

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 6-11-2019
Delivered on 20-11-2019

CRA No. 97 of 2013

1. Gorelal S/o Gyan Singh Gond Aged About 22 Years R/o Village - Saida, Thana - Khadgawan, Distt. - Korea C.G. , Chhattisgarh.
2. Radheshyam S/o Dalsai Panika Aged About 30 Years R/o Village - Badi Bazar, Thana - Chirmiri, Distt. - Korea C.G. , District : Koriya (Baikunthpur), Chhattisgarh

---- Appellants

Vs

- State of Chhattisgarh Through Police Station, Khadgawan, Distt. Korea Chhattisgarh

---- Respondent

CRA No. 820 of 2012

- Sunil Jangde S/o Ghanshyam Jangde Aged About 27 Years R/o Chhoti Bazar Chirmiri, Distt. Korea , Chhattisgarh

---- Appellant

Vs

- State of Chhattisgarh S/o Through - P.S. Khadgawan , Distt. Korea, Chhattisgarh

---- Respondent

For Appellant in CRA : Mr. Radhe Shyam Advocate.
No. 97 of 2013.

For appellant in CRA :Appellant is present in person along
No.820 of 2012 with Mr. Gurudev I Sharan, Advocate

For respondent/State : Mrs Smita Jha, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. As both the aforesaid appeals arise out of common judgment/incident, they are heard analogously and are being disposed of by this common judgment.
2. Both the appeals are preferred against the judgment of conviction and order of sentence dated 12-9-2012 passed by the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Korea, Baikunthpur (CG) in Sessions Trial No.19 of 2010 wherein the said Court has convicted and sentenced the appellants for commission of offence under Sections 365 and 376/109 of IPC and sentenced them to undergo RI for seven years and to pay fine of Rs.1000/- on each count with default stipulations for abducting prosecutrix (PW/1) with intent to secretly and wrongfully confined her and for commission of offence of rape and abetment of the said offence.
3. In the present case, prosecutrix is PW/1. As per version of prosecution, prosecutrix is a student of 10th class and studying in Government Higher Secondary School, Khadgawan. On 4-8-2010 at about 10.00 a.m., when she was in school where all the three appellants came to school and called prosecutrix on the pretext that her mother was bitten by snake. Relying on their

version prosecutrix sat on the mother cycle of appellant Radheshyam and other appellants came on another motor-cycle. Other appellants stopped their motor-cycle on the way and thereafter appellant Radheshyam took her to Tengni road. When prosecutrix objected as to why he was taking her towards Tengni road, the said appellant Radheshyam threatened her to kill and took her to his house situated at village Badibazar where he committed sexual intercourse with her without consent and against her will. When the appellant Radheshyam was in bath room prosecutrix went to bus stop, came to her house and intimated the incident to her parents. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

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

- i) The trial court has not considered the evidence of all the prosecution witnesses while passing judgment of conviction.
- ii) Appellant Sunil Jangde did not take the prosecutrix and there is no evidence that he seduced the said prosecutrix or committed any criminal act against her.
- iii) The trial court has not evaluated the

evidence in its true perspective, therefore,
same is liable to be set aside.

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. To substantiate the charge prosecution examined as many as 12 witnesses. The question for consideration of this court is whether prosecutrix (PW/1) was abducted with intent to secretly and wrongfully confined her and whether the appellants Gorelal and Sunil Jangde abetted the appellant Radheshyam for commission of rape against said prosecutrix.

8. PW/5 prosecutrix is the victim of the incident and she alone is eye-witness account to the incident. As per version of this witness, appellant Gorelal informed her that snake had bitten her mother and she was admitted in hospital, Baikunthpur. As per version of this witness, she sat on the motor-cycle of appellant Radheshyam while other appellants sat on another motor-cycle. When appellant Radheshyam turned his motor-cycle towards village Salka,

prosecutrix objected that it is not the way to hospital at Baikunthpur, then appellant Radheshyam threatened her and took her to village Badi Bazar where he confined her and committed sexual intercourse with her. She further deposed that when appellant Radheshyam went outside she fled away and came to village Khadgawan by bus and she informed about the incident to her parents and thereafter they reported the matter at Police Station Khadgawan. Version of this witness is supported by FIR Ex.P/1 which is lodged on next day of the incident i.e., 5-8-2010 in which name of the appellant is mentioned as culprit. Version of prosecutrix is supported by version of PW/2 Samaru who is father of the prosecutrix and PW/3 Indermati who is mother of the prosecutrix. Again, it is supported by version of Dr. R.P. Singh (PW/7) who examined the appellant and found him capable of intercourse. Version of prosecution witnesses is unrebutted during cross examination and there is nothing on record to say that appellate Radheshyam has been falsely implicated. Even otherwise, 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, Again the matter is reported on the next day of the incident which cannot be termed as delay in lodging the report.

9. In view of this court, 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.

10. Looking to the entire evidence it is not a case where story can be rejected on the ground of one day delay in lodging the FIR. From the evidence, it is clear that appellant Sunil Jangde did not say anything to the prosecutrix. From the evidence of the prosecutrix, it is clear that he did not take her from her school, therefore, it cannot be held that appellant Sunil Janjgde had abetted the appellant Radheshyam for commission of offence or he abducted the prosecutrix for confinement. Looking to the entire evidence, charge against appellant Sunil Janjgde is not established. Though it has come in evidence of prosecutrix (PW/1) that appellant Gore,lal informed her that her mother has been bitten by snake, but thereafter he did not act to take prosecutrix from her school and he has not accompanied the appellant Radheshyam while the appellant Radheshyam took the prosecutrix on his motor-cycle. Only informing

the prosecutrix is not sufficient to hold that this appellant abetted the appellant Radheshyam for commission of offence, therefore, it is not safe to convict him for abduction or abetment of commission of offence. Accordingly offence for which both appellants Gorelal and Sunil Jangde have been convicted, is not sustainable.

11. Criminal Appeal No.97 of 2013 preferred by appellant Gorelal and Criminal Appeal No. 820 of 2012 preferred by appellant Sunil Jangde are allowed. Their conviction and sentence is hereby set aside. They are acquitted of the charges under Section 365 and 376(1)/109 of the IPC. The appellants are reported to be on bail. Their bail bonds shall continue for further six months in view of Section 437-A of Cr.P.C.

12. So far as appellant Radheshyam is concerned, from the evidence it is clearly established that he abducted the prosecutrix, confined her into his house and committed rape on her, therefore, the act of the appellant falls within mischief under Section 365 and 376(1) of the IPC for which trial court convicted him. Conviction of the appellant Radheshyam is hereby affirmed.

13. Heard on the point of sentence.

The trial Court awarded RI for seven years for offence of rape under Section 376 (1) of IPC which is minimum and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

14. Accordingly, the appeal preferred by appellant Radheshyam being devoid of merits is liable to be and is hereby dismissed. As the appellant Radheshyam is reported to be in jail, therefore, no fresh order for his arrest etc., is necessary.

15. In view of the above, CRA No. 97 of 2013 is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju