
(2019) 12 CHH CK 0087
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 61 Of 2009

Dinesh Patel And Anr

APPELLANT

Vs

State Of Chhattisgarh And

RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 323, 376(1)
Code Of Criminal Procedure, 1973 — Section 437A

Citation : (2019) 12 CHH CK 0087

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Utkal Pradhan, Ishwar Jaiswal

Final Decision : Allowed

Judgement

1. The appeal is directed against judgment dated 15.01.2009 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), 1989, Raigarh (CG) in Special Session Trial No.35/2007 wherein the said Court convicted appellant Dinesh for commission of offence under Section 376(1) and 323 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of 1000/- and simple imprisonment for six months respectively with default stipulation. Appellant Govind has been convicted under Section 323 IPC and sentenced to undergo simple imprisonment for six months.

2. In the present case prosecutrix is PW-3. Injured Bhupendra Singh is PW-2. Report was lodged by the prosecutrix at Police Station Chakradharnagar, Raigarh on 01.6.2007 and as per the report she came to the house of her uncle Ramlal at Raigarh with her mother Smt. Rajani on 30.5.2007. She was going to Banjari temple with her maternal uncle Bhupendra Singh on his motor cycle. On the way near village Navapali his motor cycle was stopped itself and he got down for repairing it. Meanwhile at about 3 pm three boys came there and started assaulting Bhupenda Singh and they robbed his mobile phone. Thereafter

appellant Dinesh Patel committed sexual intercourse with her without her consent and against her will. The matter was reported and investigated. Both appellants were charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellants submits as under:

(i) As per the version of the prosecutrix, she has been dragged by appellant Dinesh Patel but no injuries were found on her body which makes the prosecution case doubtful.

(ii) Version of the prosecutrix is not supported by version of Dr. Ratnamani Meshram (PW-15) , therefore, story put forth by the prosecution is not dependable.

(iii) Version of the prosecution witnesses is contradictory in nature, therefore, finding of the trial Court is liable to be set aside.

4. 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 marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. Prosecutrix (PW-3) deposed before the trial Court that she along with her maternal uncle Bhupendra Singh (PW-2) were going to Banjari Temple on a motor cycle . The motor cycle stopped near one TV Tower and at that time three persons reached there, including both the appellants. Both the appellants assaulted her maternal uncle Bhupendra Singh and appellant Govind dragged her maternal uncle to other side and thereafter appellant Dinesh took her to a house made of soil, removed her garments, also removed his garments and thereafter committed sexual intercourse with her. As per the version of this witness, she reported all these matters as per Ex-P/4. Version of this witness is supported by FIR. Version of this witness is again supported by the version of Bhupendra Singh (PW-2) who is the eyewitness account of the incident. Both the witnesses were subjected to searching cross examination but nothing could be elicited in favour of the defence. Their version is again supported by the version of Smt. Rajani (PW-4) and Ramlal (PW-6). Again it is supported by the version of Additional Tahsildar Atul Shete (PW-10), who conducted identification parade in which the prosecutrix identified both the appellants namely Dinesh and Govind as culprits. Version of this witness is unrebutted during cross examination and there is nothing on record to reject the version of this public servant because it is presumed that official act have been performed regularly. Then again it is supported by version of Dr. S. Lakra (PW-11) who examined appellant Dinesh and found him capable to do intercourse. Dr. Anil Kumar Kushwaha (PW-13) examined Bhupendra Singh and noticed following injuries on his body.

(i) 2 ½ cm length stitched wound on occipital area of scalp

(ii) Abrasion of 3 cm x ½ cm on centre of back

Version of this witness is unrebutted during cross- examination.

7. On overall assessment of the evidence, statement of the prosecutrix inspires confidence. In a 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, there is eyewitness account of the incident and other corroborative pieces of evidence. Therefore, there is nothing to say that the appellants have been falsely implicated.

8. 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. It is difficult to appreciate the plight of victim who has been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reasons for little delayed FIR. 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.

9. From the evidence, it is clearly established that appellant Dinesh committed rape on the prosecutrix and also assaulted the prosecutrix and Bhupendra Singh. Act of Dinesh falls under Section 376(1) & 323 of the IPC for which the trial Court convicted him. Looking to the entire evidence, arguments advanced on behalf of the appellant is not sustainable, therefore, conviction of appellant Dinesh Patel for the said offence is hereby affirmed.

10. Heard on the point of sentence.

The trial Court awarded sentence of seven years and fine of Rs.1000/- for the offence under Section 376(I) IPC and awarded sentence of six months for offence under Section 323 IPC for appellant Dinesh. Sentence awarded to the offence of rape is minimum and less than minimum cannot be awarded. Therefore, sentence awarded to appellant Dinesh is not liable to be interfered with and the same is hereby affirmed.

11. So far as appellant Govind is concerned, he has been convicted for the offence under Section 323 IPC. He suffered jail term from 03.6.2007 to 03.7.2007 thereby he has suffered jail term for one month. Considering the facts and circumstances of the case, this Court is of the view that ends of justice

would be served if the sentence awarded to appellant Govind is reduced to the period already undergone by him. Now appellant Govind is sentenced to the period already undergone by him under Section 323 IPC. He is reported to be on bail. His bail bonds shall remain operative for further period of six months from today as per the terms of Section 437A of the Code of Criminal Procedure, 1973.

12. The trial Court shall prepare super-session warrant and issue non-bailable warrant against appellant Dinesh Patel and after his arrest he be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 30.4.2020.