

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1643 of 1999

Judgment Reserved on 30.09.2019

Judgment delivered on 13.11.2019

Mahesh Yadav, Aged about 25 years, S/o. Laxman Yadav,
Resident of village Nepani, P.S. and Tahsil Patan, District Durg
(C.G.) **----Appellant**

Versus

State of Madhya Pradesh through Police Station Chhavni, District
Durg (C.G.) **---- Respondent**

with

Criminal Appeal No. 1559 of 1999

Ashok Gadariya S/o. Brijlal Gadariya, Aged 27 years, R/o.
Minimata Chowk Nagar, near Jaitkham Khurshipar, Police Station
Chhavni, District Durg (C.G.) **----Appellant**

Versus

State of Madhya Pradesh through Police Station Chhavni, District
Durg (C.G.) **---- Respondent**

For Appellants : Ms. Sareena Khan, Advocate
For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

1. Since both the appeals arise out of the same order dated 16.04.1999 passed by Special Judge Durg, in Special Case No. 178 of 1997, they are being disposed of by this common judgment.
2. What is unveiled from the material on record is that on 30.09.1996 when the prosecutrix (PW-2) aged about 30 years at

the relevant time was present in her house along with her husband (PW-3), at about 11.00 PM, the accused/appellants came there, threatened the husband and took her away to an isolated area where they committed forcible sexual intercourse with her one after the other, and at about 7.00 AM they let her free. After she returned home, disclosure was made to her husband followed by lodgment of the report (Ex.P-2). After medical examination, prosecution filed the *challan* and eventually the charge was framed against both the accused/appellants under Sections 363, 376(2)(g) IPC and 3(i)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the Special Act).

3. Learned Court below vide judgment impugned acquitted the accused/appellants of the charge under Sections 363 IPC and 3(i)(x) of the Special Act but has convicted them under Section 376(2)(g) IPC and sentenced each of them to undergo RI for 10 years with fine of Rs. 500/- plus default stipulations.
4. Counsel for the appellants/accused submits that the story put forth by the prosecution regarding subjection of rape of a major lady and mother of three children is highly unnatural particularly when she is said to have been taken away to an isolated area in the presence of her husband. Medical evidence also does not support the case of the prosecution and being so according to the counsel for the appellants the judgment impugned is liable to be set aside.

5. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellants as mentioned above are based on the proper appreciation of the evidence on record and, therefore, no illegality or infirmity is traceable in the same worth interference in this appeal.
6. It is not disputed that the prosecutrix is a major lady aged about 30 years and the mother of three children as is evident from the medial evidence. The statement made by the prosecutrix that in the night that too in the presence of her husband she was taken away by the accused/appellants to a deserted place and was subjected to sexual intercourse by both of them in turn, appears to be highly unnatural. It does not convince the judicial mind of this Court that while being taken away she has not raised any hue and cry to attract the attention of the people of locality. Silent accompaniment with the accused/appellants speaks something otherwise maybe her consent. The act of her husband (PW-2) in not resisting the accused/appellants from taking away the prosecutrix (PW-1) also sounds untrustworthy and unnatural. The medical evidence though says that a woman subjected to sexual intercourse repeatedly may cause her pain but in this case no such complaint came forth from the prosecutrix. The evidence of the Doctor (PW-8) also does not give any definite opinion regarding the recent sexual intercourse with the prosecutrix and the bleeding noticed by her was that of the menstrual cycle. The defence version that there was a payment

related dispute between the prosecutrix and the accused/appellants for supply of milk and resultant false implication of the accused/appellants, cannot be set at naught. Thus there are two probabilities in the case in hand, first that she was a consenting party to the act of the accused/appellants or that she has falsely implicated the accused/ appellants over the dispute referred to above. So far as the commission of gang rape on her by the accused/appellants is concerned, the prosecution has not led any evidence much less the cogent and clinching one. Even the evidence of the prosecutrix and her husband present a queer picture to be relied upon as it bears an altogether improbable story. The evidence is also missing that she in any manner whatsoever protested the act of the accused/appellants as the medical evidence does not indicate any external or internal injury on her person.

7. In view of above, the judgment impugned convicting and sentencing the accused/appellants is not in accordance with the evidence adduced by the prosecution and therefore, it is hereby set aside by allowing the appeals, two in numbers. Order accordingly. Consequence to follow.

Sd/-

(Vimla Singh Kapoor)

JUDGE