

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 234 of 2019**

Ku. Durgawati D/o Santram Aged About 15 Years Occupation
Student, Minor through father & natural guardian Santram S/o
Ramcharan, 37 Years R/o Village Keshavpur, P. S. Gandhinagar,
District Surguja Chhattisgarh

---- Appellant

Versus

1. Hari Ram Bargah S/o Manmohan Ram Bargah Aged About 35
Years,

2. Ramdhani Bargah S/o Late Bandhan Ram Bargah Aged About
38 Years

Both R/o R/o Village Keshavpur, P. S. Gandhinagar, District Surguja
Chhattisgarh

3. The State of Chhattisgarh, through P. S. Gandhinagar, District
Surguja Chhattisgarh

--- Respondents

For appellant- Shri A.K. Prasad, Advocate.
For State- Shri Aditya Bharadwaj, PL.

Hon'ble Shri Justice Goutam Bhaduri &

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgement

20/09/2019

1. Heard on admission.

2. The instant appeal is by the victim against the acquittal order dated
29/06/2009 passed in Sessions Trial No.217/2008 by the Third Additional
Sessions Judge, F.T.C. Surguja (Ambikapur)

3. As per the prosecution case, on 29/06/2009 at 8 pm at village
Keshavpur, PS Gandhi Nagar the victim when she went out of her house
to answer the call of nature, the accused in furtherance of the common
object, caught hold of her dragged her to a nearby house and without her
consent committed forceful sexual intercourse and also extended threat to
life. The FIR was registered by Ex.P-1 and the map of the area was
prepared by Ex.P-4. After obtaining necessary permission to get the victim

examined she was medically examined. The medical report was filed as Ex.P-8. The inner garments were seized by Ex.P-3 and necessary slides were prepared by Ex.P-16 and sent to FSL for examination. The accused was subsequently arrested and after committal the trial started before the court of 3rd Additional Sessions Judge, Ambikapur. During the course of trial the accused abjured the guilt. The prosecution on their behalf primarily relied on the statement of the victim as PW-1, Dr. Rajat Toppo as PW-4, the IO as PW-8 besides the other witnesses. The trial court after examination of the entire witnesses in detail came to a finding that the prosecution was failed to prove the case warranting conviction and passed the order of acquittal. Being aggrieved by such acquittal, the instant appeal has been preferred by the victim. Order sheet of this court would reveal that initially leave to appeal was filed. Subsequently, in view of the law laid down in case of **Mallikarjun Kodagali (Dead) represented through Legal Representatives Vs. State of Karnataka & ors.** the case was directed to be registered as criminal appeal against the judgement of acquittal on 25/01/2019. Now the case is being heard on the admission.

4. Learned counsel for the appellant would submit that the trial court failed to appreciate the un-controverted statement of the victim wherein she categorically stated that she was subjected to gang rape by both the accused. It is further submitted that identification of the accused are not in question since they were specifically named by the victim. He would submit that sole statement of the victim would be enough to convict in the cases of like nature and the trial court instead relied on the other evidence on record so as to acquit the accused, therefore the court below failed to appreciate the evidence in proper perspective and the wrong finding was arrived at.

5. We have heard the learned counsel for the appellant.

6. Perused the record and the judgement. The record would show that

a FIR was lodged by Ex.P-1 by PW-1 on 29/06/2018 at 22 hours wherein she stated that she was subjected to gang rape by the accused. Before the court the victim was examined as PW-1. In the examination in chief she contended that on the date of incident at about 8 pm when, she went out to answer the call of nature, the accused came there gagged her mouth and she was taken to a nearby house wherein straw were stored. Subsequent thereto she was subjected to forceful rape by both the accused. She further stated that as she did not come back home for taking meals, as such she was being searched by their mother and father, her step mother came to the spot, when she raised her voice, the accused fled away and the incident thereafter was disclosed to their parents. With respect to the seizure she did not supported the cause, as such she was declared hostile and was cross examined.

7. The examination of the statement in cross examination describing the position of the house wherein the incident happened she stated that in front of her house one shop of Ramratan exist there which belong to her uncle which is open up till 9-10 pm and at the time of incident the shop was opened and 5-6 persons were also standing on the shop and both the house and the shop are opposite to each other and are visible. She further stated that electricity connection also is there. Further she made admission to the fact that her father and accused had entered into a quarrel. She further also admitted the fact that the quarrel had happened on the date of rape itself. She further admitted that she knows one Bijendra who is brother of Ramdhani who is one of the accused and stated that there were certain cases were in between Bijendra and her father before this incident. She further admitted that the wife of Bijendra namely Shanti Bai had made a report against father of the victim for molestation and her father used to pressurize Ramdhani and others to compromise such case. She further stated that at one time though the

wife of Bijendra and Bijendra came to the court for compromise in the molestation case but they went away.

8. Further statement would show that on the date of incident in the house of Ramdhani they had cooked mutton and thereafter after the drink, the dispute aggravated to the extent that the family members of the victim PW-1 went to the house of Ramdhani and broke certain goods including the bulb and further the quarrel aggravated and father of the victim chased Hariram to assault and they fled away. After Hariram and Ramdhani (the accused herein) when fled away, father of the victim and uncle came back had made consultation with each other and thought that they might have gone to make a report and in order to counter the same report was made by her. It is stated the family member deliberated on this issue that as to what report would be made and after consultation the report of rape was lodged. Victim further stated that she told her mother and father that she was in the menstrual cycle and as such she would not be able to make report on which she was assaulted by her mother and father and forced to make a report. Thereafter, after reaching the station police constable wrote according to the narration made by father of the victim. She further stated that when she was sent to the doctor, the doctor was of the opinion that nothing sought of rape has happened with her.

9. The doctor PW-4 Smt. Rajat Toppo who had examined the victim had given opinion that no definite opinion can be given of recent intercourse, report is marked as Ex.P-8. Ex.P-8 would show that certain slides were prepared and further doctor opined that after analysis of microscopic and chemical examination definite report of rape could have been given. The record would show that the slides which were prepared alongwith the seizure of the inner garments of the victim were sent to the FSL by Superintendent of Police on 3/07/2008 by Ex.P-22. Though the trial court has mentioned FSL report dated 6/05/2009 as Ex.P-23 but it is

not actually exhibited. However, FSL report dated 6/05/2009 is on record. Therefore, this court in exercise of power under section 293 (1) of Cr.P.C. takes cognizance of it. On inspection of such report both the inner garments and slides prepared were shown that they do not have any spermatozoa.

10. Consequently, if statement of the victim read with statement of the doctor as also FSL report are examined as a whole, the finding arrived at by the learned court below cannot be faulted with. Finding of the court below that no rape was actually committed is actually been corroborated by the statement of the victim herself. Under the circumstances, after thorough examination of the entire documents on record, we are of the opinion that the learned court below was justified in acquittal of the accused. In the result, this court itself do not warrant admission.

11. Accordingly, the appeal is dismissed.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge