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HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.85 of 2015**

- Ku. Reena Rajput, D/o Shri Shivnandan Rajput, Aged About 16 Years, Minor- Through Her Guardian/Father- Shivnandan Rajput, S/o Shri Sidhram Rajput, Aged About- 40 Years, R/o Sambalpur, Police Station- Nandghat, Distt.- Bemetara, Chhattisgarh

---- Applicant**Versus**

1. Vijay Gupta, S/o Shri Santosh Gupta, Aged About 23 Years, Occupation- Agriculture, R/o Village- Daupara, Mungeli, Police Station- Mungeli, Distt.- Mungeli, C.G., Present Address - Village- Sambalpur, Police Station- Nandghat, Distt.- Bemetara, Chhattisgarh
2. Mayank Soni @ Sonu, S/o Shri Vinod Soni, Aged About 34 Years, Occupation- Private Job, R/o Village- Sambalpur, Police Station- Nandghat, Distt.- Bemetara, Chhattisgarh
3. State Of Chhattisgarh, Through- The Station House Officer, Police Station Nandghat, Distt.- Bemetara, Chhattisgarh

---- Respondents**CRA No.191 of 2015**

- Vijay Gupta, S/o Santosh Gupta, Aged About 21 Years, Occupation Cultivator, R/o Village Daupara Mungeli, Distt. Mungeli, C.G., Presently Village Sambalpur, PS Nandghat, Distt. Bemetara, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh, Through Police Station Nandghat, Distt. Bemetara, Chhattisgarh

---- Respondent**CRA No.1204 of 2014**

- Mayank Soni @ Sonu, S/o Vinod Soni Aged About 34 Years, R/o

CRR No.85/2015 & Ors
 Village Sambalpur, P.S. Nandghat, Civil and Revenue, Bemetara,
 Chhattisgarh

---- Appellant

Versus

- The State Of Chhattisgarh, Through the Police Station Nandghat,
 Civil and Revenue Distt. Bemetara, Chhattisgarh

---- Respondent

For Applicant	Shri Samir Singh, Advocate in CRR No.85/15
For Appellants	Shri Ravindra Sharma, Advocate in CRA No.191/15 and Shri Rishi Rahul Soni & Shri Vipin Singh, Advocates in CRA No.1204/14
For Respondent-State	Shri Chitendra Singh, PL

Hon'ble Justice Shri Prashant Kumar Mishra

Hon'ble Justice Shri Gautam Chourdiya

Order On Board By Shri Prashant Kumar Mishra J.

28/02/2020

1. The appellants Mayank Soni @ Sonu and Vijay Gupta have been convicted by the Trial Court for committing offence under Section 376 (2) (g) of IPC and have been sentenced to undergo RI for 10 years and pay fine of Rs.3,000/- and in default of payment of fine amount, additional RI for 6 months. The prosecutrix has filed CRR No.85/2015 seeking enhancement of the sentence and award of compensation out of the same judgment of conviction and sentence. Both the criminal appeals and the criminal revision are disposed of by this common order.

2. The prosecution case, as projected in the material on record, is that the accused Mayank Soni, who is neighbor of the prosecutrix,

came in front of the house of the prosecutrix when she was drawing *rangoli* at 7 am on 14.09.2012. Mayank Soni forcibly took the prosecutrix inside his house where the accused Vijay Gupta was already present. Vijay Gupta closed the door of the room by putting on the latch and Mayank Soni threatened the prosecutrix that if she raises alarm, she will be killed. Mayank Soni thereafter undressed the prosecutrix, lied her on floor and committed forcible sexual intercourse and thereafter Vijay Gupta also committed forcible sexual intercourse. The prosecutrix tied her *dupatta* with her body and ran away towards her house and informed the incident to her aunt (Bua) Sunita and grandmother Ramkali, who in turn informed her father, who had gone to work in the agricultural field, through one Ramdev. Her father was also informed about the incident when he returned to the house.

3. For the incident which took place at about 7 am, the FIR was lodged within 6 hours i.e. at 12:30 pm vide Ex-P-1. The prosecutrix was sent for medical examination, which was conducted by PW-11 Dr. Rajshri Devdhar, who submitted her report vide Ex-P-14 finding recent rupture of hymen by some hard blunt object between 8-10 hours. The memorandum statement of Mayank Soni was recorded vide Ex-P-19 on 17.02.2012, consequent to which the underwear of the prosecutrix was recovered vide Ex-P-20, while his own underwear was recovered vide Ex-P-21. To ascertain the exact age of the prosecutrix, she was subjected to radiological examination, in which she was found to be aged between 14-15 years. As per report of the radiologist (Ex-P-22) proved by PW-15 Dr. N. P. Jangde, seized articles including the

pubic hair and vaginal slide were sent for FSL examination vide Ex-P-25, the report whereof was submitted by the Forensic Science Laboratory, Raipur vide Ex-P-30, in which sperms were found on the vaginal slide (Article-F) but not on any other article. After recording case diary statements of the witnesses, charge sheet was filed and the accused persons were sent for trial for committing offence under Section 376 (2) (g) of IPC.

4. In course of trial, the prosecution examined as many as 23 witnesses to bring home the charges. The accused persons abjured the guilt, pleaded innocence and false implication. The Trial Court has convicted the accused as stated above.
5. It is argued that the prosecutrix has stated a very dramatized story, which is full of material contradictions and omissions. Referring to the FSL report, it is further argued that if the version put forth by the prosecutrix that she was bleeding profusely is taken to be true, then the articles recovered and sent for FSL examination including the cushion (gadda) and blanket (kathri) should have found traces of blood, but the FSL report is negative for these articles. Thus, the entire story told by the prosecutrix appears to be false. Further, referring to the statement of the prosecutrix, learned counsels would argue that when the prosecutrix reached her house, she first met her sister Ranjita and aunt Pushpa, but the incident was not narrated to them, therefore, again her statement is unbelievable.
6. Per contra, learned State counsel would submit that the present is an open and shut case against the appellants in view of prompt

FIR; due corroboration in the FSL on account of positive report regarding presence of sperms on the vaginal slide; prosecutrix's version being supported by her relatives and other witnesses.

7. We have heard learned counsel for the parties at length and perused the record.
8. The prosecutrix, examined as PW-1, would clearly depose and unfold the sequence of events at the time of the incident. She fully supports the prosecution case by reiterating the allegations made in the FIR lodged by her. As regards non disclosure of the incident to her sister Ranjita and aunt Pushpa, she has explained that Ranjita being her younger sister, she did not disclose the incident to her and that she did not muster courage to speak to her aunt (chachi). She immediately informed the incident to her aunt (bua) Rajni, who has been examined as PW-19, fully supported the prosecutrix. Similarly, the prosecutrix informed the incident to her grandmother Ramkali, who has been examined as PW-5 and again she fully supports the case of the prosecution. She speaks about her medical and radiological examination. Despite being subjected to intense cross-examination, the defence has not been able to illicit any material contradiction and omission, which may dent and dilute her statement and the case of the prosecution. True it is that in the FIR, she has not mentioned that after commission of rape, she started bleeding from her private parts, but such facts are mentioned by PW-11 Dr. Rajshri Devdhar in her medical report finding that the prosecutrix was bleeding on touch.
9. PW-2 Urwashi, mother of the prosecutrix, and PW-3 Shivnandan,

father of the prosecutrix, have also supported the prosecution and the statement of the prosecutrix by stating that Raghunath informed them over phone that serious incident has taken place with the prosecutrix. PW-3 states that her nephew Ramdev reached to the agricultural field at 8:30 to 9 am where he was working and informed about the incident, whereafter he immediately rushed back to his house and saw her daughter bleeding. The prosecutrix narrated the whole incident to her father. PW-4 Siddhram is the grandfather of the prosecutrix living in the same village. The prosecutrix informed about the incident to this witness also and he supports the entire prosecution case.

10. PW-5 Ramkali and PW-19 Rajni are the two important witnesses to whom the incident was first disclosed by the prosecutrix. While Ramkali says that after the prosecutrix disclosed the incident to her, she sent her grand son Ramdev to the agricultural field to inform Shivnandan (PW-3) about the incident. This fact is deposed by Shivnandan also. Ramdev also supports the statement of the prosecutrix. Ramkali also says that the prosecutrix was bleeding and she changed her clothes having blood stains. It was Ramkali who took the prosecutrix to the house of Vimla (PW-6), who also supports the prosecution. The other witnesses have also supported the prosecution including two medical officers namely PW-11 Dr. Rajshri Devdhar, who examined the prosecutrix, and PW-15 Dr. N. P. Jangde, who conducted the radiological examination of the prosecutrix.
11. Having scrutinized the entire evidence minutely, we are satisfied

that the prosecution has proved its case beyond reasonable doubt on the basis of prompt FIR, positive FSL report finding human sperm on the vaginal side (Article-F) and oral testimony of the prosecutrix and her relatives. The conviction of the appellants deserves to be and is hereby affirmed.

12. Insofar as revision application preferred by the prosecutrix seeking enhancement of the sentence and award of compensation is concerned, it is to be seen that on the date of incident, the offence under Section 376 (2) (g) of IPC carried minimum sentence of 10 years, which may be extended up to life imprisonment. The Trial Court has awarded the minimum sentence of 10 years, therefore, considering all the relevant aspects of the matter and for the fact that the incident took place about 8 years back and the appellants are already in jail since from the date of their arrest and the appellant Vijay Gupta was aged about 21 years at the time of incident, we are of the view that the minimum sentence imposed on the appellants would be the appropriate sentence and there is no scope for enhancement at this stage after 8 years of the incident.
13. At this stage, Shri Samir Singh, learned counsel for the prosecutrix, would submit that considering the manner in which the prosecutrix was ravished by the accused persons, she is entitled for compensation, which has not been granted by the Trial Court.
14. Having seen the entire material and the plight and trauma sustained by the prosecutrix as a result of gang rape committed

on her, we are of the view that she is entitled for compensation.

Considering the entire facts situation of the case, we direct that the prosecutrix be paid compensation to the tune of Rs.1 Lakh under the Victim Compensation Scheme, 2011, which shall be paid by the State Government within 3 months.

15. Accordingly, the criminal revision is allowed in part to the extent indicated above and both the criminal appeals are dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge