Special Sessions Trial No. 45/2012 convicting and sentencing the accused/appellants as detailed below, they are disposed by a common judgment.

Accused	Conviction	Sentence
Rupesh Kumar, Ashok Kumar & Krishna Kadra	U/s 376 (2) (g) IPC	RI for 20 years with fine of Rs. 100/- plus default stipulation
Smt. Sonkunwar	U/s 376 (2) (g) read with 109 and 114 IPC	RI for 20 years with fine of Rs. 100/- plus default stipulation

2. Facts of the case in brief are that on 01.07.2012 at about 8.15 PM FIR (Ex.P-11) was lodged by the prosecutrix (PW-5) then aged about 15 years alleging that accused Sonkunwar was kept by her father as wife. 4-5 days prior to the date of incident the prosecutrix was dropped by her father at Kasdol in the house of accused Sonkunwar. On the date of incident at about 5 PM accused Rupesh Kumar, Ashok Kumar, Krishna Kadra and Rajeshwar alias Lalu came there, consumed liquor with accused Sonkunwar and then committed forcible sexual intercourse with her. Based on this FIR, offences under Sections 376 (2) (g) IPC and 3 (1) (xii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the "Special Act") were registered against Rupesh Kumar, Ashok Kumar, Krishna Kadra and Rajeshwar alias Lalu. Prosecutrix was medically examined on 02.07.2012 by Dr. Pramila Toppo (PW-11) who gave her report Ex. P-27. Accused Rupesh Kumar, Ashok Kumar, Krishna Kadra and Rajeshwar alias Lalu were also medically examined by Dr. Rakesh Kumar (PW-10) vide reports Ex. P-19 to Ex. P-22 stating that they all were capable of performing sexual intercourse. Court below framed the charge against accused Rupesh Kumar, Ashok Kumar, Krishna Kadra and Rajeshwar alias Lalu under sections 376 (2) (g) IPC and 3 (2) (v) and 3 (1) (xii) of the Special Act. Against accused Sonkunwar the charge framed was u/s 109/114 IPC only.

3. In order to prove its case the prosecution has examined 14 witnesses. Statements of the accused/appellants were also

recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellants as mentioned in paragraph No. 1 of the judgment impugned.

5. Counsel for the accused/appellants submit as under:

(i) That the prosecutrix has not supported the case of the prosecution as she has categorically stated that on being asked by the Police she named the accused/appellants.

(ii) That the prosecutrix has further stated that she was not aware as to who committed the offence alleged.

(iii) That under no circumstance, Sonkunwar could be convicted under Section 376 (2) (g) IPC.

(iv) That the accused/appellants are in jail since 01.07.2010 and therefore they be set free by setting aside their conviction and sentence.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellants as detailed above are in accordance with law and there is no illegality or infirmity in the same. He vehemently argued that the prosecutrix appears to be fully reliable and considering the FIR and the medical report, accused/appellants have rightly been convicted for committing forcible sexual intercourse on the

minor prosecutrix.

7. Prosecutrix (PW-5) has stated that she knew the accused/appellants herein as they all belonged to her caste. According to this witness, though she was resident of Baloda Bazar but her father had left her at Kasdol in the house of accused Sonkunwar. On the date of incident, her father had gone to Raipur and after accused Sonkunwar had gone asleep after taking liquor, accused/appellants Rupesh Kumar, Ashok Kumar, Krishna Kadra and Rajeshwar alias Lalu already present there removed her clothes, threw her on the ground and committed forcible sexual intercourse with her one after the other. This witness has stated that the house where the incident took place was surrounded by many other houses and the voice raised in the neighbouring houses could be heard in the house where the incident took place. She has stated that while lodging the report she had informed the police that she did not know the accused/appellants and that half an hour after lodging the report the police had brought them to the police station and told her that they knew as to who committed the offence. According to her, after bringing four accused/appellants the police people asked her about their identity but she told them that as it was dark at the time of incident, she could not identify them. According to her, on being told by the police that it is these four persons who committed bad work with her, she took their names accordingly. Further, on being asked by the police as to who the accused Krishna was, she pointed at accused Ashok. She

has further stated that while lodging the report she did not disclose the names of accused persons who were involved in the incident. She has reiterated that she was not aware as to who committed bad work with her. Dr. Pramila Toppo (PW-11) is the witness who medically examined the prosecutrix and gave her report Ex. P-27 stating that on the basis of symptoms noticed by her, she was of the opinion that the prosecutrix was recently subjected to repeated sexual intercourse within two days therefrom. Domendra Singh alias Dinesh (PW-2) – brother of the prosecutrix has stated that when he asked the prosecutrix as to who subjected her to rape, she expressed her ignorance and told him that on account of being dark at the relevant time, she could not identify them. Pravin Kumar (PW-6) – another brother of the prosecutrix has stated that his sister (prosecutrix) did not disclose the names of the culprits. O.P. Sharma (PW-14) has however supported the case of the prosecution.

17. We have heard counsel for the parties and gone through the evidence of the witnesses with utmost care. Though medical evidence is suggestive of the recent repeated sexual intercourse with the prosecutrix yet if her evidence is read as a whole, it emerges that she herself was not sure as to by whom she was sexually exploited. Her deposition shows that because of darkness prevailing at the relevant time she was not aware as to who was the real culprit and that she had taken the names of the accused/appellants Rupesh Kumar,

Ashok Kumar, Krishna Kadra and Rajeshwar alias Lalu on being so asked by the police. Her deposition further shows that on being asked by the police as to who the accused Krishna was, she pointed at accused Ashok. According to the prosecutrix, half an hour after lodging the report the police had brought the accused/appellants to the police station and told her that they knew as to who committed the offence and for that only she took their names as accused. Even brothers of the prosecutrix being PW-2 and PW-6 have categorically stated that when they asked the prosecutrix as to who subjected her to rape, expressing ignorance she told them that on account of being dark at the relevant time, she could not see or identify them. Since the prosecution has utterly failed to prove its case beyond reasonable doubt as to who subjected the prosecutrix to forcible sexual intercourse. This being the position, accused Sonkunwar in whose house the incident is said to have taken place is also out of this ugly scene and no offence is made out against her. Her evidence also shows that the house where the incident took place was surrounded by many other houses and the voice raised at one end could be heard at the other, but surprisingly the incident went un-noticed even by the neighbours which also creates a strong doubt in the mind of this Court as to any such occurrence. The Court below appears to have totally misdirected itself in convicting the accused/appellants for make the prosecutrix the victim of their lust even in the absence of any such evidence.

8. Accordingly, the appeals are allowed, the judgment impugned is set aside and the accused/appellants are acquitted of the charge levelled against them. They being in jail are directed to be released forthwith if not required in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Rajani Dubey)
Judge

Jyotishi