

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 07-02-2020

Delivered on 12-02-2020

CRA No. 493 of 2001

- Bharatlal aged about 18 years son of Jagdish Sahu resident of Matasgra, Police Station Takhatpur, Tahsil and District Bilaspur (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Takhatpur, District Bilaspur (CG).

---- Respondent

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CRA No. 545 of 2001

- Ramnarayan aged about 18 years son of Dhaniram Sahu resident of Matasgra, Police Station Takhatpur, Tahsil and District Bilaspur (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Takhatpur, District Bilaspur (CG).

---- Respondent

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For Appellant in : Mr. Anish Tiwari, Advocate
CRA No. 493 of 2001

For Appellant in : Mr. Atul Kumar Kesharwani,
Advocate.
CRA N. 545 of 2001

For respondent/State : Mr. Afroz Khan, Panel Lawyer

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Hon'ble Shri Justice Ram Prasanna Sharma
CAV Judgment

1. As both the aforesaid appeals arise out of same incident they are heard analogously and are being disposed of by this common judgment.

2. Both these appeals are preferred against the judgment of conviction and order of sentence dated 23-4-2001 passed by 6th Additional Sessions Judge, Bilaspur in Sessions Trial No. 363 of 2000 wherein the said Court has convicted the appellants for commission of offence under Sections 363, 376 (2)(g) and 506-B of the IPC, 1860 and sentenced them to undergo RI for three years and fine of Rs.500/-, RI for ten years and fine of Rs.500/- and RI for one year with default stipulations respectively. All the sentences are directed to run concurrently.

3. In the present case, prosecutrix is PW/1. As per prosecution case, on 5-7-2001, prosecutrix a girl aged about 14 years along with her girl friends had gone to her school situated at village Tenduwa at about 10.00 a.m., Her school is situated 3 kms away from her village Matsagra. At about 12.30 noon the school was over and the students returned. Her girl friends went to village Tikra whereas prosecutrix went to the house of one Doctor who is closely known to her father, but his house was locked, therefore, she sat under a Neem tree at village Tenduwa. It is alleged that both appellants went to the place where prosecutrix was sitting and both appellants were armed with axe. They caught hold of the girl and dragged her towards forest.. On enquiry by the girl, accused persons threatened her to kill and they had taken her upto Kori dam. They took the girl in hut and first appellant Ramnarayan committed sexual intercourse with her. At that

time the other appellant namely Bharatlal was standing holding axe in his hand and was threatening that if she would make any hue and cry she will be killed. After appellant Ramnarayan, appellant Bharatlal also committed sexual intercourse with prosecutrix. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced them as aforementioned.

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

- i) There is delay of two days in lodging the report, therefore, case of the prosecution is doubtful.
- ii The medical evidence is also not supporting version of prosecution and no injury was found on the body of the prosecutrix and report of FSL is also not supporting her version, therefore, version of the prosecutrix is not dependable. Axe was seized from open place, therefore, it is not seized as per discovery statement of the appellants.
- iii) Prosecution failed to prove the age of the prosecutrix because no birth certificate was produced while date of birth of the

prosecutrix was recorded in school register, therefore, finding of the trial court is liable to be set aside.

Reliance has been placed in the matter of **Munnilal and others vs. State of MP (Now CG)**, decided by this court on 6-5-2010 in CRA No. 115 of 1994, **Naresh Kumar Satnami vs. State of Chhattisgarh**, decided by this court on 22-2-2012 in CRA No. 388 of 2009, **Tuna vs. State of West Bengal and others**, decided on 20-3-2009 in CRA No. 502 of 2005 and **Thainga Mog and others vs. State of Tripura**, decided on 10-1-2000 in **CRA No. 41 of 1998**.

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

7. In the present case, date of incident is 5-7-2000. The incident took place at Tenduwa forest which is 14 kms away from Police Station Takhatpur. Report was lodged on 7-7-2000 i.e., delay of two days. It is true that there is delay of two days in lodging the report at Police Station. Where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. In the present case, there is delay of only two days. The delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In the present case, argument on account of delay is not sustainable.

8. As per version of prosecutrix (PW/1) both appellants came to her with axe and they took her to forest and committed sexual intercourse with her forcefully in hut one by one. The appellants were in possession of axe and they threatened her to kill if she would make hue and cry. From the evidence of this witness, it is established that both appellants committed sexual intercourse with her without her consent and against her will one by one. Version of this witness is supported by version of Milan Bai (PW/2) who is her mother, Baiju

(PW/6) and Sukhnandan (PW/7). Version of these witnesses is supported by version of Dr. V.K. Soni (PW/3) who examined both the appellants and found them capable of intercourse. All these witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. There is nothing on record that both the appellants have been roped in false charge.

9. The statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bounds of society of India, 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. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary, but in the present case, evidence of prosecutrix inspires confidences, therefore, no corroboration is required.

10. The trial court has elaborately discussed the entire evidence and recorded finding that the appellants committed gang rape against prosecutrix and threatened her to kill with axe and they were in possession of axe, therefore, their act falls within mischief of Section 376 (2)(g) and 506 Part II of IPC, 1860.

11. Lilluram Sahu (PW/11) is teacher. He deposed before the trial court that date of birth of the prosecutrix is 27-6-1986 as per record. As per version of mother of the prosecutrix Milan Bhai (PW/2), her

daughter is aged 13 years. Taking into consideration the statement of mother of the prosecutrix and other witnesses and further taking into consideration the school register, age of the prosecutrix comes about 14 years and she was minor on the date of incident. Taking the minor girl without consent of lawful guardianship is an offence of kidnapping which is punishable under Section 363 of IPC.

12. After assessing the entire evidence, this court has no reason to take a contrary view what is recorded by the trial court. Conviction of the appellants for the offence in question are not liable to be interfered with and argument advanced on behalf of the appellants is not sustainable. Conviction of the appellants for the said offences is hereby affirmed. Considering all the facts and circumstances of the case, this court is of the view that the case laws cited by learned counsel for the appellants are clearly distinguishable from the facts of the present case.

13. Heard on the point of sentence.

The trial Court awarded RI for ten years for offence under Section 376 (2)(g) of IPC (gang rape) which is minimum prescribed for the said offence and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

14. Accordingly, both appeals being devoid of merits are liable to be and are hereby dismissed. Both 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 31-7-2020.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju