

(2010) 01 CHH CK 0009

In the Chhattisgarh High Court

Case No : Criminal Appeal No's. 3091 of 1998 and 05 of 1999

Kashiram and Another and Khubiram

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 114, 376(2)

Citation : (2010) 2 CGLJ 164 : (2010) 2 Crimes 153

Hon'ble Judges : Pritinker Diwaker, J

Bench : Division Bench

Judgement

Pritinker Diwaker, J.—As both the aforementioned appeals are arising out of the same judgment dated 17.12.98 passed in Sessions Trial No. 166/1998, they are being disposed of by this common judgment.

2. The present appeals are directed against the impugned judgment dated 17.12.98 passed by the Additional Sessions Judge, Bemetara in Sessions Trial No. 166/98 convicting the appellant/accused-Khubiram alias Ramesh in (Cr.A. No. 3091/1998) for the offences punishable under Sections 376(2)(g)/114 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 2 years and to pay fine of Rs. 500, in default of payment of fine to further undergo rigorous imprisonment for two months whereas appellants Kashiram and Lalxminarayan alias Bodda in (Cr.A. No. 5/99) for the offences punishable under Sections 376(2)(g) of the Indian Penal Code and sentencing each of them to undergo rigorous imprisonment for 10 years and pay fine of Rs. 500, in default of payment of fine to further undergo rigorous imprisonment for two months.

3. Brief facts of the case are that on 27.2.1998 FIR (Ex.P-2) was lodged by the prosecutrix (PW-2) aged about 12 years alleging that on 26.1.1998 at about 2.00 p.m. her mother Sushila Bai (PW-3) had asked her to go to the field to take care of the crop standing thereon. Thereafter, she went to the house of the accused Lakshmi Narayan to watch T.V. where the other accused persons namely Kashi

Ram and Khubi Ram were also present. After watching TV for some time, she along with her friend Bina (PW-4) went to the field where at about 4.00 p.m. all the accused persons had also come. Accused Lakshmi Narayan had called her and when she did not go to him, he caught hold of her hand, dragged her to a nearby pit where accused Kashi Ram was already standing. Meanwhile, accused Lakshmi Narayan leaving her there went to some distance. Accused Kashi Ram after holding both of her hands asked her to have sexual intercourse with him and when she refused for that, he had thrown her on the ground and after removing her underwear as also that of his own inserted his penis in to her private part and thus committed sexual intercourse with her. Thereafter, accused Lakshmi Narayan who was already standing nearby also came there and committed rape on her. She has stated that when Lakshmi Narayan was committing the offence Khubhi Ram started shouting saying that mother of the prosecutrix was coming and on hearing this, they left the place and went towards the dam. Thereafter, she disclosed the incident to her friend Bina who was in some other field. She has also stated that on account of her being dragged by accused Laxmi Narayan she had sustained abrasions on her wrist and nose. Then she came to her house along with her mother and informed her father about the incident who thereafter went to the Kotwar and disclosed the matter to him. However, due to onset of night, the report could not be lodged on the same day which ultimately was lodged on 27.1.1998. She has also stated that had her mother not reached the spot, accused Khubiram would have also committed the offence. Thereafter, the prosecutrix was sent for medical examination to Government Hospital, Durg, vide Ex. P-11 where she was examined by Dr. (Smt.) Sugam Sawant (PW-9). After completion of investigation charge sheet was laid against all the accused/appellants.

4. In support of its case, the prosecution has examined as many as ten witnesses. Statements of the accused/appellants were also recorded u/s 313 of the Code of Criminal Procedure in which they denied the charges leveled against them and pleaded their innocence and false implication in the case.

5. After hearing counsel for the parties, the Court below has convicted and sentenced the accused/appellants as described above.

6. Counsel for the accused/appellants submits that the entire case of the prosecution is so improbable that it cannot be believed for convicting the accused/appellants for the offence u/s 376(2)(g) of the Indian Penal Code as according to him, a very unnatural story has been designed by the prosecution where a girl aged about 12 years has been subjected to rape by the accused/appellants but she has not suffered any injury in particular on her private part. He further submits that in absence of any positive medical report, the appellants cannot be held guilty for the offence alleged against them. He submits that even the FSL report of the prosecutrix (Ex.P-21) does not support the case of the prosecution as no semen was found on the undergarment of the prosecutrix or those of the accused persons. He submits that the statement of the prosecutrix

has not been supported by her friend Bina (PW-4) who is said to have accompanied her to the filed. According to him, father of the prosecutrix namely Ageshwar (PW-1) and her mother Sushilabai (PW-3) have falsely implicated the accused/appellants due to some dispute between them. He submits that when the statement of the prosecutrix alone is there, it should not be accepted as a gospel truth until and unless it inspires confidence of the Court in order to base the conviction of the accused thereon.

7. On the other hand supporting the impugned judgment it has been argued by the counsel for the State that the manner in which a minor girl of 12 years has been ravished itself is sufficient to convict the accused persons. He further submits that had it been a case of false implication, the prosecutrix would have also implicated accused/appellant Khubiram for the commission of the offence of rape and would have made the similar allegation as has been made against the two accused persons.

8. Heard counsel for the parties and perused the material available on record including the judgment under challenge.

9. It is not in dispute that at the relevant time the prosecutrix (PW-2) was minor aged about 12 years. The prosecutrix has stated in her evidence that on 26.1.1998 she along with her friend namely Bina (PW-4) had gone to the field to take care of the crop standing thereon. At about 3 p.m. all the accused/appellants came there, accused/appellant Laxmi Narayan caught hold of her hand and took her to a nearby pit. Accused/appellant Kashi was hiding himself amidst the standing crop whereas accused/appellant Khubiram was keeping a watch on the passers by on street. Accused/appellant Laxmi Narayan made her fall on the ground, removed her underwear as also the Lungi and underwear worn by him and inserted his penis into her private part as a result of which her private part started bleeding. Thereafter, accused/appellant Kashi also came there and committed sexual intercourse with her. Thereafter, she cleansed the blood and seminal discharge of the accused/appellants. The accused/appellants had made her friend Bina (PW-4) to sit on a bund by putting her under threat to finish her if she disclosed the matter to anyone. When accused/appellant Laxmi Narayan made her fall on the ground, Babul thorn got pricked near her nose and eye and due to fall she had sustained injury on her back. When her friend Bina shouted, the accused/appellants, seeing her mother proceeding towards the spot, ran away. Accused/appellant Khubiram also shouted saying that mother of the prosecutrix was coming. Thereafter, she went to her friend Bina and narrated the entire incident to her. Then her mother Sushila Bai (PW-3) took her home and informed about the incident to her father Ageshwar (PW-1) who subsequently went to one Gauntia Sadhu of the same village and disclosed the incident to him. Thereafter, on the next day i.e. on 27.1.1998 the matter was reported to the police. In her cross examination the prosecutrix has admitted that the approach road is adjacent to her field and if someone shouts there from, the passers by on the road can hear the same. In the cross examination, she has

further stated that accused/appellant Laxmi Narayan had dragged her up to 200 ft. by tying her hand with his Lungi as a result of which she had sustained injuries on both her legs. The prosecutrix has also stated that on account of her bangles being broken, she had sustained injuries on her hands. According to her she had sustained injuries on 10-15 places of her body which she had shown to the police people and also to the doctor who examined her but she was not admitted in the hospital.

10. Mother of the prosecutrix namely Sushila Bai (PW-3) has stated in her evidence that when at about 4-5 p.m. she went to her field, friend of the prosecutrix namely Bina (PW-4) had informed her that accused/appellant Laxmi Narayan had dragged the prosecutrix to a nearby pit and committed sexual intercourse with her and thereafter accused/appellant Kashi also did the same act. According to this witness, when accused/appellant Khubiram who was standing near the road shouted saying "Mama Aa Raha Tha" all the accused/appellants ran away. She has stated that she had seen the accused/appellants running away. Thereafter, this witness has stated that she herself had seen accused/appellant Kashi mounting on the prosecutrix. In her cross examination, this witness has stated that as she had not counted the injuries sustained by the prosecutrix, she cannot tell that her daughter had sustained injuries on 10-15 places of her body. First, this witness has stated that she herself had seen the entire incident but subsequently she has stated that she had seen the accused/appellants running away. Thereafter, this witness has stated that first of all she had seen accused/appellant Kashi mounting on the prosecutrix and thereafter who mounted, she did not know. This witness has stated that there was swelling on the private part of the prosecutrix and as she was not feeling well, could not tell as to for how many days her daughter remained hospitalized but thereafter she came to know that the prosecutrix was hospitalized for two days, one day at Berla and one day at Durg.

11. Father of the prosecutrix namely Agheshwar (PW- 1) has stated in his evidence that when at about 6 p.m. his wife along with the prosecutrix and her friend Bina came back from the field, they informed him that accused/appellant Laxmi Narayan and Kashi had committed sexual intercourse with the prosecutrix but accused/appellant Khubiram who was present on the road, did not commit the offence. Friend of the prosecutrix namely Bina (PW-4) has not supported the case of the prosecution and has been declared hostile. Vishram Patel (PW-5) and Dr. G.S. Thakur (PW-7) are the witnesses in respect of the age of the prosecutrix and according to them on the date of incident the prosecutrix was minor. Dr. (Smt.) Sugam Sawant (PW-9) who examined the prosecutrix has stated in her evidence that only one abrasion was there on her left wrist which could be self inflicted and could be caused by coming into contact with rough surface, her hymen easily entered two fingers and no bleeding was there on her private part. According to this witness, no definite opinion regarding recent intercourse could be given.

12. Now, if a comparative study of the evidence of the witnesses, FIR and the statement recorded u/s 161 of the Code of Criminal Procedure is made, a lot of contradictions come to the fore. In the FIR the prosecutrix has stated that at about 2 p.m. she had gone to watch TV in the house of accused/appellant Laxmi Narayan where other accused persons were also present. After watching TV for half an hour, she along with her friend Bina went to the field where at about 4 p.m. accused/appellants also came. Accused/appellant Laxmi Narayan called her saying that he would give some information to her and when she did not go, he caught hold of her hands, dragged her to a nearby pit where accused/appellant Kashiram was already standing and then he went to some distance. Thereafter, accused/appellant Kashiram asked her to have sex with him and when she refused for that, he threw her on the ground, removed her undergarment and that of his own and committed sexual intercourse with her. Thereafter, accused/appellant Laxmi Narayan also came there and committed sexual intercourse with her. Meanwhile, when accused/appellant Khubiram shouted saying that mother of the prosecutrix was coming, the accused/ appellants ran away. However, in her evidence this witness has stated that first accused/appellant Laxmi Narayan committed sexual intercourse with her and thereafter accused/appellant Kashi who was hiding himself in the field also came there and committed sexual intercourse with her. Thus there is contradiction in the FIR and the evidence of the prosecutrix as to the persons who first committed the offence.

13. If the evidence of the prosecutrix is compared with that of her mother Sushila Bai (PW-3), number of contradictions are noticeable in the same. The prosecutrix has stated that when Bina (PW-4) shouted saying that her mother was coming, the accused/appellants ran away. However, her mother Sushila Bai (PW-3) has stated in her evidence that when accused/appellant Khubiram shouted saying that mother of the prosecutrix was coming, the accused/appellants ran away. Thereafter, this witness has stated that she herself had seen the incident while accused/appellant Kashi was lying over the prosecutrix. Secondly, the prosecutrix herself has stated that she was not required to be admitted in the hospital for treatment but according to the evidence of her mother namely Sushila Bai (PW- 3), her daughter was admitted in the hospital for two days, one day at Berla and one day at Durg. The prosecutrix has stated in her evidence that as a result of dragging, she had sustained injuries at 10- 15 places but the doctor who examined her has found only one injury on her left wrist. Even the mother of the prosecutrix Sushila Bai (PW-3) has not stated as to how many injuries were caused to the prosecutrix. Even the friend of the prosecutrix namely Bina (PW-4) who is said to have accompanied her to the field has not supported the case of the prosecution and has been declared hostile. Dr. (Smt.) Sugam Sawant (PW-9) who medically examined the prosecutrix has stated in her evidence that only one abrasion was there on her left wrist, no bleeding was there, two fingers easily entered her vagina and no definite opinion regarding the recent sexual intercourse could be given.

14. Even if the evidence of the prosecutrix and the FIR lodged by her are

considered as a whole, the same being full of contradictions does not inspire confidence of the Court. The entire case of the prosecution where the prosecutrix aged about 12 years at the relevant time is said to have been raped by two persons and not even a single injury was found on her private part, gets falsified. The contradictions and discrepancies in the evidence of the prosecutrix as well as that of her mother and father having remained uncorroborated by the doctor who examined the prosecutrix, make it highly improbable that such an incident has ever taken place.

15. In view of the aforesaid analysis of the facts duly weighed with the evidence available on record, this Court is of the considered opinion that the Court below has recorded the findings of conviction by the impugned judgment by adopting a mechanical methodology which cannot be permitted to stand. Accordingly, the appeals are allowed. Impugned judgment dated 17.12.1998 convicting and sentencing the accused/appellants as mentioned above is hereby set aside. Appellants are acquitted of the charges levelled against them. The appellants are reported to be on bail. Their bail bonds stand discharged.