

(2019) 12 CHH CK 0017

In the Chhattisgarh High Court

Case No : Criminal Appeal No. 1743, 2657 Of 1999

Munna Soni And Ors

APPELLANT

Vs

State Of Madhya Pradesh And Ors

RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2)
Indian Penal Code, 1860 — Section 376(2)(g)

Citation : (2019) 12 CHH CK 0017

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Smita Jha, Rahul Kumar, Ishwar Jaiswal

Final Decision : Dismissed

Judgement

1. Since both the appeals arise out of same judgment/ sessions trial, they are heard analogously and are being disposed of by this common judgment.

2. These appeals are preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 24.06.1999 passed by Special Judge (Atrocities), Bilaspur (M.P.) (Now C.G.) in Special Criminal Case No. 11/1998, wherein the said court convicted both the appellants for commission of offence under Section 376 (2)(g) of IPC, 1860 and sentenced to undergo R.I. for 10 years and fine of Rs. 500/- each with further default stipulations.

3. In the present case, date of incident is 10.01.1998 at 3:00 a.m. and report was lodged as per Ex. P/4 on the same day i.e. on 10.01.1998 at 5:50 a.m. Both the appellants have been named in the report as culprit and their act of gang rape is also mentioned in the said report. As per version of the prosecution, the prosecutrix (PW-1) went in Ram Navmi fair at Village- Khamariya and when she was going to ease herself at about 3:00 a.m., the appellants caught hold her and taken her to field and committed sexual intercourse one by one against her will and without her consent. On cries of the prosecutrix, the police personnels who

were engaged in duty in the said fair, caught both the appellants. The matter was reported, appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

4. Learned counsel for the appellants submits as under:-

(i) The prosecutrix (PW-1) deposed (Para 2) that the incident took place at 5:00 a.m. but as per the FIR (Ex. P/4), the incident took place at 3:00 a.m. As per statement of Anjani Kumar Kashyap (PW-4), the incident took place at 1:00 a.m. Looking to the contradictory statement, the case of the prosecution is doubtful.

(ii) There is a lot of contradiction in statement of the prosecutrix (PW-1), Anjani Kumar (PW-4) and other witnesses.

(iii) Identification of the appellants is not performed in the present case and evidence of the prosecutrix is not satisfactory on the point of identification.

(iv) Medical evidence is not supporting version of the prosecutrix. No injury was found on body of the prosecutrix which shows that the case of the prosecution is not established, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the records.

6. The prosecutrix (PW-1) deposed before the trial court that she had gone to fair and when she had gone to ease herself at about 5:00 a.m. where both the appellants made her lie down in the ground and removed her garment and also their garment and thereafter, committed sexual intercourse with her one by one. As per version of the prosecutrix (PW-1), when appellant- Munna was committing intercourse, the other appellant- Dhaniram caught her and when appellant- Dhaniram was committing intercourse, appellant- Munna caught her. On her cries, the police personnels came there to whom she informed about the incident. At that time, both the appellants were flee away. They were caught by the police personnels. Version of this witness is supported by version of Home Guard-Anjani Kumar Kashyap (PW-4) and Shyamlal Pradhan (PW-5). From their evidence, it is clear that both the appellants were caught on the spot and they were taken to police out-post where report was lodged. All these three witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

7. Further, version of these witnesses is corroborated by version of Dr. A.K. Dixit (PW-2) who examined both the appellants on 11.06.1998 at District Hospital, Bilaspur and found them capable of intercourse. It is further supported by version of Dr. Neelima Sharma (PW-7) who examined the prosecutrix and prepared a slide and the same was sent for medical examination in which

presence of spermatozoa was found positive.

8. It is not a case where identification of the appellants was necessary. Both the appellants were caught on the spot and taken to police out- post where FIR was lodged. The medical evidence is supporting version of the prosecutrix and other witnesses. There is no material contradiction in statement of material witnesses of the incident. Minor contradictions which do not go to root of the case are insignificant and case of the prosecution cannot be thrown out on the basis of insignificant contradiction. The evidence against both the appellants is clinching in nature.

9. The statement of the prosecutrix is quite natural and inspires confidence and when her evidence is inspiring confidence, no corroboration is required. In the present case, both the home guards supported version of the prosecutrix who caught both the appellants on the spot. There is no delay in lodging the report and report was lodged instantly because both the appellants were taken to police out post just after the incident.

10. 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. The matter was reported to the police personnels instantly just after the incident, therefore, there is no reason to say that both the appellants have been falsely implicated. There is no reason to disbelieve the evidence of the prosecutrix and other witnesses of the spot. In view of the above, argument advanced on behalf of the appellants is not sustainable.

11. The trial court elaborately discussed the entire evidence and recorded finding of conviction and after reassessing the same, this Court has no reason to record contrary finding. The act of both the appellants falls within mischief of Section 376 (2)(g) of IPC, 1860 for which the trial court convicted both the appellants and the same is hereby affirmed.

Heard on the point of sentence.

12. The trial court awarded R.I. for 10 years for commission of offence under Section 376 (2)(g) of IPC, which is minimum sentence and less than minimum cannot be awarded. The whole sentence part is also not liable to be interfered with. Accordingly, both the appeals are liable to be and are hereby dismissed.

13. The appellants are reported to be on bail, their bail bonds are cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against both the appellants and after their arrest, they be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 30th April, 2020.