

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 21-01-2019

Judgment delivered on 13-02-2019

CRA No. 878 of 2011

- Santosh @ Najir s/o. Nohar Singh @ Noor Mod., aged about 49 years, r/o. Village Antagarh, Police Station Antagarh, Dist. Kanker (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Dondi, District Durg (CG).

---- Respondent

CRA No. 1004 of 2011

- Devendra Kumar s/o. Shyam Lal Gond, aged about 25 years, r/o. Village Aamadula, Police Station Doundi, District Durg (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Daundi, District Durg (CG).

---- Respondent

&

CRA No. 804 of 2011

- Keshar Bai d/o. Dharamsingh Gond aged about 45 years, r/o. Village Aamuadula, Police Station Doundi, District Durg (CG)

---- Appellant

Versus

- State of Chhattisgarh through Police Station Dondi, District Durg (CG).

---- Respondent

 For Appellant in : Mr. Vipin Singh, Advocate.
 CRA No.878 of 2011

For Appellant in : Ms. Laxmeen Kashyap, Advocate
 CRA No.1004 of 2011

For Appellant in : Mr. Amit Kumar Sahu, Advocate
CRA No. 804 of 2011

For respondent/State : Mr. Raghavendra Verma Govt. Adv.

Hon'ble Shri Justice Ram Prasanna Sharma
CAV Judgment

1. As all the aforesaid three appeals arise out of common judgment/incident, they are heard analogously and are being disposed of by this common judgment.

2. All the three appeals are preferred against the judgment of conviction and order of sentence dated 24-8-2011 passed by the Additional Sessions Judge, Balod, District Durg in Special Sessions Trial No. 23 of 2011 wherein the said Court has convicted and sentenced the appellants as under.

<u>CONVICTION</u>	<u>SENTENCE</u>
Appellant Santosh @ Najir under Sections 363, 366 and 376 (1) of IPC	RI for seven years and to pay fine of Rs.50/-, on each count with default stipulations.
Appellant Devendra Kumar under Sections 363 and 366/34 of IPC	RI for seven years and to pay fine of Rs.50/-, on each count with default stipulations.
Appellant Keshar Bai under Sections 363, 366/34 and 114 of IPC.	RI for seven years and to pay fine of Rs.50/-, on each count with default stipulations.

3. In the present case, prosecutrix is PW/1. As per prosecution case, prosecutrix was minor on the date of incident i.e., 7-3-2009

and she was in custody of her lawful guardianship i.e., father and mother. All the appellants took her away from village Hadgahan and appellant Santosh committed rape on her. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

4. Learned counsel for the appellants would submit as under:

- i) The trial Court has convicted the appellants on the basis of statement made by the prosecutrix (PW/1) and Toor Singh (PW/2), but the statements of these witnesses are not reliable and Doctor Rashmi Nathan (PW/12) who examined prosecutrix did not find any injury on her body and no definite opinion regarding rape and age of the prosecutrix has been given by her, therefore, conviction of the appellants is bad in law.
- ii No independent witnesses have supported the version of prosecutrix and statement of the relatives of the victim is not material for basing conviction.
- lii) The trial Court has overlooked the contradictions and omissions in the

statements of the prosecution witnesses, therefore, finding of the trial Court is against factual and legal aspect of the matter which is liable to be reversed.

- iv) There are contradictions and omissions in the statements of the prosecutrix and other witnesses.

5. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

7. In the present case, date of incident is 7-3-2009 and report was lodged on 13-3-2009 at Police Station Doundi as per Ex. P/4. PW/6 Phool Singh is father of the prosecutrix. As per version of this witness, on the date of incident prosecutrix was aged about 13 1/2 years. Doctor A.K. Sahu (PW/14) is Radiologist who examined the prosecutrix on 13-4-2009 and after taking her X-ray he elaborately discussed the issue of age on the basis of joining of bone and opined that her age is between 15 – 16 years. Version of this expert is unshaken during cross examination. Looking to the

direct evidence of father of the prosecutrix, it is established that prosecutrix was below 16 years and she was minor on the date of incident. Looking to the evidence on record, it is established that prosecutrix was minor on the date of incident and she was in custody of her guardianship i.e., father and mother.

8. Prosecutrix (PW/1) deposed before the trial Court that on the date of incident she was returning from school at about 10.00 a.m.,, and no one was there in her house where appellant Santosh reached alone. After some time, appellant Keshar Bai also reached there. Thereafter she went to the house of appellant Keshwar Bai and took some meals there and thereafter, appellant Santosh took her to village Puri. Appellant Devendra Kumar also accompanied Santosh upto village Puri.. She further deposed that appellant Santosh committed sexual intercourse with her without her consent in the village who is unknown to her. Version of this witness is supported by version of Toor Singh Vishwakarma (PW/2), Krishna Bai (PW/4), Hariram (PW/5) and Phool Singh (PW/6). All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence and their version remained unshaken.

9. Looking to the evidence, it is established before the trial Court that the appellant Santosh had criminal intention to commit intercourse with her, that is why he kidnapped the prosecutrix with intention to commit intercourse with her and thereafter committed

rape on her. Version of the prosecutrix is natural and inspires confidence and she has no grudge against the present appellant to rope him in false charge. There is no material contradiction in the statement of prosecutrix and witnesses and all have deposed in one voice and therefore, it is not the case where material contradiction is established. Minor contradictions which do not go to the root of the case are insignificant and therefore, minor contradictions have no adverse affect to the entire case of the prosecution.

10. The statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary.

11. It is true that there is delay of six days in lodging the report at Police Station. Where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of victim who has been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reasons for little delayed FIR. The

delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.

12. After assessing the evidence, there is nothing on record to say that the appellant Santosh has been falsely roped with the charge. Evidence of prosecutrix and other witnesses are reliable, therefore, there is nothing to say that their version cannot be acted upon. Looking to the entire evidence, argument advanced on behalf of the appellant Santosh is not sustainable and his act falls within mischief for which the trial Court convicted him and same is hereby affirmed. The trial Court awarded minimum sentence and less than minimum cannot be awarded.

13. Accordingly, the appeal No. 878 of 2011 preferred by appellant Santosh being devoid of merit is liable to be and is hereby dismissed. He is reported to be in jail, therefore, no further order for his arrest etc., is required.

14. So far as appellants Devendra Kumar and Keshar Bai are concerned, the only evidence against them is that they accompanied the appellant Santosh. There is nothing on record to say that both these appellants have intended to accompany the

prosecutrix for any illegal purpose. Mere accompanying to some place is not criminal act and looking to the evidence on record, it is not established that both these appellants had criminal intention of kidnapping or for some other offence, therefore, it would not be safe to affirm the finding against these two appellants.

15. Accordingly, Criminal Appeal No. 1004 of 2011 preferred by appellant Devendra Kumar and Criminal Appeal No. 804 of 2011 by appellant Keshar Bai are allowed and their conviction and sentence is set aside and they are acquitted of the said charges. Both the appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju