
(2012) 01 CHH CK 0007
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 553 of 2009

Bharat Lal Nai and Another	Vs	APPELLANT
State of Chhattisgarh		RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 34, 354, 376, 376(2)(g), 450
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(xii)

Citation : (2012) 01 CHH CK 0007

Hon'ble Judges : Pritinker Diwaker, J

Bench : Division Bench

Advocate : Yogeshwar Sharma, for the Appellant; Sunita Jain, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Pritinker Diwaker, J.—This appeal has been preferred against the judgment and order dated 9-1-2009 passed by Special Judge, Raigarh, in Special Case No. 33/2007 holding the accused/appellants guilty under sections 450 and 376(2)(g), IPC and sentencing each of them to undergo rigorous imprisonment for five years u/s 450 and rigorous imprisonment for ten years with fine of Rs. 1000 u/s 376(2)(g), IPC plus default stipulations. Facts of the case in brief are that on 22-6-2007 FIR Ex. P-1 was lodged by the prosecutrix - a minor girl aged about 14 years at the relevant time alleging that on 21-6-2007 when she was all alone in her house as her mother had gone to jungle, the accused/appellants came there and made an enquiry about her mother. When the prosecutrix told them that her mother had gone to jungle, they gained an entry to her house, accused Bharat threw her on the cot, accused Krishna Kumar pressed her mouth and accused Bharat removed her clothes. Thereafter, she somehow managed to get rid of them and called out her neighbour Ram Kumar for help on which his mother and sister Shiv Kumari came there to whom she narrated the entire

incident and then on the next day the report was lodged. Based on this report offences under sections 354, IPC and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as "Act") were registered against the accused/appellants. Case diary statement of the prosecutrix was recorded on 26-6-2007 in which she has categorically stated that she was subjected to rape by accused/appellant Bharat Lal whereas accused/appellant Krishna Kumar had pressed her mouth. After completion of investigation, challan was filed by the police on 20-9-2007 for the offences under sections 450, 376/34, IPC and 3(1)(xii) of the Act.

2. So as to hold the accused/appellants guilty, prosecution has examined 13 witnesses. Statements of the accused/appellants were also recorded u/s 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence and false implication in the case.

3. After hearing the parties, the trial Court convicted and sentenced the accused/appellants as mentioned in paragraph No. 1 of this judgment. Hence, this appeal.

4. Counsel for the appellants submits that in the FIR place of incident is shown as Gorapar whereas as per her case diary statement the incident took place at Kasaipali. He submits that in the FIR the allegation is only with respect to the offence u/s 354, IPC whereas in the case diary statement and the statement made in the Court, the prosecutrix has stated that she was subjected to rape by accused/appellant Bharat Lal whereas accused/appellant Krishna Kumar had pressed her mouth. He further submits that FSL report of the prosecutrix does not support the case of the prosecution. Lastly he submits that as the appellants are in jail since 25-6-2007, their sentence may be reduced to the period already undergone by them.

5. On the other hand counsel for the respondent/State supports the impugned judgment and submits that at the time of incident the prosecutrix was a minor girl aged about 14 years and that she has categorically stated in her evidence that at the time of recording of FIR also she had informed the police about her subjection to rape by accused/appellant Bharat Lal but if the FIR is not recorded correctly by the police, she cannot be made to suffer. She submits that on account of the mistake committed by the police in recording the FIR, the appellants cannot derive any benefit. She further submits that the case diary statement of the prosecutrix was recorded by the police on 26-6-2007 which makes it clear as to in what manner she was ravished by the appellant Bharat Lal after her mouth being pressed by accused Krishna Kumar. He submits that medical report Ex. P-6 clearly supports the case of the prosecution which says that injury was found on the private part of the prosecutrix. She submits that the medical examination of the prosecutrix was done on 26-6-2007 i.e. 5 days after the incident, FSL report is bound to be negative. In respect of the argument of the counsel for the appellants for reducing the sentence, she submits that the minimum sentence for an offence of gang rape is imprisonment for ten years and therefore no reduction in it can be granted.

6. Heard counsel for the parties and perused the material available on record.

7. Prosecutrix (PW-1) - a minor girl aged about 15 years has stated in her evidence that she knew the accused/appellants as they were of her village. On the date of incident she was all alone in the house as her mother had gone to the jungle whereas her brother to her in-laws" house. She has stated that the accused/appellants came up to her doorstep, asked about her brother and mother and when she told them that her mother had gone to jungle and brother to his in-laws" house, accused Krishna demanded tobacco from her. After this witness told him that tobacco was in the kitchen, accused Krishna went there also and on this when she was to come out of her house, he caught hold of her hand saying as to where she was going. According to this witness, when she tried to free herself from his clutches, both the accused/appellants took her inside her house, threw her on the cot, accused Bharat tore off her frock, removed her underwear and by inserting his private part into that of her committed sexual intercourse with her and at that time accused Krishna was pressing her mouth. In order to free herself from the clutches of accused Krishna who at the relevant time was pressing her mouth, she even bit his hands and then called out her neighbour Ranikumar. On hearing her cries, sister of said Ram Kumar namely Shiv Kumari and his mother reached the spot and on their arrival the accused/appellants fled away. Thereafter, she narrated the incident to Shiv Kumari and her mother and then went to her maternal grandparents" house weeping and narrated the incident to them also. According to her, she also went to the Sarpanch of the village and narrated the incident to him also. At about 4 p.m. when her mother Narmada Bai reached her grand-parents" house, she narrated the incident to her as well. She has further stated that as on that day no bus was available to go to the police station, she went there on the next day at about 7 a.m. and lodged the report. This witness has further stated that the police had seized her frock and underwear under Ex. P-2 and that she was sent for medical examination 4-5 days thereafter. This witness has stated that after lodging the report, the police had brought both the accused/appellants to the police outpost but they were released thereafter and it is after their release her statement was recorded by the police. This witness has further stated that after release of the accused/appellants by the police, she had gone to Kharsia and made a complaint to the superior officer as to why the accused/appellants were released by the police even after the report lodged by her against them and that officer had told her that they were released on bail. According to her, while lodging the FIR, she had disclosed to the police about rape also but if it is not mentioned therein, she cannot tell the reason for that. This witness has denied the fact that she had not informed the police about rape committed by accused Bharat and that her mouth was pressed by accused Krishna Bharosh Ram Satnami (PW-2) - the maternal grandfather of the prosecutrix has stated in his evidence that the prosecutrix had come to his house weeping and informed that one boy had pressed her mouth whereas the other had thrown her down and torn off her clothes. However, no question was put to this witness as to whether

the prosecutrix had told him of her being subjected to rape. Narmada Bai (PW-3) - the mother of the prosecutrix has supported the case of the prosecution stating that when she returned from jungle, the prosecutrix told her that accused/appellant Bharat had molested her whereas accused Krishna pressed her mouth. Chainmati (PW-4) has made almost the same statement as by Bharosh Ram (PW-2). Pramod Kumar Purse (PW-5) is the Patwari who prepared spot map Ex. P-4. Dr. (Smt.) Lalita Rathia (PW-6) is the witness who medically examined the prosecutrix and given her report Ex. P-6. According to this witness, recent rupture of hymen was there, one finger entered the vagina of the prosecutrix and that sexual intercourse was there with her within 3-5 days of the examination. Bhim (PW-7) - brother of the prosecutrix has stated that when he reached home, his mother had informed him about the fact that the prosecutrix was subjected to gang rape by the accused/appellants. Ghasnin (PW-8) has not supported the case of the prosecution and has been declared hostile. Ganga Bai (PW-9) has supported the case of the prosecution stating that when she reached the spot after hearing the cries of the prosecutrix, she saw the appellants running away and then the prosecutrix informed her as to in what manner she was ravished by the accused/appellants. Dr. R. Jitpure (PW-10) is the radiologist who conducted ossification test on the prosecutrix and gave his report Ex. P-8 opining that at the relevant time she was aged in between 15 and 17 years. Manmohan Bairagi (PW-11) is the witness who assisted the investigating officer in the investigation. Krishna Bihari Singh (PW-12) is the witness who recorded FIR Ex. P-1. B.M. Puri (PW-13) is the investigating officer who has duly supported the case of the prosecution.

8. Having thus made an analysis of facts and evidence collected by the prosecution particularly that of the prosecutrix and the doctor who medically examined her, it becomes apparent that she has been molested by accused/appellant Bharat which was facilitated by accused Krishna Kumar by pressing her mouth. It is also clear from the evidence of the prosecutrix that she had informed the police about her being subjected to rape by accused/appellant Bharat but if the same is not mentioned in the FIR the appellants cannot derive any benefit for this omission by the police. Investigating officer (PW-13) has also stated in his evidence that the prosecutrix had disclosed in her statement recorded by him that she was subjected to rape and that he had obtained the clarification also regarding the reported lodged by her. Though there is no documentary evidence in respect of age of the prosecutrix yet from the medical report it can be gathered that she was a tender aged girl. Even as per the radiological examination report, she was aged in between 15 and 17 years. There is no evidence on record to show as to why she has falsely implicated the accused/appellants in the case in hand. Moreover, the record shows that taking advantage of loneliness of the prosecutrix in her house, the accused/appellants gained an entry thereto, enquired about her mother and brother and then accused Bharat subjected her to rape which was facilitated by accused Krishna by pressing her mouth. There is no force in the argument that two places of

incident have been given by the prosecutrix because even if in the FIR something is wrongly mentioned, it can not be given up if the statement of the prosecutrix itself is specific and it has been duly supported by the medical evidence. As minimum sentence in the case of gang rape is imprisonment for ten years, this Court does not see any reason to reduce the sentence to the period already undergone by the accused/appellants. Consequently, the findings recorded by the Court below are just and proper and do not call for any interference in this appeal. Appeal is thus dismissed and the judgment impugned hereby affirmed. The accused/appellants are already in jail and therefore no order regarding their surrender etc. is required.