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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.96 of 2002

Judgment Reserved on : 3.12.2019

Judgment Delivered on : 2.3.2020

Mahendra Ram, son of Thiro Kumar, aged about 27 years occupation Labour, resident of Village Sanna, Majha Toli, P.S. Sanna, Tahsil Bagicha, District Jashpur, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through P.S. Sanna, District Jashpur, Chhattisgarh

--- Respondent

and

Criminal Appeal No.464 of 2002

1. Ramkumar, son of Madanram Ghansi, aged 19 years, Rickshaw-Puller, resident of Sanna, Magar Toli, P.S. Sanna, Tahsil Bagicha, District Jashpur Nagar, Chhattisgarh
2. Mahendra Ram, son of Thoro Kumhar, aged 28 years, Labour, resident of Manna Magar Toli, P.S. Sanna, Tahsil Bagicha, District Jashpur Nagar, Chhattisgarh ----- **Deleted**

---- Appellants

versus

State of Chhattisgarh through P.S. Sanna, Tahsil Bagicha, District Jashpur Nagar

--- Respondent

For Respective Appellants : Shri Sushil Dubey and Shri Rishi Rahul
Soni, Advocates
For Respondent : Shri Ajay Kumrani, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. Since both the appeals arise out of a common judgment, they are decided together.

2. The instant appeals have been preferred against the judgment dated 14.12.2001 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the Act'), Jashpur in Special Case No.23 of 2001, whereby each of the Appellants has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(2)(g) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.5,000/- with default stipulation

3. Prosecution case, in brief, is that on the relevant date the prosecutrix (PW1) was aged about 15 years 9 months. On 13.7.2000, at about 6 a.m., to go to the house of her maternal grand parents, the prosecutrix (PW1) came out of her house along with her friend Anita (PW2). At about 9 a.m., when they reached Sanna nala, both the Appellants met there. Appellant Ramkumar caught hands of the prosecutrix, then Anita (PW2) screaming ran away from there towards *Basti*. Thereafter, Appellant Ramkumar pressed her neck and dragging her towards under a tree committed rape with her there. thereafter, he called his friend Appellant Mahendra. The prosecutrix tried to run away from there, but Appellant Mahendra caught her and committed rape with her. Thereafter, she, weeping, returned. On the way, two persons along with Anita (PW2) met her. She told them about the incident and thereafter returned to the house of her maternal grand parents and also told them about the incident. A village meeting was convened. Thereafter, on the same day, i.e., the date of incident itself, at about 4 p.m., named First Information Report (Ex.P1) was

lodged by her. She was medically examined by Dr. Vinodini Bakhla (PW4). Her report is Ex.P8 in which redness and swelling were found over private part of the prosecutrix. Her hymen was ruptured. Slight bleeding was found from the private part. Swelling, tenderness and laceration were found over the perineum. Statements of the prosecutrix as well as other witnesses were recorded under Section 161 of the Code of Criminal Procedure. Caste certificate and mark-sheet of the prosecutrix were also seized. On completion of the investigation, a charge-sheet was filed against the Appellants. Charges under Section 3(1)(xi) of the Act and Section 376(2)(g) of the Indian Penal Code were framed against them.

4. In support of its case, the prosecution examined as many as 12 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt and pleaded innocence. 1 witness has been examined in defence.
5. On completion of the trial, vide the impugned judgment, the Trial Court acquitted the Appellants of the charge framed under Section 3(1)(xi) of the Act, but convicted and sentenced them as mentioned in second paragraph of this judgment. Hence, these appeals.
6. Learned Counsel appearing for the respective Appellants submitted that without there being any clinching evidence on record against the Appellants, the Trial Court has wrongly convicted them. It was submitted that in her Court statement, the prosecutrix (PW1) has admitted that she did not know the Appellants from before. She has further admitted that when she went to the police station, at that time, police officials had made the Appellants sit there and names of the Appellants were told to her

by police officials and her maternal grand uncle. She has further admitted in paragraph 13 that when she went to the police station, at that time, Appellant Mahendra was not present there and she also did not know him from before and no test identification parade of Appellant Mahendra was conducted by the police. Since the prosecutrix did not know the Appellants from before, mentioning names of the Appellants by her in the FIR as well in her diary statement is suspicious. It was further submitted that Anita (PW2), the sole eyewitness of the case has also categorically admitted that she never saw the Appellants from before and she has also admitted that she made a false statement to falsely implicate the Appellants. Thus, from the statement of Anita (PW2) also, the prosecution does not get any help. It was further submitted that the incident took place on 13.7.2000 and the prosecutrix was medically examined by Dr. Vinodini Bakhla (PW4) on 14.7.2000 and as opined by the doctor sexual intercourse with the prosecutrix was done 2 days prior to her medical examination. Thus, the incident took place on 13.7.2000 is not established. Therefore, the Trial Court, without there being any sufficient and clinching evidence on record, has wrongly convicted the Appellants. Thus, the Appellants deserve acquittal.

7. 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.
8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. In her Court statement, the prosecutrix (PW1) has stated that at the time of incident, when she was going to Village Akrikona with

Anita (PW2), the Appellants met them near Sanna Nala. Thereafter, first, Appellant Ramkumar committed sexual intercourse with her and thereafter he called Appellant Mahendra. When she tried to run away, Appellant Mahendra caught her and he also committed sexual intercourse with her. This witness has further stated that when Appellant Ramkumar had caught her, at that time, Anita (PW2) had run away from there due to fear. According to the prosecutrix (PW1), the Appellants thereafter ran away from the spot. Then weeping, she went to the house of her maternal grand parents and told them about the incident. Thereafter, the FIR was lodged by her. During cross-examination, in paragraph 6, this witness has categorically admitted that she did not know the Appellants from before. When she went to the police station, she saw that police officials had made the Appellants sit there. when police officials and her maternal grand uncle told names of the Appellants to her then she came to know about their names. This witness has further admitted that the place where the incident had taken place was a busy place and movement of the people was continued there at the time of incident. She has further admitted that after the incident when she was returning, at that time, villagers had met her on the way, but she did not disclose them about the incident. She has further admitted that many small and big stones were lying at the place where the incident had taken place, but she did not suffer any injury over her body. In paragraph 13 of her cross-examination, this witness has further deposed that when she reached to the police station, at that time, Appellant Mahendra was not present there. She has further stated that neither she knew Appellant Mahendra from before nor was any test identification parade conducted to identify him. Meaning

thereby, this witness did not know Appellant Mahendra.

- 10.** Anita (PW2), who is the sole eyewitness of the case, has stated in her examination-in-chief that when she and the prosecutrix were going, the Appellants met them. The prosecutrix was caught by Appellant Ramkumar and she was scolded and made to run away from there. but, in paragraph 5 of her cross-examination, she has categorically admitted that she never saw the Appellants prior to recording of her statement nor did she know them. She has further admitted that she made a false statement to implicate the Appellants.
- 11.** Sarturam (PW3) is maternal grand father of the prosecutrix. He has deposed that in the afternoon, her wife told him that 2 boys had committed wrong with the prosecutrix on the way. But, who were those boys, has not been stated by this witness.
- 12.** Dr. Vinodini Bakhla (PW4) examined the prosecutrix on 14.7.2000. Her report is Ex.P8. According to this witness, she found redness and swelling over private part of the prosecutrix. She found that hymen of the prosecutrix was ruptured. Slight bleeding was found from the private part. Swelling, tenderness and laceration were also found over the perineum. As opined by this witness, sexual intercourse with the prosecutrix was done 2 days prior to her medical examination. This witness has admitted that she did not find any injury or abrasion over body of the prosecutrix.
- 13.** Dhaniram (PW5) has deposed that Sarturam (PW3) had told him that the Appellants had done wrong with the prosecutrix. Dhaniram has further deposed that on being asked by him from the prosecutrix, she had told him the same thing. However, in

paragraph 4, this witness has further stated that whose name was told to him by the prosecutrix is not known to him.

14. On a minute examination of the evidence available on record, it is clear that according to the medical examination report (Ex.P8) of the prosecutrix and as opined by Dr. Vinodini Bakhla (PW4), rape was committed with the prosecutrix, but as opined by this doctor, the rape was committed with the prosecutrix 2 days prior to her medical examination. Therefore, it is doubtful that the alleged rape was committed with the prosecutrix on the date of incident, i.e., 13.7.2000. From the admission and statement made by the prosecutrix, it is also established that many stones were lying on the spot, but no injury was found on her body during her medical examination. Movement of people was also continued at the place where the alleged incident took place, but the prosecutrix did not raise her voice there nor did she tell about the incident to any of the villagers there. From the statement of the prosecutrix, it is also established that she did not know the Appellants from before nor did she know their names. She saw them in the police station for the first time. In these circumstances, mentioning of names of the Appellants in the FIR by her and in her case diary statement is suspicious. From the admission made by her, it is also established that she even did not know Appellant Mahendra nor did she ever see him. In these circumstances, mentioning name of Appellant Mahendra in the FIR by her makes the entire FIR suspicious. From the statement of Anita (PW2) also, it is established that she also did not know the Appellants and as admitted by her she had made a false statement to implicate them. Considering the entire evidence available on record, I find that the whole prosecution story is doubtful. Thus, the Appellants are entitled to get benefit of

doubt.

- 15.** Consequently, both the appeals are allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge framed against them.
- 16.** 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