

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 133 of 2014

1. Ramkhilawan Yadav S/o Shashibhushan Yadav Aged About 27 Years, Occupation Labourer, At Present R/o At Punjipathra, Police Station Punjipathra, Distt. Raigarh C.G.

Permanent R/o Village Madtoli, PS Darbhanga, Distt. Darbhanga (Bihar).

---- Appellant

Versus

1. State Of Chhattisgarh Through Station House Officer, PS AJAK, Raigarh, Tah. And Distt. Raigarh C.G.

---- Respondent

CRA No. 351 of 2014

1. Mangal Prasad Sidar S/o Panchu Sidar Aged About 22 Years Occupation Labourer, R/o Village Purigaon, PS Chandrapur, Distt. Janjgir-Champa C.G.

---- Appellant

Versus

1. State Of Chhattisgarh Through Station House Officer, PS AJAK, Raigarh, Tah. And Distt. Raigarh C.G

---- Respondent

For Appellants

Shri Ashish Gupta, Advocate

For Respondent/State

Shri Avinash Choubey, Panel Lawyer

Hon'ble Shri Prashant Kumar Mishra, J.Hon'ble Shri Gautam Chourdiya, J.Judgment on BoardByPrashant Kumar Mishra, J.

6-12-2019

1. Since both the criminal appeals are arising out of same judgment dated 18-7-2013 passed in ST No.142 of 2011 by the Additional Sessions Judge, Fast Track Court, Raigarh, they are being considered and decided by this common judgment.
2. Appellants namely; Ramkhilawan Yadav (henceforth 'A1') & Mangal Prasad Sidar (henceforth 'A2') have been convicted for committing offence under Section 376 (2) (g) of the Indian Penal Code (henceforth 'the IPC') and have been sentenced to undergo RI for 12 years and to pay a fine of Rs.5,000/- each, in default of payment of fine to further undergo RI for 6 months.
3. Prosecutrix (PW-1), aged about 35 years, lodged First Information Report (FIR) (Ex.P/1) at about 8.30 am on 13-2-2011 informing that she is performing labour work at the Nalwa Factory and was called by A1 for arranging some work in the Dabha. At 3.00 – 4.00 pm on 12-2-2011 she went to Dabha and searched for a house and thereafter was staying in a room in the Dabha where A1 committed forcible sexual intercourse with her. Thereafter, one Dumper Driver and another person to whom A1 identified as his brother also

committed forcible sexual intercourse. Thereafter, Sadhram, Tuleshwar & Mangal Prasad Sidar (A2) all employed in the Dabha also committed forcible sexual intercourse. She was ravished till 4.00 am in the morning and was also assaulted by A2 near the right eye. The prosecutrix was sent for medical examination to the Community Health Centre where she was examined by PW-5 Dr. Savitri Tigga. She submitted her report (Ex.P/9) according no definite opinion for recent sexual intercourse.

4. After recording the case diary statements of the witnesses and completing other investigation, charge sheet was filed against four accused persons namely; Ramkhilawan Yadav (A1), Tuleshwar Yadav, Mangal Prasad Sidar (A2) & Mohd. Muktar. Two other accused namely; Sadhram & Gopal Ram are absconding.
5. Shri Ashish Gupta, learned counsel appearing for the appellants, would submit that the entire story narrated by the prosecutrix is absolutely unbelievable in view of the medical report as also in view of the material contradictions and omissions. Learned counsel would further submit that the brother of the prosecutrix namely; PW-3 Karamsingh Chouhan & PW-4 Mohd. Imtiyaz were important witnesses,

but they have not supported the case of the prosecution, therefore, the whole prosecution story deserves to be disbelieved.

6. Shri Avinash Chobey, learned Panel Lawyer appearing for the State, *per contra*, would support the impugned judgment on submission that the prosecutrix having specifically named the appellants as the persons who had performed forcible sexual intercourse, their conviction is wholly justified.
7. In her Court statement PW-1 Prosecutrix would state that she had gone to the Siddhi Vinayak Factory in search of work where she met A1, who promised her to arrange a job. After 2-3 days she received a call from A1 over her mobile informing her that work has been arranged. After 4 days she went to Siddhi Vinayak Factory and met A1 and one Narayan Tekedar. A house was arranged for the prosecutrix at Sharma Colony and she was employed at Siddhi Vinayak Factory. She worked for about one week and returned to village Taraimal. About one week later A1 again called her to inform that work has now been arranged at the Dabha and she now started working in the Dabha belonging to PW-2 Netram Yadav. On the date of incident A1 allegedly locked her in the room inside the Dabha and performed sexual intercourse and thereafter,

locked her inside the room. After 1½ hour accused Muktar came and committed forcible sexual intercourse. Thereafter, Sadhram & A2 also committed sexual intercourse with her. A2 also assaulted her by means of slipper and brandished a knife. She was subjected to sexual intercourse by A2 and after assaulting her A2 paid Rs.50/- to the prosecutrix.

