

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 344 of 2005

Judgement reserved on 06.02.2019

Judgement delivered on 05.12.2019

1. Ram Singar, S/o. Ahibaran, Aged about 17 years, Minor through Guardian Father Ahibaran Rajwar, S/o. Gokul Prasad, Aged about 50 years.
2. Anil Rajwade, S/o. Mohar Say, Aged about 17 years, Minor through Guardian Father Mohar Say

Both resident of village Pidha, P.S. and Tahsil Surajpur, District Surguja (C.G.)

---- **Applicants**

Versus

State of Chhattisgarh Through Police Station Surajpur, District Surguja (C.G.)

---- **Respondent**

For Applicants : Mr. A.K. Shukla, Advocate.

For Respondent : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

Case of the prosecution in brief is that, on 12.09.2003 at about 7.00 PM, when the prosecutrix (PW-1) was returning to her home from her friend's house on the way, she was apprehended by applicants Ram Singar and Anil Rajwade. Applicant No.1

caught hold the prosecutrix (PW-1) and pressed her mouth from his hand and the applicant No. 2 caught the legs of the prosecutrix (PW-1) and lifted her to the *Badi* of Bhagwan Rajwar where applicants committed forcibly sexual intercourse with her one after the other and at about 12.00 PM they let her free. After she returned home, disclosure was made on the next day to her parents followed by lodgment of the report (Ex.P-1). After medical examination, prosecution filed the challan and eventually the charge was framed against both the accused/appellants under Section 376(2)(g) IPC.

2. By the judgment dated 08.06.2005 Juvenal Justice Board, Ambikapur convicted the applicants under Section 376(2)(g) IPC and sentenced them to send Special Home for two years. However, in appeal the finding recorded by the Juvenal Justice Board, Ambikapur have subsequently been affirmed by the lower appellate Court. Hence, this revision.

3. Learned counsel for the applicants submits that the Courts below have passed totally erroneous judgment of conviction without there being any reliable and cogent evidence in support of the charge. The prosecution has failed to prove the case against the applicants beyond all reasonable doubt. He submits that the prosecution has failed to produce the material witnesses. Moreover, there are so many discrepancies in the investigation conducted by the police, but the same has been

ignored by both the Courts below. Lastly, he submits that the Courts below failed to appreciate the evidence adduced by the prosecution properly and wrong finding has been recorded though there is no sufficient evidence on record to connect the applicants with the commission of alleged offence.

4. On the other hand, learned State counsel supported the impugned judgment of conviction and sentence and opposed the arguments advanced by learned counsel for the applicant.

5. Having gone through the material on record in particular the evidence of the minor prosecutrix (PW-1) who has been subjected to rape by two persons, this Court has no hesitation to *prima-facie* hold the accused/applicants guilty under Section 376(2)(g) IPC. Apart from the statement of the minor rape victim, the agony undergone by her gets full corroboration from the testimony of her parents, Bhaiyalal and Dharmsai (PW-3, PW-4, PW-7 and PW-8) to whom she narrated the entire incident after reaching home. Apart from parents PW-4 and PW-7, two other witnesses namely Bhaiyalal and Dharmsai PW-3 and PW-8 have also supported the case of the prosecution stating that on being asked the prosecutrix had disclosed them that on the date of incident when she was returning from the house of one Santoshi, the accused/applicants met her on the way and committed forcible sexual intercourse with her one after other. Since from the evidence collected by the prosecution the prosecutrix has

been held to be minor at the relevant time, the defence taken by the applicants that she was a consenting party to their act is rendered highly irrelevant to be looked into. Thus, in view of the factual discussion made above in the light of the evidence of the witnesses, this Court is of the opinion that both the Courts below have been quite justified in holding the accused/applicants guilty under Section 376(2)(g) IPC, and being so, the same is hereby maintained.

6. Resultantly, the revision fails and is hereby dismissed.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh