

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 168 of 2017

- Budharu Ram Meravi, S/o Ram Singh Meravi, Aged About 26 Years, R/o Village Manpur Naka, Police Station Gandai, District Rajnandgaon, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Gandai, District Rajnandgaon, Chhattisgarh.

---- Respondent

AND

Criminal Appeal No. 396 of 2019

- Santosh Kunjam, S/o Darshan Kunjam Aged About 21 Years, R/o Village Makarkund, Thana-Gandai, District : Rajnandgaon, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through Station House Officer, Thana- Gandai, District- Rajnandgaon, Chhattisgarh.

---- Respondent

For Appellants	:	Ms. Itu Rani Mukherjee and Shri Dhirendra Prasad Mishra, Advocates.
For State/Respondent	:	Shri Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

03/08/2021

1. These appeal have been preferred against the impugned judgment dated 20.07.2016 passed in Special Case No.02/2014 by the Additional Sessions Judge, Khairagarh, District Ragnandgaon, (C.G.) wherein appellants have been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 363 of the I.P.C.	R.I. for 4 years and fine of Rs.1,000/- with default stipulations.
U/s 366(क) of the I.P.C.	R.I. for 4 years and fine of Rs.1,000/- with default stipulations.
U/s 506-B of the I.P.C.	R.I. for 1 years and fine of Rs.500/- with default stipulations.
U/s 376(2)(घ) of the I.P.C.	R.I. for 10 years and fine of Rs. 1,000/- with default stipulations.
All sentences to run concurrently.	

2. In the present case, age of the prosecutrix (PW-1) at the relevant time was 15 years and 11 months. According to the entries made in *Dakhil Kharij register* i.e. Ex.P-9, date of birth of the prosecutrix is mentioned as 25.12.1997. Date of incident is 08.12.2013. According to the case of prosecution, on 08.12.2013 at around 7:30-8:00 PM, when prosecutrix went out of her house for throwing water, allegedly, accused/appellants caught hold her hand and took her near '*rahar bharri*' and committed forcible sexual intercourse with her one by one. After the commission of alleged incident, prosecutrix came to her house and narrated about

the incident to her mother. On the next date of incident i.e. 09.12.2013, F.I.R. vide Ex.P-1 was lodged by the prosecutrix. Statement of the prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. After completion of the investigation, a charge-sheet was filed. To prove the guilt of the accused/appellants, prosecution has examined as many as 12 witnesses. No defence witness has been examined. Statement of appellants under Section 313 of the Cr.P.C. was recorded, wherein accused/appellants have pleaded innocence and false implication.

3. After completion of trial, the trial Court has convicted and sentenced the accused/appellants as mentioned in paragraph 1 of this judgment. Hence, this appeal.
4. Learned Counsels appearing on behalf of the appellants submit that appellants are innocent and are falsely implicated in the present case. They further submit that trial Court has wrongly convicted the appellants without there being sufficient and clinching evidence against them. It is further stated that statement of the prosecutrix (PW-1) is suspicious. Prosecutrix in her examination-in-chief has supported the case of prosecution but during cross-examination she has admitted the fact that at the time of alleged incident, there was darkness at the place of occurrence of alleged act and due to which she could not identify that who had caught her and committed sexual intercourse with her. Prosecutrix has disclosed the names of appellants only at the behest of his uncle. Also, the medical report of the prosecutrix does not support the case of prosecution. Therefore, conviction of the appellants are not sustainable.

5. Per contra, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing for the parties, perused the record, statement of the witnesses and other annexed documents minutely.
7. With regard to the alleged incident, prosecutrix (PW-1) has deposed that on the date of incident when she went out at '*badi*' then accused/appellants caught hold her and took her at '*rahar*' field and they both committed rape with her one by one. Thereafter, she narrated about the alleged incident to her parents and her uncle. Then on the next day, prosecutrix lodged F.I.R. vide Ex.P-1 at the police station against the accused/appellants. In para 14 and 23 of cross-examination of the prosecutrix, she has admitted the fact that there was darkness at the place of occurrence of the incident due to which she was unable to identify the accused persons and was unable to tell their names that who caught her and committed sexual intercourse with her. She further admitted the fact that names of the present appellants were told to her by her uncle and thereafter, she has disclosed the names of the appellants. She further admitted the fact that in paragraph 20 and 22, report was lodged by her uncle and further admitted that she has given Court statement as tutored by his uncle.
8. Dr. Leela Ramteke (PW-5) examined the prosecutrix on 09.12.2013, and she found that there was bleeding from her vagina and found one injury measured $\frac{1}{4}$ x $\frac{1}{4}$ x $\frac{1}{4}$ cm. She also found six abrasion in right

hand of the prosecutrix. She also found one lacerated wound at the outer side of vagina of the prosecutrix which may occur due to scratching by nails. She has not given any definite opinion regarding commission of intercourse or forcible sexual intercourse with the prosecutrix. She has further admitted the fact that if forcible intercourse would have happened with the prosecutrix then there might have occurred redness or swelling in the vagina of the prosecutrix and in this matter no such injury has been found.

9. On minute examination of the above evidence, it makes clear that though prosecutrix has admitted the fact regarding commission of alleged act with her but she has also admitted the fact that she has disclosed the names of the appellants as tutored/persuaded by her uncle. Further, prosecutrix was not aware about the persons who had committed sexual intercourse with her. She has further admitted that there was darkness at the place of occurrence of alleged act and also the F.I.R. was lodged by her uncle and at that time prosecutrix was standing outside the police station. From the medical report of the prosecutrix and from the admission made by Doctor Leela Ramteke (PW-5), it appears that no forcible sexual intercourse has been committed with the prosecutrix. Though one lacerated wound has been found in the vagina of the prosecutrix but the Doctor has admitted that said wound may occur by self-caused.
10. Looking to the entire evidence adduced by the prosecution, and on perusal of statement of the prosecutrix (PW-1), in my considered view, her statement is not reliable and on the basis of her shaky statement, conviction of appellants are not sustainable and therefore, appellants

are entitled to get benefit of doubt.

11. Consequently, the appeals are allowed. The conviction and sentence of the appellants are set aside and they are acquitted of the charge framed against them.
12. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

**Sd/-
(Arvind Singh Chandel)
Judge**