8. During cross-examination, PW-1 prosecutrix resiled from her statement in the examination-in-chief to admit that Muktar & Tuleshwar have not committed forcible sexual intercourse. She also admits that A2 has not committed sexual intercourse but has only assaulted her.
9. PW-3 Karamsingh Chouhan, is the brother of the prosecutrix. He denies to have any clue about the incident. In his case diary statement (Ex.P/7) he informed the police that the prosecutrix had narrated the entire incident to him, however, in his deposition he denies that the prosecutrix had ever narrated the incident to him after lodging the FIR (Ex.P/1).
10. PW-4 Mohd. Imtiyaz is the Auto & Puncture repair shop owner whose shop is adjoining to the Dabha. He denies to have any information about the incident. He admits that the room located behind the Dabha has no doors and further that

the said room is the place where cement bags and scrap are stored and that if any incident would have happened he would have definitely become aware. In his case diary statement (Ex.P/8), this witness had informed the police that he had heard shouts/alarm of a lady in the night.

11. PW-2 Netram Yadav is the owner of the Dabha where the incident has taken place. This witness has also turned hostile without supporting the prosecution at any stage of his examination. He denies that any incident has happened in the room located behind his Dabha. He only speaks about some quarrel in the Dabha, however, he is not in a position to state as to who were involved in that quarrel.
12. PW-5 Dr. Savitri Tigga medically examined the prosecutrix on 13-2-2011 i.e. on the date when the FIR was lodged. As per her report (Ex.P/9) she found blood stains over the right cheek and ½ cm abrasion. On internal examination, the prosecutrix did not complain of any pain nor any swelling or abrasions were found over the genital organ. According to this witness, she could not give any definite opinion for recent sexual intercourse. The witness had prepared vaginal swab slide and handed over the same to the duty Constable after properly sealing the same, however, there is no FSL report

filed with the charge sheet nor presented in course of trial.

13. A close analysis/marshaling of the evidence putforth by the prosecution would reveal that the prosecutrix is a grown up woman, aged about 35 years. The FIR was lodged within few hours of the incident and she was sent for medical examination within next few hours, yet the medical opinion would not support the prosecution.
14. Similarly, the prosecutrix has informed the police that six persons have committed rape one after another and was ravished almost throughout the night till 4.00 am in the morning, however, no external or internal injury was found over her body or private parts. In the FIR she alleges commission of forcible sexual intercourse by Ramkhilawan Yadav (A1), Tuleshwar Yadav, Mangal Prasad Sidar (A2), Mohd. Muktar, Sadhram & Gopal Ram, however, in her Court statement she denies that Tuleshwar & Mohd. Muktar or even Mangal Prasad Sidar (A2) have committed sexual intercourse with her.
15. This departure is very significant in a serious offence like gang rape. If the prosecutrix was raped by these three persons

for whom she is not making allegation in her Court statement, her entire story becomes doubtful.

16. It is also important to notice that the Dabha is located near a barrier where presence of police is available 24 x 7 as stated by PW-1 prosecutrix herself, however, no witness or the persons coming to the Dabha have heard any commotion or shout or alarm raised by the prosecutrix. The room located behind the Dabha has no rooms as stated by PW-4 Mohd. Imtiyaz. It appears highly improbable that six persons would commit rape for entire night in such location and locality and no one else would come to know.
17. Considering the evidence where the Medical Officer has found bloodstains and abrasion over the right cheek of the prosecutrix and her admission that she was assaulted by A2 by means of slipper over her right eye it appears that a quarrel/ brawl has taken place between her and A2 and the prosecutrix was paid only Rs.50/-, therefore, the report of commission of gang rape might have been lodged.
18. Having carefully examined the evidence, we are not in a position to conclude that the prosecutrix is speaking truth in the Court in respect of the real incident. She having diluted

allegations against three accused, the remaining part of the story/incident is also diluted and the benefit of that shall always be available to the accused as is settled in the criminal jurisprudence. Even slightest doubt in the prosecution case coupled with material contradictions and omissions and lack of corroborative medical evidence is sufficient enough to give benefit of doubt to the accused persons.

19. Accordingly, conviction and sentence imposed on both the appellants under Section 376(2)(g) of the IPC are hereby set aside and they are acquitted of the said charge. The appellants are in jail. They be released forthwith if not required in any other case, on each of them furnishing a personal bond for a sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of six months as required under the provisions of Section 437-A of the Cr.P.C. The appellants shall appear before the higher Court as and when directed.
20. In the result, both the criminal appeals are allowed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri