
(2016) 04 CHH CK 0012
In the Chhattisgarh High Court
Case No : CRA No. 309 of 2001

Jiwan Lal alias Bahadur Dhruw	Vs	APPELLANT
State of Chhattisgarh		RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 376(1)

Citation : (2016) 3 CGLJ 508 : (2016) CriLJ 2809

Hon'ble Judges : Pritinker Diwaker, J.

Bench : Single Bench

Advocate : D.N. Prajapati, Advocate, for the Appellant; Adil Minhaj, PL, for the Respondent

Final Decision : Dismissed

Judgement

Pritinker Diwaker, J.—This appeal is directed against the judgment and order dated 5-2-2001 passed by Additional Sessions Judge Baloda Bazar, District Raipur, in Sessions Trial No. 244/2000 convicting the accused/ appellant under Section 376 (1), IPC and sentencing him to undergo rigorous imprisonment for seven years with fine of Rs. 300/-, plus default stipulation.

2. Case of the prosecution in brief is that on 26-2-2000 at about 7.30 p.m. the FIR was lodged by the prosecutrix (PW-2) alleging that on that day at about 2.30 p.m. when she had gone to the field for answering the call of nature, accused/ appellant suddenly came there, pulled her by hair, threw her down and committed forcible sexual intercourse with her after removing her underwear. He is also alleged to have bitten her lips while committing sexual intercourse and inserted handkerchief in her mouth so that she could not raise her voice. After the act was over, he asked her not disclose the incident to anyone or else he would consume poison in front of her house and leave a note holding her responsible for the same. Thereafter, while getting back home, she spent some time in the thrashing field falling in between and after a while her mother (PW-1) came there to whom she narrated the entire incident and after reaching home

she also informed her father, sister-in-law and two persons of the village namely Roshan Jaiswal and Raghunath Sahu, about it. Based on this report, offence under section 376 (1), IPC was registered against the accused/appellant and she was medically examined by Dr. Vidya Vajpai (PW-10) who gave her report Ex. P-16. After completion of investigation, charge-sheet was filed by the police for the offence punishable under Section 376 (I), IPC followed by framing of charge accordingly.

3. So as to hold the accused/appellant guilty, prosecution has examined 12 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as mentioned above in paragraph No. 1 of this judgment.

5. Counsel for the accused/appellant submits that the prosecutrix was a consenting party to the act of the accused/appellant otherwise she would not have remained with the accused for about one and half hour without raising offering any resistance. According to him, even the medical report Ex. P-16 does not support the case of the prosecution. He submits that the incident had taken place about 16 years back and after such a long period no useful purpose would be served in again sending him to jail having remained outside after grant of bail by this Court.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 376 (1), IPC are strictly in accordance with law and there is no infirmity in the same. He submits that mother of the prosecutrix (PW-1) who came to know about the incident from her daughter (prosecutrix) immediately after reaching the thrashing field, has categorically supported the case of the prosecution. He submits that medical report Ex. P-16 also supports the prosecution case where the doctor (PW-10) has clearly stated that she noticed injuries on the private part and marks of struggle were also present, which could be within the duration of 24-36 hours. According to the State counsel, FSL report Ex. P-22 is also positive which shows presence of sperm on the skirt, slides and underwear of the prosecutrix. According to him, merely being out of jail for sufficient period and incident being 16 years old is not a ground for acquittal of the accused.

7. Heard counsel for the parties and perused the evidence on record.

8. Prosecutrix (PW-2) has stated in her evidence that on the date of incident when she had gone to the field for answering the call of nature, accused/appellant came there and pulled her by hair. On being asked as to why he was doing so, the accused/appellant started abusing her and also slapped her. She has stated that after gagging her mouth by inserting handkerchief he threw her

down, removed her underwear and committed forcible sexual intercourse with her and while committing the offence he had also bitten her lips. After commission of the offence, he threatened her not to disclose the incident to anyone or else he would consume poison in front of her house. Thereafter, she came to her thrashing field and while she was weeping, her mother Punni Bai (PW-1) came there and on being asked by her the reason of weeping, she disclosed her the entire incident. She then accompanied her mother home informed the incident to her father, sister-in-law and two villagers namely Roshan Jaiswal Raghunath Sahu followed by lodgment of report and medical examination by Dr. Vidya Vajpai (PW-10). In cross-examination, she has disclosed her age at the relevant time to be 17 years. She has also denied that there was any affair between her and the accused. Other things stated by her in the examination-in-chief also find place in the cross-examination and nothing extra has been stated by her. Punni Bai (PW-1)-mother of the prosecutrix has also supported the case of the prosecution stating that on the date of incident when she had gone to her thrashing field to collect straw, prosecutrix was seen there weeping and on being asked she disclosed to her about being slapped and subjected to bad work by the accused/appellant. According to this witness, after reaching home with her the prosecutrix informed her father about the incident. In cross-examination also this witness has stated the same thing as in the examination-in-chief. Dr. Vidya Vajpai (PW-10) is the witness who medically examined the prosecutrix and gave her report Ex. P-16 stating that she noticed the marks of struggle - right palm impression on the lumbar region of her back. She also noticed superficial laceration on her upper lip and its duration was 24-36 hours therefrom. This witness is also stated to have noticed abrasions on the neck of the prosecutrix. On internal examination, she found swelling and redness of the private part of the prosecutrix. As per the x-ray done on her advice, the ulna had joined the ossification centre which normally happens at the age of 16-1/2-18 years. Age of the prosecutrix, according to this witness, was around 17 years. Domar (PW-3) - the father of the prosecutrix who is stated to have come to know about the incident after it had happened. Dwarika Prasad Srivas (PW-4) is stated to have proved the FIR Ex. P-1 and seizure of underwear and skirt of the prosecutrix. Dipak Das (PW-5) is the witness to seizure of underwear and slides made under Ex. P-7 and P-8. Lekhrum Dewangan (PW-6) is the Patwari who prepared spot map Ex. P-9. Roshan Jaiswal (PW-7) has not supported the case of the prosecution and has been declared hostile. Punit Ram Kannauje (PW-8) is the head master of a school who has stated that date of birth of the prosecutrix is 24-1-1983 Dr. F.R. Nirala (PW-9) is the witness who medically examined the accused/appellant and gave his report Ex. P-14 stating that he was capable of performing sexual intercourse. Panchram Sahu (PW-11) is the witness who took the prosecutrix for medical examination and also handed over the slides to police people. Viswas Chandrakar (PW-12) is the investigating officer who has duly supported the case of the prosecution.

9. From perusal of the evidence of the prosecutrix it emerges that on the date of

incident the accused/appellant committed forcible sexual intercourse with her when she had been to the field for answering the call of nature. The narration brought out by the prosecutrix in her Court statement that while she had been to the field, accused came there suddenly, pulled her by hair, slapped her and committed forcible sexual intercourse with her after gagging her mouth, perfectly tallies with the FIR lodged by her on the same day. Evidence of the prosecutrix is fully corroborated by the doctor (PW-10) who has stated that marks of struggle were noticed by her on the lumbar region of the prosecutrix and that her upper lip was also having superficial laceration. The medical evidence also goes to show that there was swelling and redness on the private part of the prosecutrix. In addition, the FSL report Ex.P-22 is also positive which shows the presence of semen and sperm on the underwear, skirt and slides of the prosecutrix. Thus there is enough evidence to show the involvement of the accused in the crime in question and the trial Court has committed no illegality in relying upon the same while recording its finding. Conviction of the accused under Section 376(1), IPC is thus maintained.

10. Submission of the counsel for the appellant that having remained on bail for a considerable period, no useful purpose would be served in again sending the appellant to jail, does not appear to have any force because ultimately if his involvement is established and he is held guilty, the bail granted earlier becomes meaningless and he has to serve out the sentence imposed on him.

11. In the result, the appeal being without substance is hereby dismissed. Appellant who is enjoying bail be arrested and sent to jail forthwith to serve out the sentence imposed on him.