

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 29-11-2019

Delivered on 06-01-2020

CRA No. 1005 of 1999

1. Narendra Kumar Mishra aged about 39 years s/o. Jeewanlal Mishra, r/o. Village Bondari P.S. Chakarbhatta at present Hirri Mines, Dist. Bilaspur, MP now CG.
2. Santosh Kumar @ S.K. Tailors s/o. Meghoo Ram aged 31 years, r/o. Vilalge Maro Police Station Nandghat, dist. Durg, MP now CG.
3. Khakhonoo @ Shiv Shankar Paswan s/o. Jatan Ram aged 34 years, r/o. Village Kurur, P.S. Karakat, Distt. Rohtas, Bihar (working at Hirri Mines, Bilaspur, MP now CG.

---- Appellants

Versus

- The State of Madhya Pradesh (now CG)

---- Respondent

For Appellant : Mr. Sanjay Patel, Advocate

For respondent/State : Mr. Ishwar Jaiswal, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 26-3-1999 passed by the Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act, 1989") Bilaspur in Special Criminal Case 29 of 1997 and Sessions Trial No. 286 of 1997 whereby all the three appellants were convicted for

commission of offence under Section 376(2)(g) of the IPC and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.500/- with default stipulations.

2. In the present case, prosecutrix is PW/4 and as per version of prosecution, prosecutrix was going to Raipur in a vehicle at about 9.00 p.m. When the vehicle reached near village Mahuda road, some persons stopped the said vehicle and four persons dragged her from the vehicle to the field and thereafter all the three appellants committed sexual intercourse with her without her consent and against her will. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

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

- i) The story put-forth by the prosecutrix is unreliable because the same is full of contradictions, omissions and improvements.
- ii Husband of the prosecutrix had old enmity with appellant No.1 Narendra Mishra that is why he has been falsely implicated.
- iii) No external or internal injuries were caused to prosecutrix even after four

persons committed sexual intercourse with her, therefore, her version is highly improbable.

- iv) Prosecutrix left the house of the husband and sat on the tanker and unknown persons took her and committed rape on her, therefore, story is shaky in nature
- v) The case of the prosecution is not established by corroborating evidence and medical evidence is also not supporting.
- vi) As per statement of prosecutrix, she knows appellants Santosh Kumar and Narendra Kumar, but their names are not mentioned in FIR which creates doubt in the story of the prosecution.
- vii) It is stated that blouse of the prosecutrix was torn by the appellants but there is no seizure of such blouse of prosecutrix.

viii) There is no such compliance of provision of Section 157 of Cr.P.C., therefore, it is not proved that the report was lodged on the same day of the incident.

Reliance has been placed in the matters of **Krishna Kumar Malik vs. State of Haryana¹, Bhaiyamiyan @ Jardar Khan & another vs. State of MP², Narendra Kuamr Vs. State (NCT of Delhi)³, Baldev Singh and others vs. State of Punjab⁴, Satosh Kumar and others vs. State of CG⁵ and Kashiram and another vs. State of CG⁶**

4. 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.

1 (2011 SAR (Criminal) 700

2 2011 SAR (Criminal) 625

3 2012 SAR (Criminal) 511

4 (2011) 13 SCC 705

5 2011 (3) CGLJ 405

6 2010(2) CGLJU 164

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

6. In the present case, date of incident is 10-5-1997 at about 0.30 am at village Mahuda road. Prosecutrix (PW/4) deposed before the trial court that on the date of incident i.e., on 10-5-1997 that she was going to Raipur in a vehicle and when the vehicle reached near village Mauda road, four persons stopped the vehicle, took her from the vehicle to the field and committed rape forcefully on her one by one without her consent and against her will. Thereafter she informed the incident to her husband and they lodged report in Hirri Mines Police Station on the same day i.e., on 10-5-1997 at 3.30 a.m. as per Ex.P/9 in which name of the appellant Narendra Kumar Mishra is clearly mentioned and it is also mentioned that other accused was owner of the shop of S.K. Tailors while other two persons were not named. As per FIR four persons are culprits in the crime in question. S.R. Sori (PW/7) Tahsildar conducted identification parade in the present case. As per his version six persons were brought in the identification parade, prosecutrix identified appellants Khakhonoo and Shivshankar as culprits. As per version of this witness, identification parade was done at the premises of the court. There is nothing from the statement of this witness to discard identification parade. Version of this witness is supported by version of prosecutrix who identified all the three appellants in

court as culprits. He has also clarified that appellant Santosh is called S.K. Tailors (para 22). Looking to the entire evidence of prosecutrix (PW/4) and S.R. Sori (PW/7) Tahsildar, involvement of all the three appellants in crime in question is established.

7. Dr. (Smt) C.K. Singh (PW/9) examined the prosecutrix on 10-5-1997 at Primary Health Centre, Belha and noticed the following injuries on her body.

- I) Contusion 2 cm x 1 cm slight oblique with 2 linear abrasions out 1 cm length over right side of chest 3 cm below the medial end of right clavicle reddish colour.
- ii) No other injury was seen over abdomen, back and thigh. Breast soft, pendulous.

She deposed that injuries were caused by hard and blunt object and duration of injuries is within 24 hours of the examination. Dr. A.K. Sanyal (PW/3) examined all the three appellants and found them capable of intercourse. Saree article (B1) and Petti Coat article (B2) were seized in the present case and Dr. Smt. C.K. Singh (PW/9) prepared two slides from vaginal swab of the prosecutrix and all the three articles were sent to FSL examination and test of spermatozoa was found positive in all the

three articles as per Ex.P/25. Looking to the injuries on the body of the prosecutrix, argument advanced on behalf of the appellants that no injury was found on her body is unsustainable. Again, version of the prosecutrix is affirmed by FSL examination in which spermatozoa test was found positive. There is nothing on record to say that all the three appellants have been falsely roped in charge in question.

8. In the present case, report was lodged promptly and prosecutrix deposed before the trial court firmly which inspires confidence. When statement of the prosecutrix inspires confidence no corroboration is necessary, but in the present case, there is ample corroboration to version of prosecutrix. There is no delay in lodging the report at Police Station. 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.

9. After assessing the evidence, this court has no reason to say that all the three appellants have been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix and other witnesses. Argument advanced on behalf of the appellants is unsustainable and the case laws cited by learned counsel for the appellants are clearly distinguishable from the facts of the present case.

10. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. The act of the appellants falls within mischief of Section 376 (2)(g) of IPC for which the trial Court has convicted the appellants and same is hereby affirmed.

11. Heard on the point of sentence.

The trial Court awarded RI for ten years for said offence which is minimum sentence and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

12. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellants are reported to be on bail. Their bail bonds stand cancelled. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellants and after their arrest they be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 11-5-2020.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju