

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.209 of 2008**

- Gurubari Bai W/o Bhagvan Das, Aged About 25 Years (Schedule Caste)
R/o Sarthipara, Chanderpur, Distt. Janjgir-Champa, Chhattisgarh

---- Applicant**Versus**

1. State Of Chhattisgarh Through DM Janjgir-Champa, Chhattisgarh
2. Ramesh Kumar S/o Daya Ram Yadav, aged 40 years, R/o Sakti, P.S. Sakti, District Bilaspur (now Janjgir Champa) Chhattisgarh
3. Vijay Kumar S/o Shyam Sunder Agrawal, aged 37 years, Hatri Chowk, Chanderpur, P.S. Chanderpur, District Bilaspur (now Janjgir-Champa) C.G.
4. Dhura Bai alias Rajni D/o Chhedu Ghasya, aged 22 years R/o Chanderpur, P.S. Chanderpur, District Bilaspur (now Janjgir-Champa) C.G.
5. Guru Lal alias Sudarshan S/o Sukhdeo, aged 38 years, R/o Chanderpur, P.S. Chanderpur, District Bilaspur (now Janjgir-Champa) C.G.

---- Respondents**For Applicant :**

Shri Priyanshu Gupta, Advocate on behalf of Shri S.N. Nande, Advocate

For Respondent/State:

Shri Vikash Shrivastava, Panel Lawyer

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board**Per Manindra Mohan Shrivastava, J.****07-02-2020**

1. This revision is directed against the impugned judgment of acquittal dated 17-12-2007 passed by the Sessions Judge, Janjgir-Champa in Special Sessions Trial No.45/2006, whereby and whereunder the respondents-accused -Ramesh Kumar, Gurulal @ Sudarshan and Vijay Kumar have been acquitted

from the charges of commission of offences under Section 366, 376(2)(G) of IPC and 3(2)(V) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and respondent-accused-Dhura Bai has been acquitted from the charges of commission of offence under Section 363 & 366 of IPC.

2. According to the prosecution story, FIR was lodged by the prosecutrix-Guruwari Bai in the Police Station on 12-05-1996, alleging commission of offence of rape on her. In the FIR, it was stated by the prosecutrix that 6 days before the date of lodging of FIR, when she was going towards the house of Babu Ghasiya in the evening, near Veterinary Hospital, she met with the accused-Dhura Bai, on her request, she had gone along with Dhura Bai in a particular direction as Guruwari Bai was going along with the respondent-accused-Dhura to attend the call of nature. It was also stated in the FIR that when she was standing at the spot, where she was taken by Dhura Bai, in the motorcycle, respondent-accused-Gurulal Yadav, Vijay Agrawal and Ramesh came and thereafter Dhura Bai left the place and prosecutrix was caught hold of by the two accused, mouth gagged and dragged to nearby bushes behind the building of Mandi and subjected to rape by the accused Gurulal Yadav, due to which, she fainted. Early morning at 4 AM, she regained consciousness and found herself in the house of Dhimra Ghasiya. Then, she went to her house and because of fear and embarrassment, incident was not disclosed immediately and also because she was not keeping well and then, later on, the incident was disclosed and report was lodged. On such report, the police arrested the respondents-accused and upon investigation, filed charge sheet against the respondents-accused and they were subjected to trial. The prosecution led the evidence of the prosecutrix-Guruwari Bai, PW-3 and also led evidence regarding medical examination conducted by Dr. Sudha Girish Pandey, PW-2.

The prosecution also came out with the evidence regarding presence of spermatozoa in the vaginal slides collected during investigation as also the seminal stains found in the clothes of the prosecutrix.

Recording a finding that prosecution case was doubtful, the learned trial Court acquitted the respondents-accused by giving them benefit of doubt. As no appeal has been preferred by the State against the acquittal of the respondents-accused, the prosecutrix herself has filed instant revision.

3. Learned counsel for the applicant-prosecutrix would argue that the learned trial Court has committed patent illegality and perversity in granting acquittal to the respondents-accused, despite categoric evidence of the prosecutrix herself that she was subjected to rape by the respondents-accused- Ramesh Kumar, Vijay Kumar Agrawal and Gurulal. The prosecutrix has clearly stated in her evidence that when she was taken to a particular spot by one of the accused-Dhura Bai and thereafter, the accused persons arrived and she was caught hold of her and subjected to rape by the accused. He argued that even though, the law does not require that the statement of the prosecutrix should be corroborated from any other evidence, the prosecution has also proved presence of spermatozoa and seminal stains, which fully corroborates the case of the prosecutrix that she was ravished. Lastly, it is submitted that the evidence of the prosecution with regard to age of the prosecutrix is proved from the evidence of the Radiologist Dr. Ram Krishna Jitpure, PW-1 and Dr. Sudha Girish Pandey, PW-2 has also proved that the prosecutrix, on the date of commission of offence, was less than 16 years of age. Therefore, even if, no date of birth certificate was produced from any other source like School or Kotwari Register, the evidence of Radiologist coupled with the evidence of Dr. Sudha Girish Pandey, PW-2, who conducted MLC, that the prosecutrix was less than 16 years of age, as on the date of incident i.e.06-05-1996.

4. There is no representation made by the respondents-accused.
5. On the other hand, learned State counsel supports the submission of learned counsel for the applicant and stated that even though, the prosecution has led clinching evidence of the prosecutrix, the learned trial Court has wrongly given the benefit of doubt to the respondents-accused and acquitted them from the charges of commission of offence, as stated above. The prosecutrix has clearly stated that rape was committed on her by the accused. As the prosecutrix was minor, as proved from the evidence on record, the learned trial Court has committed patent illegality and perversity in granting acquittal to the accused.
6. We have heard learned counsel for the parties and perused the records.
7. The learned trial Court, in order to acquit the respondents-accused, has firstly taken into consideration that the FIR was belatedly lodged. The incident is dated 06-05-1996. The FIR was, however, lodged on 12-05-1996, which was after six days of the date of incident. The explanation offered by the prosecutrix has been found to be insufficient and also contradictory and suffering from material omissions. The learned trial Court in paras 29, 30 & 31 of the judgment has considered the evidence on record. The learned trial Court, in holding that the prosecutrix has failed to give satisfactory explanation regarding delay in lodging of FIR, has taken into consideration contradictory statement made by the prosecutrix in FIR, EX.P-1-A and Court statement.
8. The learned trial Court has also taken into consideration the prosecutrix statement that on the request made by Dhura Bai, she went towards the spot rather than going to the house of Babu Sarthi. Discrepancy in the statement in this regard have been noticed in para 34 of the judgment. Contradiction in what has been stated in her Court statement and what was recorded in the statement under Section 161 of Cr.P.C., has been taken into consideration. In para 31 &

32 of the judgment, the learned trial Court has taken into consideration the prosecution story that on the request of Dhura Bai, prosecutrix went behind the Rice Mill, though, Dhura Bai is not her friend, she was known only on the basis of she being resident of the same village and further that before meeting on that day, earlier the prosecutrix hardly had any familiarity with Dhura Bai.

9. In the present case, the learned trial Court has also taken into consideration that the prosecutrix version with regard to incident and number of persons involved, is also contradictory. In the FIR, she has made allegation only against Gurulal. The prosecutrix in her statement under Section 161 of Cr.P.C., she has involved Gurulal and in her Court statement under Section 164 of Cr.P.C., the prosecutrix has involved three accused namely Vijay Kumar Agrawal, Ramesh Kumar and Gurulal.

10. The evidence of the prosecution with regard to presence of spermatozoa in vaginal slides and seminal stains in clothes have been disbelieved by the learned trial Court taking into consideration that the sample was collected after six days of the incident and it is not possible that spermatozoa would remain present even after six days.

11. The prosecutrix version has been found to be doubtful on yet another reason. According to the evidence of the prosecutrix, she was caught hold of and she was thrown on the ground and then she was dragged and subjected to rape. According to her, the accused also failed down from their vehicle. However, in the evidence of Dr. Sudha Girish Pandey, PW-2, no external injury has been found on the body of the prosecutrix. Dr. Sudha Girish Pandey, PW-2, in her evidence, has stated that looking to the age of the prosecutrix, if she would have been raped by three persons, much injury would have been found on her private parts, but, except disturbed hymen, no injury has been found. Hymen has been found to be clinically present.

12. The evidence of Dr. Ram Krishna Jitpure, PW-1, Radiologist, also reveals that the age estimated by the Radiologist could be three years more or less meaning thereby that the possibility that the prosecutrix could be more than 16 years of age on the date of incident, could not be ruled out. No other evidence in the form and entries made in the Kotwari Register or School Register/Certificate has been produced by the prosecution to prove that the age of the prosecutrix on the date of incident was less than 16 years of age.

13. Taking into consideration the aforesaid aspects, even if we accept that another view is possible, the view taken by the learned trial Court to grant the respondents-accused benefit of doubt, cannot be said to be so perverse or patently illegal as to warrant interference by this Court against the impugned judgment of acquittal. The learned trial Court has discussed settled legal position in para 43 of the judgment that for conviction, the statement of the prosecutrix is sufficient and no further corroboration is necessary. Thereafter, looking to various material discrepancies in the evidence of the prosecution, the learned trial Court has granted benefit of doubt to the respondents-accused.

14. Taking into consideration the law laid down by the Supreme Court and the limited scope of interference against the impugned judgment of acquittal, we are not inclined to interfere with the impugned judgment of acquittal.

15. In the result, this criminal revision being devoid of merit is dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor)
Judge