

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 15-11-2019

Delivered on 06-01-2020

CRA No. 2225 of 1999

1. Rikheshwar s/o. Santan Satnami, aged about 32 years r/o. Village Khamhia, Police Station Baradwar, District Janjgir-Champa (MP now CG).
2. Smt. Susheela Bai w/o. Rikheswar Satnami, aged about 30 years r/o. Village Khamhia, Police Station Baradwar, District Janjgir-Champa (MP now CG).

---- Appellants

Versus

- State of Madhya Pradesh (now CG) through District Magistrate, Janjgir-Champa (CG).

---- Respondent

For Appellants : Mrs. Savita Tiwari, Advocate

For respondent/State : Mr. Ravish Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 12-8-1999 passed by the Additional Sessions Judge, Sakti, District Janjgir-Champa (MP now CG) in Session Trial No. 289 of 1998 wherein the said Court has convicted the appellant No.1 Rikheshwar for commission of offence under Sections 376(1) and 314 read with Section 34 of IPC 1860 and sentenced him to undergo RI for seven years and to pay fine of

Rs.1,000/- and RI for five years and fine of Rs.500/- with default stipulations and convicted the appellant No.2 Susheela Satnami under Section 314 read with Section 34 of IPC and sentenced her to undergo RI for five years and fine of Rs.500/- with default stipulations.

2. As per allegation of the prosecution, about three months from 21-4-1998 prosecutrix who was daughter of Jularam had gone to village Khamhia for obtaining photograph of herself and for that purpose she went to the studio of appellant No.1 Rikheshwar. When she reached there and asked for water, wife of appellant No.1 Rikheshwar namely Susheela who is appellant No.2 went away to fetch water and during this time appellant No.1 Rikheshwar committed sexual intercourse with her. It is alleged that when the next menstrual cycle did not begin, prosecutrix informed appellant No.1 about pregnancy on which he gave some tablets to the prosecutrix but when still the prosecutrix complained of the pregnancy, appellant No.2 Susheela called on the prosecutrix to her house and asked to lay down on the bed and thereafter other co-accused Chhat Ram (absconded) who is brother-in-law of appellant No.1 Rikheshwar inserted some machine like object and rod in the private part of the prosecutrix and the present appellants did not allow the prosecutrix to make shout by pressing her mouth. Prosecutrix became unconscious and thereafter her pain became unbearable. Prosecutrix was taken to Champa hospital and the matter was

reported to Police Station by the prosecutrix as per FIR. Thereafter prosecutrix was shifted to Hospital at Sakti where she died on 25-4-1998 during treatment. The matter was investigated and 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 evidence produced by the prosecution is highly suspicious and shaky in nature.
- ii The evidence of grand-mother of the prosecutrix is not dependable and dying declaration recorded by PW/16 Ghanaram Mahaling is not inspiring confidence.
- lii) There is no evidence against the appellants either with respect to sexual intercourse or with respect to miscarriage
- lv Post-mortem report Ex.P/19 conducted by Dr. S. Mukherjee (PW/14) holds that the deceased was not carrying pregnancy. The trial court ought to have disbelieved the entire prosecution case.

- v) The trial court erred in holding that prosecutrix was less than 16 years at the time of alleged incident but for that there is no cogent and reliable record produced by the prosecution. The judgment is based on conjectures and surmises, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

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

6. To substantiate the charge, prosecution examined as many as 20 witnesses. The defence side examined the evidence of Sajju Prasad (DW/1). PW/2 Ruchi Bai, is grand mother of the deceased prosecutrix. She deposed before the trial court that deceased prosecutrix informed her about rape by appellant No.1 Rikheshwar on her. Deceased also informed her regarding pregnancy and also informed that both the appellants called her, caught her and thereafter

other co-accused inserted iron rod in her private part to remove pregnancy.

7. PW/11 Gouri Bai deposed on same line that rod is inserted by Chhtram who is Surpanch and so called Doctor. In the present case, FIR (Ex.P/18) was lodged by the prosecutrix in which it is clearly mentioned that she conceived because of sexual intercourse by appellant Rikheshwar and it is also mentioned that both the appellants are involved in causing miscarriage because she conceived due to sexual intercourse by the appellant Rikheshwar. FIR is proved by Sub Inspector PW/20 Quamruddin Khan that prosecutrix lodged the report on 21-4-1998 in which she has signed and this witness has also signed. Dr. Smt. C.K. Singh (PW/8) examined the deceased prosecutrix and found her in state of shock. This witness has found tenderness in her uterus and also found infection in her uterus. She clearly opined that infection in the uterus may be caused due to intervention of foreign body. As per version of this witness deceased prosecutrix informed her regarding insertion of rod in her uterus.

8. Dr. S. Mukherjee (PW/14) who conducted autopsy of the deceased prosecutrix on 26-4-1998 at 11.00 hours at District Hospital, Bilaspur opined that cause of death is septicaemia and shock due to peritonitis it means infection and toxæmia which means infection under the abdomen. Dr. J. Singh (PW/10) examined the appellant

Rikheshwar and found him capable of intercourse. Ghanram (PW/16) was posted as Naib Tahsildar and Executive Magistrate at Sakti during relevant time. As per version of this witness, he recorded dying declaration of deceased prosecutrix on 2-4-1998 as per Ex.P/20. This witness has proved the dying declaration (Ex.P/20) in which it is clearly declared by the deceased that she conceive due to sexual intercourse by appellant Rikheshwar and both the appellants called her and participated in abortion. Version of this witness is unrebutted during cross examination and there is nothing on record to reject version of this witness.

9. The next question for consideration of this court is as to what was the age of the prosecutrix on the date of the incident i.e., date of sexual intercourse. In the present case, FIR was lodge on 21-4-1998. As per FIR, incident took place three months since lodging of the FIR, it means sexual intercourse is committed on prosecutrix in the month of January, 1998. As per version of Principal, S.R. Adil (PW/19) date of birth of the prosecutrix is 7-11-1983 as per school record. This document is historical document and there is nothing on record to say that document is forged one. The document has evidential value and therefore, age of the prosecutrix comes out around 15 years and two months at the time of incident. As she was below 16 years, she was incompetent to give consent for sexual intercourse, therefore, the act committed by appellant Rikheshwar is

rape as defined in Section 375(6) of IPC 1860 which was prevailing on the date of incident. Again, from the entire evidence, it is clear that both the appellants are involved in miscarriage of the deceased prosecutrix resulted into her death. From the evidence, it is clear that infection in the body of the deceased was caused due to foreign body in her uterus, therefore, no other view can be taken by this court what is recorded by the trial Court. Argument advanced on behalf of the appellants is unsustainable and same is liable to be and is hereby rejected. The act of the appellant No.1 Rikheshwar falls within mischief of Section 376(1) and 314 read with Section 34 of IPC and the act of appellant No.2 Susheela falls within mischief of Section 314 read with Section 34 of IPC for which the trial court convicted them and this court has no reason to record a contrary view and same is hereby affirmed.

10. Heard on the point of sentence.

The trial court awarded sentence of seven years for offence under Section 376(1) of IPC to appellant No.1 Rikheshwar which is minimum prescribed under the law and less than minimum cannot be awarded. The trial Court awarded RI for five years for offence under Section 314 read with Section 34 of IPC to appellant No.2 Susheela which cannot be termed as harsh, unreasonable or disproportionate looking to the death caused to an innocent girl by both the appellants.

Sentence part is also not liable to be interfered and same is hereby affirmed.

11. Accordingly, the appeal being devoid of merit 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 supersession 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 30-4-2020.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju