
(2011) 08 CHH CK 0051
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 554 of 2007

Krishna Kodaku

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

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

Citation : (2011) 4 CGLJ 345

Hon'ble Judges : T.P. Sharma, J;Rangnath Chandrakar, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Hon"ble Shri T.P. Sharma, J.—Challenge in this appeal is to the judgment of conviction & order of sentence dated 9.5.2007 passed by the Second Additional Sessions Judge (FTC), Ramanujganj in Sessions Trial No. 386/06, whereby & where under learned Second Additional Sessions Judge after holding the appellant guilty for commission of rape with minor girl below the age of 12 years convicted him u/s 376(2)(f) of the I.P.C. and sentenced to undergo imprisonment for life and to pay fine of Rs. 2000/-, in default of payment of fine to further undergo R.I. for one year.

2. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, the present appellant., maternal uncle (brother of elder sister-in-law of mother of the prosecutrix i.e. brother of devrani) of the victim (PW-6) (name not mentioned) was residing in the house of the prosecutrix along with father & mother of the victim. On 30.5.2006 the prosecutrix aged about seven years was alone in her house, her mother & father were not present in the house, the appellant was present in his house, he took the prosecutrix on account of allurement of providing sweets and after removal her undergarment

inserted his penis in vagina of the victim and committed forcefully rape with her, she received serious injuries on her private part. Her private part was badly injured. Her parents had gone to forest for collecting tendu leave. When her mother came back to her house at about 12 at noon, then the victim narrated the incident, her mother saw that blood was coming out from her private part. After commission of rape the appellant fled from the spot. After sometime the victim become unconscious. Her mother Sushila (PW-7) narrated the incident to Nirdosh Kumar (PW-1) who arranged tractor and took the prosecutrix along with parents and other relatives to Government Hospital, Pratappur. Government Hospital, Pratappur referred her to District Hospital, Ambikapur on account of excessive bleeding. Nirdosh Kumar (PW-1) lodged F.I.R. vide Ex.P/1. Spot map was prepared by investigating officer vide Ex.P/5. One frock of the victim was seized from her mother Sushila (PW-7) vide Ex.P/7.

4. The prosecutrix was examined by Dr. Padmini Singh (PW-8) vide Ex.P/8 and found that her age was seven years, 5-5 teethes were found in upper jaw, 6-6 teethes were found in lower jaw and one teeth was broken. She was examined under anesthesia in operation theatre. Multiple abrasions were found over both elbow, joint multiple abrasions over both knee and abrasion over left side of the body. Her secondary sexual characters were not developed, dried blood was found in vagina and anus, hymen was ruptured at 1, 4 and 6 O'clock, perineum and hymen were congested, vagina admits one finger easily and vagina torned up to lateral wall of 2". Two slides of vaginal smear were taken. Injuries were caused by hard object, may be by penis. Patwari prepared spot map vide Ex.P/9. On the basis of F.I.R. Ex.P/1, Police Station Chalgali has registered the F.I.R. vide Ex.P/11. The accused was arrested and sent for medical examination vide Ex.P/13, he was examined by Dr. Janeshwar Singh (PW-11) vide Ex.P/12 and found capable for committing sexual intercourse, Slide was seized vide Ex.P/2. Undergarment stained with sperm of the accused was seized vide Ex.P/4.

5. Statements of the witnesses were recorded u/s 161 of the Cr.P.C. and after completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Ramanujganj, who in turn, committed the case to the Court of Sessions, Ambikapur (Surguja), from where the Second Additional Sessions Judge (F.T.C.), Ramanujganj received the case on transfer for trial.

6. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as twelve witnesses. Statement of the accused/appellant was recorded u/s 313 of the Cr.P.C., in which he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.

7. After providing opportunity of hearing to the parties, teamed Second Additional Sessions Judge convicted & sentenced the appellant as aforementioned.

8. We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

9. Learned counsel for the appellant vehemently argued that conviction is substantially based on the evidence of the prosecutrix (PW-6), aged about seven years whose evidence is contradictory. In para 6 of her evidence she has specifically deposed that her maternal uncle i.e. the present appellant has not committed the offence. This evidence is sufficient for proving innocence of the appellant, but without considering the aforesaid evidence the trial Court has convicted and sentenced the appellant as aforementioned. Learned counsel further argued that the appellant was aged about 19 years at the time of commission of offence. While convicting and sentencing the appellant the trial Court has not considered the age of the appellant and imposed excessive sentence which requires reconsideration.

10. On the other hand, learned State counsel supported the judgment impugned and argued that the appellant has committed rape with his niece (bhanji) aged about seven years. Evidence of the prosecutrix is sufficient for drawing inference that the appellant has committed the aforesaid offence and the trial Court has rightly convicted and sentenced the appellant as aforementioned.

11. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution.

12. In the present case, brutal act of rape committed upon the prosecutrix has not been substantially disputed on behalf of the appellant, even otherwise it is established by the evidence of Dr. Padmini Singh (PW-8) and medical examination report of the prosecutrix Ex.P/8 which reveals that rape has been committed upon the prosecutrix aged about seven years. Her hymen and vagina torned up to 2" which shows the brutal act of rape upon the prosecutrix.

13. As regards the complicity of the appellant in crime in question, conviction is substantially based on the evidence of the prosecutrix (PW-6), whose age was established by the Court as seven years. Dr. Padmini Singh (PW-8) has also assessed her age as seven years. After satisfying it that seven years aged child is able to understand the duty to speak the truth and able to answer the questions put to her rationally. By asking the questions the Court has examined her. The prosecutrix has deposed in her evidence that her maternal uncle was present in her house while she was alone, her father and mother had gone for collection of tendu leave, he was residing for 4-5 days in her house, he dragged her to room where they used to keep sticks and told her that he will provide sweets and after removal her clothes the appellant inserted his male organ in her private part and committed the offence. Blood came out from her private part, she shouted on account of pain, then the appellant fled from the spot and after sometime she become unconscious. After 4-5 hours he was regained into conscious, then she narrated the incident to her mother. She was examined by the doctor. In her detailed cross-examination she has admitted in para 5 that at the time of chaining cows she fell down and received injuries, but she has explained that she fell down after commission of aforesaid offence by the accused. In para 6 she has admitted that her maternal uncle has not committed the offence (

). When the same was explained by the Court, then she kept quiet and was watching floor instead of giving any answer. Her evidence is corroborated by the evidence of her mother Sushila (PW-7) whom she narrated the incident. Her father Ramratan (PW-4) has not substantially/ corroborated the evidence of her daughter. In para 8 he has admitted that they have entered into compromise and the accused has promised that he will not repeat the mistake in future. This shows that on account of compromise he is not telling the truth, even otherwise his evidence is heresay evidence.

14. Evidence of the prosecutrix (PW-6) clearly reveals that the present appellant has committed aforesaid offence and same is corroborated by the evidence of Sushila (PW-7), medical evidence of Dr. Padmini Singh (PW-8). These evidence are sufficient for drawing inference that the present appellant has committed rape with minor girl below the age of 12 years.

15. After appreciating the evidence available on record, the trial Court has convicted the appellant u/s 376(2)(f) of the I.P.C.

16. As regards the question of sentence, age of the appellant at the time of commission of offence was 19 years. Considering the age of the appellant as 19 years the sentence requires reconsideration.

17. For the forgoing reasons, the appeal is partly allowed. Conviction of the appellant u/s 376(2)(f) of the I.P.C. is hereby maintained, however, considering the age of the appellant, he is hereby sentenced to undergo R.I. for 10 years and fine of Rs. 10,000/-, in default of payment of fine to further undergo R.I. for three years instead of imprisonment for life and fine of Rs. 2,000/-. Fine awarded shall be paid to the prosecutrix as compensation.