

(2012) 02 CHH CK 0054

In the Chhattisgarh High Court

Case No : Criminal Appeal No. 2164 of 1999 and Criminal Appeal No. 2488 of 1999

Shankar Sindhi Rajju alias Bihari

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 324, 376(2)(g), 450
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(12), 3(2)(5)

Citation : (2012) 02 CHH CK 0054

Hon'ble Judges : Pritinker Diwaker, J

Bench : Division Bench

Advocate : Savita Tiwari and Smt. Kiran Jain, for the Appellant; Vivek Sharma PL, for the Respondent

Final Decision : Dismissed

Judgement

Pritinker Diwaker

1. As these two appeals arise out of the same judgment and order dated 29.7.1999 passed by Special Judge (Atrocities) Bilaspur in Special Criminal Case No. 06/1999 convicting the accused/appellants under Sections 450 and 376(2)(g) IPC and sentencing each of them to undergo rigorous imprisonment for 4 years and pay fine of Rs. 500 u/s 450 and rigorous imprisonment for 10 years and pay fine of Rs. 500 u/s 376(2)(g) IPC plus default stipulations, they are disposed of by this common judgment. Case of the prosecution in brief is that on 4.11.1998 at about 4 p.m. FIR Ex. P-1 was lodged by the prosecutrix (PW-1) - a married lady aged about 25 years alleging that on 3.11.1998 at about 10 p.m. when she was all alone in her house as her husband had gone to his workplace, accused/appellants entered therein, gagged her mouth, turned off the earthen lamp, tied her hands and legs with her Sari and committed forcible sexual intercourse with her one after the other. Further case of the prosecution is that

after committing rape on her both the accused/appellants subjected her to beating with hands and fists and also bit on her cheek, forehead back and breasts and one of them who was working with her husband as watchman also caused burn injury on her right arm with the help of matchbox and then after committing the offence they fled away from the scene threatening her to kill in case she reported the matter to police. Based on this report, offence u/s 376(2)(g) IPC was registered against the accused/appellants. Her case diary statement was recorded on 6.11.1998 in which describing the entire incident she has named accused/appellant Shankar Sindhi who was earlier working as watchman. When she disclosed the incident to her husband, he came to know that one of the persons who was working as watchman was Shankar Sindhi by name. In the case diary statement the prosecutrix has stated that she could identify the other accused/also by face. After the medical examination of the prosecutrix on 4.11.1998 by Dr. Sudha Pandey (PW-9), her statement Ex.D-1 u/s 164 of the Code of Criminal Procedure was also recorded on 1.2.1999. On 3.2.1999 identification parade was conducted vide Ex. P-2 by Tehsildar (PW-2) in which accused/appellant Rajju was identified by the prosecutrix. After completion of investigation, challan was filed by the police on 3.2.1999 for the offences under Sections 450, 376(2)(g), 324 IPC and Section 3(1)(12) and 3(2)(5) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the "Atrocities Act"). However, the Court below framed the charges under Sections 450 and 376(2)(g) IPC and Section 3(2)(5) of the Atrocities Act.

2. So as to hold the accused/appellants guilty, prosecution has examined 13 witnesses. Statements of the accused/appellants were also recorded u/s 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded their innocence and false implication in the case. This apart, one Ashok Kumar (DW-1) has also been examined by the defence in support of its case.

3. After hearing the parties, the trial Court though acquitted the accused/appellants of the charge u/s 3(2)(5) of the Atrocities Act but convicted and sentenced the accused/appellants as mentioned in paragraph No. 1 of this judgment. Hence, this appeal.

4. Counsel for the appellants submit that present is a case where the appellants have been implicated in a false case as there was some dispute between them and the husband of the prosecutrix namely Mangilal (PW-7). They submit that the accused/appellants have not been named in the FIR and if they were known the prosecutrix, their names should have been mentioned in it. They further submit as per the statement of the doctor (PW-9), no definite opinion about rape on the prosecutrix could be given and therefore the appellants deserve acquittal. According to them, the Court below has completely ignored the statement of defence witness Ashok Kumar (DW-1).

5. On the other hand counsel for the respondent/State submits that the version of the prosecutrix in making allegations against the accused/appellants appears

to be very natural. According to him, the prosecutrix has very categorically stated that though initially she was not aware of the name of one of the accused/appellants but as he had earlier worked with her husband, she knew them. After arrival of her husband when she told the incident to him giving description of the accused/appellants, he came to know that the person who had worked with him was Shankar Sindhi by name and thereafter the matter was reported to the police. He submits that in the test identification parade the prosecutrix has identified the other accused Rajju. He submits that medical report of the prosecutrix Ex. P-8 duly supports her entire version and proves the injuries including the burn injury found on her person. He submits that as the prosecutrix was a married lady, question of receiving injury on her private part does not arise.

6. Heard counsel for the parties and perused the material available on record.

7. Prosecutrix (PW-1) has stated in her evidence that she knew the accused/appellants - one belonged to Dhobi caste and the other to Sindhi caste. On the date of incident at about 10 p.m. when she was sleeping in her house along with her two children as her husband had gone to his workplace, somebody knocked at the door and thinking it to be her husband as soon as she opened the door, accused/appellant Shankar Sindhi gagged her mouth and the other accused Rajju alias Bihari turned off the earthen lamp. She has stated that accused Rajju alias Bihari was living in village Mangla whereas accused Shankar Sindhi was living near Futha College. Both the accused persons threw her on the ground tied her hands with sari and started making an attempt to commit rape on her and as she was making protest by raising her voice they also subjected her to beating by hands and fists as a result of which she had turned weak. This witness has stated that first she was raped by accused Shankar Sindhi and while doing so he had also bitten her cheek and thereafter the same thing was done by accused Rajju alias Bihari also. Accused/appellant Shankar Sindhi is also stated to have caused burn injury on her arm with cigarette and thereafter accused Rajju alias Bihari threatened her to kill in case she reported the matter to the police. After the accused/appellants left her house she came at the door and saw that near the railway track both of them were putting on full-pant where one other person was also there who according to her guess work, was keeping a watch on them. According to this witness, on account of being threatened by the accused/appellants she did not disclose the incident to anyone immediately and as soon as her husband returned home in the next morning at about 8 a.m. she narrated the entire incident to him. She has clarified that as the accused/appellants had worked with her husband for 4-5 months she knew them properly. This witness has further stated that when her husband went to hire rickshaw to go to the police station, the accused/appellants stopped him and subjected to beating but stealthily she went to the police station where report Ex. P-1 was lodged. Thereafter, she was sent for medical examination, her clothes and bangles were seized by the police and then identification parade was conducted by Tehsildar in which she identified the accused/appellants. In her lengthy cross examination,

she was put various suggestions but she completely denied the same. On being questioned about presence of light, she has clearly stated that though the lamp was turned off, moon light was enough to identify the accused/appellants. R.P. Tiwari - Naib Tehsildar (PW-2) has stated that in the identification parade apart from the accused/appellants four other persons of similar body structure were mixed up in which the prosecutrix had properly identified accused/appellant Rajju alias Bihari by putting hand on his head. Gokul Prasad (PW-3) is the witness to seizure of articles made under Ex. P-3. Manharan (PW-4) is the neighbour of the prosecutrix who has not supported the case of the prosecution and has been declared hostile. Dr. R.K. Gupta (PW-5) is the witness who medically examined husband of the prosecutrix and stated that he was complaining on both sides of his chest and then he advised for x-ray. Sub Inspector S.B. Dey (PW-6) is the witness who did part of the investigation. Mangilal (PW-7) - the husband of the prosecutrix has stated that on the following day of the incident at about 8 a.m. when he returned home from his workplace, prosecutrix was weeping and there was injury and swelling on her face and on being asked she narrated the entire incident to him. In cross examination, this witness remained firm to what he has stated in examination in chief and various suggestions including that enmity put to him have been categorically denied. Dr. S. Chatterjee (PW-8) is the witness who medically examined accused Rajju alias Bihari and stated that he was capable of performing sexual intercourse. Dr. (Smt.) Sudha Girish Pandey (PW-9) who medically examined the prosecutrix and gave her report Ex. P- 8 stating that as she was habitual to sexual intercourse, no definite opinion regarding rape on her could be given. She however noticed swelling at the face of the prosecutrix and on touch she was complaining pain. She also noticed injury on her jaw, scratches on left hand and breasts, burn marks on right arm which had turned into blisters. According to this witness, prosecutrix was also complaining headache and that for the injury in jaw she had advised for x-ray. Dr. A.K. Sanyal (PW-10) is the witness who medically examined accused Shankar and gave report Ex. P-9 stating that he was capable of performing sexual intercourse. E. Patel (PW-11) is the witness to seizure of articles made under Ex. P-10. Station House Officer B.M. Puri (PW-12) is the witness who recorded FIR Ex. P-1 and helped in the investigation. T. Ekka (PW-13) is the investigating officer who has duly supported the case of the prosecution. Ashok Kumar (DW-1) has stated that on 1.11.1998 he saw accused/appellant Shankar Sindhi quarreling with husband of the prosecutrix and he intervened in the matter. On being asked as to why they were quarreling, both of them told him that there was some longstanding money dispute between them.

8. Minute examination of the evidence makes it clear that on the date of incident taking advantage of helplessness of the prosecutrix, the accused/appellants subjected her to rape one after the other after gagging her mouth. Statement of the prosecutrix is duly supported by her husband (PW-7) and the doctor who medically examined her and noticed several external injuries on her body which according to the prosecutrix were caused by the accused/appellants while she

was being subjected to rape. Though an attempt has been made to show that on account of some old dispute between the husband of the prosecutrix and the accused persons they have been implicated in a false case, looking to the statement of the prosecutrix which appears to be worthy of credence and inspires full confidence of this Court, this Court finds it difficult to accept the said plea. Further, this Court does not find any force in the argument of the counsel for the appellants that in the FIR the prosecutrix did not name the accused/ appellants because she herself has stated in his evidence that one of the persons involved in the offence had earlier worked with her husband and after she disclosed the incident to her husband on the next morning after his arrival from his workplace, he came to know that the said person was Shankar Sindhi by name. Moreover, in the identification parade also she had identified the accused/ appellants to be the persons who had gained entry to her house and subjected her to forcible sexual intercourse. In view of the aforesaid analysis of the facts of the case and the evidence on record, this Court is of the considered opinion that the Court below has given a well reasoned finding after appreciation of the evidence adduced by the prosecution and that being so the judgment impugned does not call for any alteration in this appeal. Appeals thus being without merit are liable to dismissed. They are dismissed as such. The accused/ appellants are reported to be on bail. They be arrested forthwith and sent to jail to serve out the sentence imposed on them by the Court below.