

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2079 of 1998

Judgment Reserved on : 3.12.2019

Judgment Delivered on : 2.3.2020

- 1. Dayaram, aged 20 years, son of Chaitram Yadav,
 - 2. Horilal, aged 20 years, son of Yatharam Verma,
 - 3. Kunjram, aged 19 years, son of Tula Ram,
- All residents of Village Rewadih, P.S. Palari, District Raipur, M.P. (now Chhattisgarh)

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellants	:	Shri Rahil Arun Kochar, Advocate
For Respondent	:	Shri Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 7.9.1998 passed by 1st Additional Sessions Judge, Balodabazar, District Raipur in Sessions Trial No.510 of 1997, whereby each of the Appellants has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 342 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation
Under Section 506 of the Indian Penal Code	Rigorous Imprisonment for 2 years and fine of Rs.1,000/- with default stipulation
Under Section 376(1)/34 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.5,000/- with default stipulation

2. Prosecution case, in brief, is that at the relevant time age of the prosecutrix (PW10) was about 15 years 4 months. Sunita, sister of Appellant No.1 Dayaram was friend of the prosecutrix. According to the case of the prosecution, on 26.9.1997 at about 1 p.m., the prosecutrix was alone at her house. Her father had gone to Village Bhawanipur and her mother had gone to the field. At that time, Appellants No.2 and 3, i.e., Horilal and Kunjram came to the house of the prosecutrix and told her that her friend Sunita had come and called her at her house. Then the prosecutrix went along with them to the house of Sunita. Door of the house of Sunita was open. The prosecutrix calling the name of Sunita reached inside the courtyard. Behind her, both Appellants Horilal and Kunjram went to the courtyard. Thereafter, they closed the door of the house from inside and thereafter Appellant Dayaram came out of one of the rooms of the house. All the 3 Appellants caused the prosecutrix to fall down. Thereafter, Appellant Dayaram committed forcible sexual intercourse with the prosecutrix. At the time when Appellant Dayaram was committing sexual intercourse with the prosecutrix, Appellants Horilal and Kunjram had caught hands of the prosecutrix. After the incident, the prosecutrix started weeping and screaming. On this, the Appellants opened the door of the house and leaving the prosecutrix there they ran away from the spot. She returned her house and when her mother returned home, she first told her about the incident and when her father returned home in the night, mother of the prosecutrix told him about the incident. Next day, the prosecutrix went to the police station along with her father and made a written complaint (Ex.P13). On the basis of the complaint, First Information Report (Ex.P12) was registered. The prosecutrix was medically examined

by Dr. Rajshree Deodhar (PW2). Her examination report is Ex.P4 in which it was found by her that there was an abrasion of ½ inch over right cheek of the prosecutrix. 5-6 minor abrasions were present in the inner side of her thighs. Redness was present over her private part. Her hymen was ruptured. Margin was irregular. Redness was present in the margin also and the prosecutrix was complaining on touching there. Appellant Dayaram was medically examined by Dr. F.R. Nirala (PW9). His report is Ex.P10 in which Dayaram was found to be capable of performing sexual intercourse. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed. Charges were framed.

3. In support of its case, the prosecution examined as many as 13 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt and pleaded innocence. No witness has been examined in defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellants as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants submitted that without there being sufficient evidence on record against the Appellants, the Trial Court has wrongly convicted them. It was submitted that from the statement of the prosecutrix it seems that she was a consenting party to the act done with her. There is no conclusive evidence on record to establish that at the time of commission of the alleged act, she was below 16 years of age. Since she was a consenting party and her age was above 16 years, Appellant Dayaram has wrongly been convicted. It was

submitted with regard to Appellants Horilal and Kunjram that the statement of the prosecutrix is not reliable. From the statements of the witnesses, it is established that there was a previous enmity of the father of the prosecutrix with Appellants Horilal and Kunjram. Therefore, it cannot be ruled out that Appellants Horilal and Kunjram have been falsely implicated in the case

6. Learned Counsel appearing for the State/Respondent opposed the arguments advanced on behalf of the Appellants and supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. In her Court statement, the prosecutrix (PW10) has deposed that on the date of incident, when she was alone at her house, Appellant Kunjram came to her house and told her that her friend Sunita had come and called her to her house. She went to the house of Sunita and calling her name she entered her house. At that time, Appellant Dayaram was present inside the house. At that time, Appellants Horilal and Kunjram came there from her behind and closed the door of the house from inside. Thereafter, all the Appellants started catching her hands and thereafter they took her inside a room. There, Appellants Horilal and Kunjram caught her hands and Appellant Dayaram committed rape with her. She tried to shout, but since Appellants Horilal and Kunjram had gagged her mouth, she could not raise her voice. She has further deposed that if she had tried to shout, they would have killed her. After the incident, the Appellants left her there. She went to her house. When her mother returned home, she told her about the incident. When her father returned home, her mother told him

about the incident. Thereafter, she went to the police station and made the report (Ex.P12). During cross-examination, this witness has only admitted the fact that Appellant Dayaram used to go along with her to Bhawanipur for studying. In paragraph 10, she has further admitted that there was a dispute between her family members and Appellant Horilal. However, this witness has remained firm on the point that on the date of incident both Appellants Horilal and Kunjram had come to her house to call her. She has further deposed that there were 3-4 rooms in the house of Appellant Dayaram and the incident had taken place in the last room. In paragraph 15 of cross-examination of this witness, there was a suggestion made by Appellant Dayaram that this witness herself had visited his house. Meaning thereby, it has been admitted by Appellant Dayaram that the prosecutrix had visited his house on the date of incident.

9. Urmilabai (PW7), mother of the prosecutrix and Okeshwar (PW8), father of the prosecutrix have deposed that first when Urmilabai (PW7) came to home at that time the prosecutrix, weeping, narrated her about the entire incident. Thereafter, when Okeshwar (PW8) returned home, he was informed by Urmilabai about the incident happened with the prosecutrix.
10. Dr. Rajshree Deodhar (PW2) examined the prosecutrix. Her examination report is Ex.P4. According to this witness, in medical examination of the prosecutrix she found that there was an abrasion of $\frac{1}{2}$ inch over her right cheek. 5-6 minor abrasions were present in the inner side of her thighs. Redness was present over her private part. Her hymen was ruptured. Margin was irregular. Redness was present in the margin also and the prosecutrix was

complaining on touching there.

11. Arjun Kumar Sahu (PW3) is Patwari. He prepared spot-map (Ex.P5). M.R. Jaiswal (PW4) had proved the entries of Dakhil-Kharij register regarding date of birth of the prosecutrix. Dr. F.R. Nirala (PW9) examined Appellant Dayaram. His report is Ex.P10. According to him, Appellant Dayaram was capable to perform sexual intercourse.
12. Sub-Inspector R.K. Lalwani (PW12) and Assistant Sub-Inspector B.L. Sahu (PW13) are the witnesses who investigated into the offence in question.
13. On a minute examination of the evidence available on record, it is established that on the date of incident, the prosecutrix had visited the house of Appellant Dayaram. As stated by the prosecutrix, earlier Appellants Horilal and Kunjram had come to her house and at their instance she had gone to the house of Appellant Dayaram to meet her friend Sunita. Since Sunita was her friend, her visit to the house of Sunita was natural. Apart from the fact that the prosecutrix used to go along with Appellant Dayaram for studying, there is no evidence on record that there was any relationship between them. Therefore, the argument advanced by Learned Counsel for the Appellants regarding consent of the prosecutrix is not sustainable. Immediately after the incident, during medical examination of the prosecutrix, Dr. Rajshree Deodhar (PW2) found that there was an abrasion of ½ inch over her right cheek. 5-6 minor abrasions were present in the inner side of her thighs. Redness was present over her private part. Her hymen was ruptured. Margin was irregular. Redness was present in the margin also and the prosecutrix was complaining on touching

there. Thus, from the medical evidence also, the statement of the prosecutrix is corroborated that rape was committed with her by Appellant Dayaram. As stated by the prosecutrix, at the time of commission of rape by Appellant Dayaram, Appellants Horilal and Kunjram had caught her hands and gagged her mother. The Appellants had also closed the door of the house from inside. Though as admitted by the prosecutrix, there was some dispute between Appellant Horilal and the family members of the prosecutrix, only on this ground she has falsely stated against Appellants Horilal and Kunjram is not acceptable. During her cross-examination, the prosecutrix has remained firm on the point that Appellants Horilal and Kunjram were present at the spot and they had caught her hands and gagged her mouth and the Appellants had also closed the door of the house from inside. Considering the entire evidence available on record, I find that the Trial Court has rightly convicted the Appellants. The sentence imposed upon them is also just and proper.

14. Consequently, the appeal is dismissed.
15. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE