

HIGH COURT OF CHHATTISGARH, BILASPURJudgment Reserved on 12.02.2020Judgment Delivered on 16.09.2020CRA No. 471 of 2013

1. Yogesh Bhuarya S/o Krishna Bhuarya Aged About 22 Years
Occupation Agriculturist, R/o Karmoti, PS Bhanupratappur,
Distt. Kanker C.G.
2. Shashikant Nishad S/o Tularam Aged About 19 Years,
Occupation Student, R/o Karmoti, PS Bhanupratappur, Distt.
Kanker C.G.

---- Appellants

Versus

1. State Of Chhattisgarh Through Police Station
Bhanupratappur, Distt. North Bastar, Kanker C.G.

---- Respondent

CRA No. 534 of 2013

1. Bheekham Singh S/o Arjun Singh Aged About 21 Years Caste
Thakur R/o Village Karmoti, P.S. Bhanupratappur , Distt.
Kanker C.G.

---- Appellant

Versus

1. State Of Chhattisgarh Through – Police station
Bhanupratappur, Distt. North Bastar, Kanker C.G.

---- Respondent

For Appellants

Mr. Sandeep Shrivastava, Advocate

For Respondent/State

Ms. Fouzia Mirza, Addl. Adv. General

Hon'ble Shri Prashant Kumar Mishra, J.

Hon'ble Shri Gautam Chourdiya, J.

By
Prashant Kumar Mishra, J.

1. Since both the appeals are arising out of same sessions trial ie. ST No.3/12, they are being considered and decided by this common judgment.
2. Appellants would call in question their conviction under Sections 366 & 376(2)(g) of the Indian Penal Code (for short 'the IPC') and sentence of R.I. for 07 years and life imprisonment with default stipulations by the Sessions Judge/ Special Judge (FTC), Uttar Bastar, Kanker in ST No.3/2012.
3. As per the prosecution case, the prosecutrix (PW-4), a scheduled tribe girl, aged about 15 years 4 months, having studied up to class 7th, had gone to witness Ramleela played in the village. At about 8 pm on 16.10.2011 she was watching Ramleela with her mother Smt. Khorin Bai (PW6) and friend Ku. Sumit Komra (PW5). She went to attend nature's call at about 12'O clock in the midnight with her friend PW5 Ku. Sumit Komra. When she reached near the house of one Ramnath Komra, five boys gagged her mouth with a handkerchief and abducted her from the place. She was taken to a nearby agricultural field; her salwar suit was torn; removed the underwear; and thereafter, the present appellants – Yogesh, Shashikant & Bheekham along with two other accused Mukund & Golu Kange raped her one by one, due to which she became unconscious. Her mother and her brother-in-law (*Jija*) brought her to the house. The prosecutrix narrated the incident to her elder sister Lakshmi, brother-in-

law Maneshwar and her mother. In the meeting convened on the next day she identified the accused persons and named them. The *dehati nalasi* was reported at Chowki Damkasa vide Ex-P9 on 23.10.2011. The First Information Report (FIR) was registered at Police Station Bhanupratappur vide Ex-P25 on 24.10.2011.

4. In course of investigation the torn Kurti, Salwar and Dupatta were recovered from the prosecutrix vide Ex-P1 and punchanama of the Panchayat (Ex-P4) written by the villagers was recovered vide Ex-P2. The Panchayat Punchanama records that the prosecutrix identified the accused persons and on being asked the accused persons confessed their guilt. *Dakhil Kharij* Register of Tribal Welfare Primary School Rourwahi, Block Durgukondal was recovered vide ExP-3 for proving the date of birth of the prosecutrix. Her marksheet of Class 5th carrying her date of birth as 21.06.1996 was recovered vide ExP-8C. Crime details form was prepared vide ExP-10 and the MLC was conducted vide ExP-15 by PW-7 Dr.(Smt.) KL Thakur. According to the medical report multiple healed scratch marks were found on both the legs, thigh & both upper limbs; the hymen was found ruptured; and blood mixed discharge was present from vaginal passage. She concluded the opinion by mentioning that intercourse may be possible. In the FSL report ExP-16, blood was found over the Salwar (Article 'B') whereas human sperm was found on Dupatta (Article 'A') and Kurti (Article 'C'). Although blood stains were found on Salwar (Article 'B') and the same was sent for serological examination, but the report is not available. The *dakhil khareej* register has been proved as ExP-23C. Nazari Naksha was prepared vide ExP-21. All the

accused persons were medically examined and were found to be potent to perform sexual intercourse.

5. After completing necessary investigation including recording the diary statements of the witnesses; charge sheet was filed; and the appellants were charged for committing offence under Sections 366 and 376(2)(g) of the IPC and Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
6. In course of trial the prosecution examined 15 witnesses to bring home the charges. The appellants denied the charges; abjured the guilt; and pleaded false implication. They examined one defense witness who has stated that the prosecutrix had not identified the culprits in the village meeting. Upon appreciation of evidence, the trial Court convicted & sentenced the appellants as mentioned above. However, they have been acquitted from the charge under Sections 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
7. Assailing the impugned conviction, Shri Sandeep Shrivastava, learned counsel appearing for the appellants, would submit that the accused persons were not identified and the FIR is delayed. He would also submit that the delay in lodging the FIR clearly indicates that a plan was hatched by the family members of the prosecutrix to frame the appellants in the crime, therefore, they deserve to be acquitted.
8. On the other hand, Ms. Fouzia Mirza, learned Additional Advocate General appearing for the State, would submit that the appellants have ravished a minor tribal girl, aged about 15 years 4 months, therefore, in view of clinching evidence on

record the judgment of conviction is fully justified and no leniency is required to be shown.

9. PW-1 Hariram Tandiya is the Kotwar of the village. He has proved ExP-1 to ExP-3. He had also accompanied the parents of the prosecutrix to the Police Station at the time of lodging of FIR.
10. PW-2 Rainsingh had seen the bicycles belonging to all the accused persons over which names of the accused were engraved. He has also proved the Panchayat punchanama ExP-4 stating that the accused persons had confessed their guilt, about commission of rape, in the presence of the villagers. In the cross-examination, he categorically states that when in the village meeting the incident was discussed the prosecutrix and her father Sukhram (PW3) were called and the prosecutrix informed about the incident. From his statement, it appears that the accused persons had left their bicycles at the place where the Ramleela was played or at the place of occurrence which were in the possession of the village Panchayat and the same were identified by the prosecutrix. Thereafter the accused persons were called and they confessed to have committed the crime. When this witness was suggested that the appellants have refused to admit the guilt, he denies the suggestion.
11. PW-3 Sukhram is the father of the prosecutrix. According to him, his wife (PW-6 Khorin Bai) and daughter (prosecutrix) had gone to witness Ramleela, but they did not return in the night. His wife informed about the incident when she returned to the house on the next morning. On the next day, meeting of the Panchayat was convened in the village in

which Panchayat punchanama (ExP-4) was prepared. Although, this witness has been declared hostile, but during cross-examination he fully admitted his case diary statement (ExP-5).

12. Prosecutrix has been examined as PW-4. She has fully supported the prosecution case by narrating the sequence of events, which took place on the date of incident. She has reiterated the contents of the FIR. She also speaks about the panchayat meeting in the village and the fact that she informed the villagers about the commission of rape by five persons including the present three accused persons. This witness was not acquainted with the accused persons before the incident, but she identified all the accused persons during the Panchayat meeting. During cross-examination she admitted that when the accused persons abducted and took her to agricultural field her friend PW-5 Sumit ran away and she was taken to a distance of about 1 km. She denies that she became unconscious out of fear and reiterates that she became unconscious after the rape was committed upon her. She clearly admits that she identified the accused persons on the basis of their bicycles, which were found near the Ramleela Rangmanch, as names of the accused person were engraved over the bicycles. She admits that the report was not lodged immediately because the villagers effected compromise during the Panchayat meeting.
13. PW-5 Ku. Sumit Komra is the friend of the prosecutrix, who accompanied her from Ramleela Rangmanch to a distance where they started attending nature's call but when the prosecutrix was abducted by the accused person, this witness ran away. She makes the same statement before the Court. It

was this witness who had informed about the abduction of the prosecutrix to her mother. At a later stage, this witness has been declared as hostile.

14. PW-6 Smt. Khorin Bai is the mother of the prosecutrix. She has fully supported the prosecution case. She would state that PW-5 Sumit informed her that the prosecutrix has been abducted by the accused persons. She along with her son-in-law Maneshwar searched for the prosecutrix for sometime but could not locate her. Later on they found the prosecutrix lying naked in an unconscious state and brought her to the house where she informed about the incident after she became conscious. She also proves the Panchayat panchnama ExP-4, which carries her signature. She admits that her daughter identified the accused during Panchayat meeting.
15. PW-7 Dr. (Smt.) KL Thakur has proved the medical report of the prosecutrix (ExP-15) and the FSL report (ExP-16). PW-8 Mahesh Darro is a formal witness whereas PW-9 Dr. M.K Nayak & PW-15 Dr. Gopesh Kumar have medically examined the accused persons. PW-10 V.K. Bhandari is the Patwari, PW-11 Suresh Singh Somwanshi is the Head Master of the Tribal Welfare Primary School. He has proved the original *Dakhil Khareej* Register ExP-23C mentioning the date of birth of the prosecutrix as 21.06.1996. PW-12 Tarkeshwar Patel is the SDOP, PW-13 Narayan Sahu & PW-14 Radheshyam Jurri are the ASIs who have conducted the investigation.
16. The defence witness Kamlesh Kumar Potai (DW-1) has stated that a compromise was effected during the Panchayat meeting, however, this witness has not stated that the accused

persons did not make any confession during Panchayat meeting.

17. The evidence adduced by the prosecution, as discussed above, proves in definite terms that the prosecutrix was abducted from the place where she attended the nature's call along with PW-5 Sumit. This witness supports the prosecutrix about the first part of the incident where she saw the accused persons abducting the prosecutrix. Thus, the version of the prosecutrix about abduction is corroborated from the statement of PW-5 Sumit. When PW-5 Sumit informed about the incident to PW-6 Khorin Bai, they went to the place where from she was abducted but could not locate the prosecutrix. After sometime she was found in the agricultural field at a distance of about 1 km and at this place the prosecutrix was lying naked unconscious with her torn garments. This is exactly the version told by the prosecutrix and her mother. Thus there is a clear and unimpeachable evidence about the abduction and commission of gang rape with the prosecutrix.
18. It has been argued that the accused persons have not been put to Test Identification Parade (TIP), therefore, their involvement in the crime is not established. In the beginning the prosecutrix was not aware about the names of the accused persons. When there was murmuring in the village on the next day that incident of rape has happened and bicycles were found near the Ramleela Rangmanch a meeting was convened and the accused persons were called in the meeting. In this meeting the Panchayat Panchanama (ExP-4) was prepared. This document has been proved not only by the prosecution witnesses but also by the defence witness. It is mentioned in this document that during the meeting the incident of rape was

discussed and thereafter the prosecutrix as well as the accused persons were summoned. The prosecutrix identified all the accused as the persons who have committed gang rape. Thus even if the prosecutrix was not acquainted with the accused earlier she has identified them during the Panchayat meeting where the document (ExP-4) was prepared and has been duly proved by the prosecution witnesses. Thus it is not a case where the identity of the accused persons has not been established.

19. In so far as the issue of delay in lodging the FIR is concerned, it is to be seen that the Panchayat meeting was convened in the village on the very next day where, according to the witnesses, the compromise was effected. As per the material available, after the panchayat meeting the villagers refused to initiate any action and advised the father of the prosecutrix to take action if he so desires. The village where the prosecutrix resides is at a distance of about 12 kms. from the police station. The prosecutrix is a tribal girl and has explained that the delay occurred because of Panchayat meeting and non-availability of Kotwar, which is manifest from para 7 of the statement of PW-6 Smt. Khorin Bai. This version of the mother of the prosecutrix is supported by PW-1 Hariram Tandiya, Kotwar of the village, who has stated that before 23-10-2011 he was in hospital, therefore, the report was lodged after his return to the village. The delay in lodging the FIR is explained properly by giving sufficient and cogent reasons and hence the same is not fatal for the prosecution.
20. The version of the prosecutrix about commission of gang rape also finds support from the medical evidence inasmuch as PW-7 Dr. (Smt.) K.L. Thakur has proved the medical report

(Ex.P15) finding healed scratches over both the legs, thigh and both upper limbs. Since the medical was conducted on 25.10.2011 i.e. after about 9 days of the incident, the scratches were healed. According to PW-7 Dr. (Smt.) K.L. Thakur, the hymen was found ruptured and blood mixed discharge from vaginal passage was present. It was opined that intercourse may be possible. Thus, the medical evidence also corroborates the statement of the prosecutrix. The prosecution has, thus, proved its case against the appellants beyond reasonable doubt. The conviction is, therefore, upheld.

21. At this juncture, learned counsel appearing for the appellants, would submit that the appellants are young boys, aged between 19-22 years at the time of incident and they are in detention since 9-12-2011, therefore, they may be sentenced to RI for 10 years instead of life imprisonment. To buttress his contention, learned counsel would place reliance upon the decisions rendered in *Baldev Singh and Others v State of Punjab* {2011 (13) SCC 705}, *Mahendra Subhasbhai Vankhede v State of Gujarat and Others* {2018 (1) SCC (Cr.) 840}, *Rahul Dev v State & Anr.* {2014 SCC OnLine Delhi 3930} & *State (NCT of Delhi) v Pankaj Chaudhary and Others* {2019 (11) SCC 575}.
22. *Per contra*, this prayer has been vehemently opposed by the learned counsel appearing for the State. In support of her contention, learned counsel would place reliance upon the decision rendered in *Shimbhu and Another v State of Haryana* {2014 (13) SCC 318}.
23. Having considered+ the rival submissions of the learned counsel for the parties on the point of sentence, we are unable

to accede to the prayer made by the learned counsel for the appellants for the reason that five accused persons have committed rape one after another on a tribal girl, aged about 15 years 4 months. The rape was committed after tearing her wearing apparels and when she became unconscious she was abandoned naked at the agricultural field. Their depraved inhuman act does not deserve any leniency, therefore, the sentence awarded by the learned trial Court on all counts is also upheld.

24. For the foregoing reasons, in our considered opinion, the appellants have rightly been convicted and sentenced by the trial Court.
25. In the result, both the appeals, *sans* merit, are liable to be and are hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri