
(2006) 11 CHH CK 0026
In the Chhattisgarh High Court

Gajratan

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 27-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 323, 376

Citation : (2007) CriLJ 718

Hon'ble Judges : L.C. Bhadoo, J;Dhirendra Mishra, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

L.C. Bhadoo, J.—By this appeal, appellant Gajratan has questioned the legality and correctness of the Judgment of conviction and order of sentence dated 3-6-2000 passed in Sessions Trial No. 160/1999 by the learned Additional Sessions Judge, Janjgir, whereby the learned Additional Sessions Judge after holding the accused-appellant guilty for commission of offence punishable under Sections 376(6), 323 and 506(1) of I.P.C. sentenced him to undergo imprisonment for life, R.I. for six months and R.I. for six months respectively. It is also directed that all the sentences to run concurrently.

2. The case of the prosecution in brief is that on 2-4-1999, the prosecutrix lodged report Ex. P-1 in Police Station, Akaltara to the effect that about six months back she along with her parents went to Allahabad for earning livelihood, there they were working in a brick kiln. Her mother was pregnant. Her father committed rape on her 5 to 6 times. She disclosed this fact to her mother but she did not open her mouth on account of fear of beating by the accused. Now 15 days back, they had returned from Allahabad to Bamhnin where also the accused committed rape on her. Day before yesterday father asked her let us go to her maternal-grand-father's village, he will drop her there. On the way at about 3 p.m. when they reached near a mango tree, the accused gave beating and again committed rape on her. Thereafter they went to the house of maternal

grand-father at Pachari. Accused left her there and came back to Bamhnin. He said to her that if she will disclose this fact to anybody then he will kill her. Initially she was not prepared to disclose this fact to her maternal grand-father but ultimately she could not resist herself as her conscience did not permit her, therefore, she disclosed this fact to her maternal grand father and maternal grand-mother. Receiving this report the Station House Officer took up the investigation, sent the prosecutrix for medical examination to Primary Health Centre, Akaltara under Ex. P-2 where Dr. Rama Verma PW-3 conducted medical examination, prepared the report Ex. P-3. The accused was medically examined about his competence to have intercourse in Primary Health Centre under Ex. P-14 by Dr. R.K. Agrawal PW-7 and gave his report PW-13. After completion of investigation, charge-sheet was filed in the Court of Judicial Magistrate First Class, Janjgir, who in turn committed the case to the Sessions Judge, Bilaspur from where learned Additional Sessions Judge, Janjgir received the case on transfer for trial.

3. The prosecution in order to establish the charge against the accused examined 8 witnesses. The statement of the accused was recorded u/s 313 of Cr.P.C. in which he admitted that his wife was pregnant. He also admitted that he along with his family members went to earn livelihood in brick kiln at Poolpur. He also admitted that they were residing at Poolpur but he denied the allegation of the prosecutrix that he used to commit rape on her. He also denied the other incriminating evidence appearing against him in prosecution evidence and said that his daughter and wife are bad character ladies, that is why he used to beat them, therefore, they have implicated him in a false case. The learned Additional Sessions Judge after hearing the counsel for the respective parties convicted and sentenced the accused as mentioned in paragraph 1 of the judgment.

4. We have heard Shri S.L. Bajaj, Advocate on behalf of the appellant and Shri Akhil Mishra, Panel Lawyers on behalf of the State.

5. Shri Bajaj argued that as per the defence of the accused, the prosecutrix, her mother i.e. daughter and wife of the accused were bad character ladies that is why accused used to beat them and, therefore, all the family members had united against the accused. They have implicated the accused in a false case.

6. On the other hand, Shri Mishra supported the judgment of the trial Court.

7. In order to appreciate the arguments, we have perused the evidence of P.W. 1 the prosecutrix who has stated that more than a year back, she along with her father, mother, sisters and brothers went to brick kiln at Poolpur in order to earn livelihood. Her mother was pregnant. They used to reside In a hut. Her father used to beat her mother and children and send them out of the hut. Thereafter five, six times he committed rape on her. When she disclosed this fact to her mother, she replied that her father is in the habit of beating that is why, she was silent. On account of the rape committed on her, she was feeling pain in her vaginal part. When owner of the brick kiln came to know about this fact, he gave

beating to her father and her father ran away from the place to Bahmnin. Thereafter the owner of the brick kiln sent her, her mother and family members to Pachari i.e. her grand-maternal father's place. The accused came there also and he took them to village Bamhnin where the accused again committed rape on her. Her father asked her not to disclose this fact to anyone otherwise he will kill her. On account of fear, she did not disclose this fact to anyone. Thereafter she disclosed this fact to her mother, who in turn informed her grand-father and grandmother but they said that they cannot do anything. Once her father asked her let us go to her maternal grand-father's house. When they were going, on the way under a mango tree, the accused again committed rape on her. This fact was disclosed by her to her maternal grand-father and maternal grand mother. The above evidence of prosecutrix has been corroborated by P.W. 4 Sukrata aged 13 years-sister of prosecutrix and daughter of the accused. Even P.W. 5 Radhinbai, the mother of the prosecutrix has also corroborated the above evidence and even she has stated that the accused was in a habit of consuming liquor. Whatever they were earning, he used to bring liquor of that. Even P.W. 2 Ramayanbal-maternal grandmother of the prosecutrix has also corroborated the above evidence of the prosecutrix. In cross-examination of these witnesses, the defence has not been able to elicit any circumstance which probabalize the defence raised by the accused or makes the evidence of these witnesses unreliable or untrustworthy. Evidence of the prosecutrix has further been corroborated by medical evidence of P.W. 3 Dr. Rama Varma who examined the prosecutrix. She has stated that there was a peeling injury on the body of the prosecutrix in size of 3 c.m. on left elbow, there was swelling on the left knee. She was complaining pain, there was redness and tenderness in her vagina, therefore, the medical evidence also shows that injuries were present on the body of the prosecutrix. There was tenderness and redness in the vaginal track which suggest that the prosecutrix was subjected to intercourse. As per settled law, the evidence of the prosecutrix is sufficient without any corroboration to rest conviction on the testimony of the prosecutrix as evidence of prosecutrix is on par with injured witness. In this case, the evidence of prosecutrix has been corroborated by minor sister, maternal grand-mother, mother and also by medical evidence.

8. It is common knowledge that in the Indian society, the father is the head of the family. He is protector and in the normal circumstances, the Indian females are even not reporting the sexual offence committed on them on account of fear of damage of their reputation. Particularly when a rape is committed by a father on daughter, it makes the situation more difficult for prosecutrix and family members to report the matter to the police. The facts of the present case show that the accused exceeded his limits. He continued to commit rape time and again on the prosecutrix and that too after beating forced her not to lodge report at the police station. Therefore, the argument advanced by Shri Bajaj is not substantiated by any material placed on record.

9. The next argument of Shri Bajaj is that the accused has been sentenced with

extreme penalty of life imprisonment provided u/s 376 of I.P.C. and there was no valid reason for the same. Maximum punishment of 7 years could have, been imposed looking to the facts and circumstances of the case.

10. In order to appreciate the arguments advanced by the counsel for the appellant, we have perused the evidence. It is common knowledge that the sexual offence against women are on Increase and in the present case, the act of the accused is a betrayal of the faith In the humanity. As per the natural course, the accused being a father was a guardian and protector of the girl and his family members. He was under moral duty to protect them in all respect however he himself became rapist of his daughter, then there was nobody to save the chastity of the prosecutrix. In the matter of State of Himachal Pradesh v. Asha Ram reported in 2005 (7) SC 742 : 2006 Cri LJ 139 the Apex Court held that where father committing crime against his daughter was graver and rarest of rare. In that case also, the father committed rape on his daughter and the Court held that the crime committed by the respondent not only delicts the law but it has a deleterious effect on the civilized society. Gravity of the crime has to be necessarily assessed from the nature of the crime. A crime may be grave but the nature of the crime may not be so grave. Similarly, a crime may not be so grave but the nature of the crime may be very grave. Ordinarily, the offence of rape is grave by its nature. More so, when the perpetrator of the crime is the father against his own daughter is graver and the rarest of rare, which warrants a strong deterrent judicial hand. Even in ordinary criminal terminology a rape is a crime more heinous than murder and it destroys the very soul of hapless woman. This is more so when the perpetrator of the grave crime is the father of the victim girl. Father is fortress, refuge and the trustee of his daughter. By betraying the trust and taking undue advantage of trust reposed in him by the daughter, serving food at odd hours at 12.30 a.m. he ravished the chastity of his daughter, jeopardized her future prospect of getting married, enjoying marital and conjugal life, has been totally devastated. The Court increased the imprisonment of five years to life imprisonment. The present case is graver than the facts of that case, for the reason that the accused continued to commit rape after beating the prosecutrix and he was a terror in the family. Even the mother of the prosecutrix and other family members were not ready to open their mouth against the accused as has come in the cross-examination of the mother Radhinbai-the wife of the accused that they used to earn money by doing their labourer's job and the accused used to spend money in consuming liquor and thereafter he used to start his brutal act on his daughter.

11. Therefore, based of the facts of the present case, we are of the considered opinion that it was a fit case to impose life imprisonment on the accused. The accused is not entitled for any leniency whatsoever. The appeal being devoid of merit is liable to be dismissed and it is hereby dismissed.