

(2016) 04 CHH CK 0022
In the Chhattisgarh High Court
Case No : CRA No. 114 of 1999

Ramratan alias Ramu

APPELLANT

Vs

State of Madhya Pradesh (Now Chhattisgarh)

RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

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

Citation : (2016) 3 CGLJ 513 : (2016) 3 CriCC 794 : (2016) CriLJ 2790

Hon'ble Judges : Pritinker Diwaker, J.

Bench : Single Bench

Advocate : Janak Ram Verma, Advocate, for the Appellant; Ashish Surana, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Pritinker Diwaker, J.—This appeal arises out of the judgment of conviction and order of sentence dated 5-1-1999 passed by the First Additional Sessions Judge, Baloda Bazar, Distt. Raipur in S.T. No. 393/97 convicting the accused/appellant under Section 376(1) of IPC and sentencing him to undergo RI for 7 years and pay a fine of Rs. 5000/- with default stipulation.

2. Brief facts of the case are that on 8-7-1997 FIR (Ex.P/4) was lodged by the prosecutrix (PW-4) alleging in it that three months prior to the incident she was first subjected to rape by the accused/appellant which continued till 22-6-1997. She has alleged that she was subjected to sexual intercourse by the appellant without her consent and that after committing intercourse, he assured her for marriage. Based on the FIR, offence under Section 376 of IPC was registered against the appellant. The prosecutrix was medically examined on 8-7-1997 vide Ex.P/2 by Dr. Smt. Rajshree Devdhar (PW-3), who found that she was a fully developed girl, her hymen was not present and no definite opinion could be given about rape. After investigation charge-sheet was filed against the appellant under Section 376 of IPC and thereafter, the trial Court framed charge under Section 376(1) of IPC against him.

3. So as to hold the accused/appellant guilty, the prosecution examined as many as 9 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr. P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In defence, he examined one Gajju Sen.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

5. Learned counsel for the appellant submits as under:

- that there is no legally admissible evidence in respect of age of the prosecutrix.
- that there is inordinate delay of more than 3 months in lodging the FIR and the said delay has not been explained by the prosecutrix as per requirement of law.
- that as per evidence of PW-3 Dr. Smt. Rajshree Devdhar, the prosecutrix was a fully developed girl.
- that considering the overall evidence on record, it is clear that if there was any sexual intercourse between the appellant and the prosecutrix, she was a consenting party to that act and as such, the appellant cannot be held guilty under Section 376 of IPC.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is not illegality or infirmity in the judgment impugned warranting interference by this Court.

7. Heard counsel for the respective parties and perused the material on record.

8. PW-4 prosecutrix has stated that on the date of incident when she had gone to attend the nature's call, the accused/appellant reached there, asked her for sexual favour and after threatening her of life, removed his clothes and then her underwear and thereafter, committed sexual intercourse with her. She has stated that the appellant committed rape with her 4-5 times under threat whenever she would go to attend the call of nature. On 22-6-1997 he took her near the village pond and there committed sexual intercourse with her, however, it was seen by Chinta (PW-6) who enquired from her and then informed about the incident to her father. Thereafter, a village meeting was convened where the appellant admitted his guilt and assured for marrying her. As later on he refused to marry her, the report was lodged. She has stated that she cannot tell her date of birth. In cross-examination, she states that the accused/appellant was residing just 200 yards from her house and that she was subjected to sexual intercourse by him on different dates.

9. PW-6 Chintaram has turned hostile and not supported the prosecution case. PW-3 Dr. Smt. Rajshree Devdhar conducted MLC of the prosecutrix vide E.P/2 wherein she has mentioned that there was no external or internal injury on her

body, no opinion could be given regarding rape and that she was a fully developed girl. PW-1 Phooldas, village Kotwar, has proved document Ex.P/1 in which date of birth of the prosecutrix has been recorded as 18-7-1983. He, however, has stated that he is an illiterate person and the said entry was made with the help of Panch Mohan. He has admitted that the entry was not made before him and therefore, he is not aware as to on what basis, the said entry of her date of birth was recorded by Mohan PW-2 Parasram, panch witness has showed his ignorance about any such incident or village meeting in connection therewith. PW-5 Mayaram, father of the prosecutrix, has stated that he was informed by teacher Chintaram that he saw the accused/appellant and the prosecutrix in an objectionable position. He states that date of birth of the prosecutrix is 19-7-1983 but failed to state as to on what basis, the same was recorded. PW-7 Narad, brother of the prosecutrix, has stated that he arranged the village panchayat, and made statement as has been made by his father (PW-5). PW-8 RK Lalwani, investigating officer, has supported the prosecution case. He has admitted that though the doctor had advised for X-ray-examination of the prosecutrix for ascertaining her age, but he did not do so since the Kotwari register was already seized wherein her date of birth was mentioned.

10. DW-1 Rajju Sen has stated that in the village panchayat, on being enquired from the prosecutrix she had told that she was having relation with the appellant since long. However, in cross-examination he had denied holding of any such panchayat meeting.

11. In the instant case, the appellant has been convicted under Section 376(1) of IPC holding the prosecutrix minor. However, from the record, it appears that there is no conclusive proof or legally admissible evidence in relation to her age which could suggest that on the date of incident she was minor. Though PW-1 Phooldas, village Kotwar, has proved document Ex.P/1 (Kotwar Register) in which her date of birth was recorded as 18-7-1983, but according to this witness the said entry was made by Panch Mohan and he further stated that he is not aware as to on what basis, the said entry was made by Mohan, and that the said Mohan has also not been examined by the prosecution. PW-8 RK Lalwani, investigating officer, has admitted that despite being advised by the doctor for X-ray examination of the prosecutrix for ascertaining her age, he did not do so.

It is a settled legal position that the date of birth mentioned in the school register or any such document has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. Merely proof of such documents would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. In these circumstances, the date of birth as mentioned in the document Ex.P/1 in the present case has no probative value and the same cannot be accepted. Rather the medical evidence does not rule out the possibility of the prosecutrix being a major as according to PW-3 Dr. Smt. Rajshree Devdhar who conducted MLC of the prosecutrix vide E.P/2 she was a fully developed girl. Thus,, considering the overall evidence, oral and medical,

available on record, this court is of the view that based on the evidence adduced by the prosecution it has utterly failed to prove that on the date of incident the prosecutrix was a minor.

12. Now the next question for consideration is whether the sexual intercourse between the appellant and the prosecutrix was consensual or against her wishes and without her consent?

13. Admittedly, the report was lodged after inordinate delay of more than three months from the date when the prosecutrix was first allegedly ravished by the appellant, and the explanation offered for such delay is that the appellant had assured her of performing marriage with her.

14. According to the prosecutrix, about three months prior to the date of incident while she was returning home after attending the call of nature in the evening, the accused/appellant caught hold of her and despite her all possible resistance, he threw her on the ground and then committed forcible sexual intercourse with her. She was stated that thereafter he told her not to disclose the incident to anyone and assured her of marrying. She has stated that thereafter, he continued to have sexual intercourse with her on 5-6 occasions and on the date of incident i.e. 22-6-1997 also he committed sexual intercourse with her, which was seen by PW-6 Chinta and thereafter, a village meeting was convened where the appellant admitted his guilt and assured for marrying her. She has admitted that as subsequently the appellant refused to marry her, a report was lodged against him.

15. In her Court statement, the prosecutrix has stated that on the date of incident while she was sitting for urination, the appellant took her from there forcibly by dragging across the pond whereas according to PW-3 Dr. Smt. Rajshree Devdhar who medically examined the prosecutrix she found no external or internal injury on her body and stated that no opinion could be given regarding rape. In para -17 the prosecutrix has admitted that on seeing PW-6 Chinta, both of them (appellant and the prosecutrix) had tried to hide themselves, even then PW-6 saw them. .She has also admitted in para-18 that she had never disclosed the earlier incidents of sexual intercourse with the appellant to anyone. PW-5 Mayaram, father of the prosecutrix, has stated that he was informed by teacher Chintaram that he saw the accused/appellant and the prosecutrix in an objectionable position.

16. True it is that ordinarily the evidence of the prosecutrix should not be suspected and should be believed, moreso as her statement has to be evaluated on a par with that of an injured witness and if her evidence is reliable, no corroboration is necessary. While rape causes the greatest distress and humiliation to the victim, a false allegation of rape causes equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication. Indisputably, in a case of rape, the evidence of the prosecutrix must be given predominant consideration,

but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.

17. Thus, keeping in mind the aforesaid principles of law, on close scrutiny of the entire evidence, particular of the prosecutrix, it emerges that there had been physical relations between the appellant and the prosecutrix on number of occasions. At no point of time, she disclosed about those acts to anyone and it is only when she was seen in objectionable position with the appellant by PW-6 Chinta, a village panchayat was convened where the appellant is said to have assured the prosecutrix of performing marriage with her and subsequently on his refusal to marry her, a report was lodged against him. Medical evidence also belies the version of the prosecution. In these circumstances, it cannot be said that sexual intercourse between them was per force or against her will or without her consent, rather it appears to be a peaceful affair with the consent of the prosecutrix. This being the position, the appellant can, by no stretch of imagination, be held guilty of the offence under Section 376(1) of IPC, as has been held by the trial Court, and he deserves to be acquitted of the said charge by extending him benefit of doubt.

18. In the result, the appeal is allowed. The impugned judgment is set aside and the appellant is acquitted of the charge under Section 376(1) of IPC by giving him benefit of doubt. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.