

(2018) 04 CHH CK 0116
In the Chhattisgarh High Court
Case No : Criminal Appeal No.2448 of 1999

Sukhiram Gadaro

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 11-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 376(2)(g), 3(1)(xii), 3(2)(v), 34
Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 04 CHH CK 0116

Hon'ble Judges : ARVIND SINGH CHANDEL, J

Bench : Single Bench

Advocate : Savita Tiwar, U.K.S. Chandel

Final Decision : Dismissed

Judgement

Conviction, Sentence

Under Section 376(2)(g) of the Indian Penal Code, Rigorous Imprisonment for 10 year

lying there, they found that name of Appellant Shrawan was written in one of the books. On being opened the books kept in the school bag hanging",

with the lady bicycle, they found that name of the prosecutrix was written in one of the books. He has further stated that the matter was informed to",

the Headmaster by teacher Baijnath Gupta. After some time, Headmaster Toppo and some school boys reached the spot and they moved ahead for",

making search. In paragraph 25, on being suggested, he replied that it is true that when the Station House Officer asked the prosecutrix where had",

she gone, the prosecutrix told him that the Appellants had caught her and taken away.",

13. Ambika Prasad (PW16) has also supported the above statement of Narendra

Kumar (PW7) and has stated that near the culvert two bicycles, were standing and 3-4 books were lying down nearby. He has not further supported the remaining statement of Narendra Kumar and has been, declared hostile. Ramesh (PW8) has not supported the case of the prosecution and has been declared hostile. Baijnath Gupta (PW9), teacher of the", High School Chalgali, has stated that at about 10:15 a.m., he reached the spot on his motorcycle. He saw that three bicycles had fallen down on the", spot and Narendra Kumar (PW7), Ambika Prasad (PW16) and 2-4 other persons were standing there. He has further stated that he informed", Headmaster Vijay Toppo (PW12) about the incident and after sometime Vijay Toppo also reached there. After sometime, Vijay Toppo went to the", police station and informed about the incident. Vijay Toppo has supported the above statement and stated that after receiving information from, Baijnath Gupta (PW9), he reached the spot and saw that bicycle of the prosecutrix with school bag had fallen down on the way and two more", bicycles had fallen down there. Apprehending some untoward incident, he went to the police station and informed about the incident which was", recorded in Rojnamcha Sanha (Ex.P16).,

14. Dr. Subhadra Paikra (PW15), who examined the prosecutrix on 23.7.1998, has stated that two fingers were being inserted in the vagina of the", prosecutrix but with her complaint of pain. White liquid was also present inside the vagina of the prosecutrix. She has further stated that no injury was, present on the private part of the prosecutrix. She has further stated that she found that sexual intercourse was done with the prosecutrix recently., Her examination report is Ex.P18. She has also examined skirt and underwear of the prosecutrix in which she found four white stains on the skirt and, one brown stain on the underwear of the prosecutrix. Her report in this regard is Ex.P19. She advised for chemical examination of the clothes of the, prosecutrix, but no FSL report is available on record.",

15. Station House Officer of Police Station Chalgali, namely, R.C. Nishad (PW11) has stated that on the basis of the written report (Ex.P1), he", registered First Information Report (Ex.P2), seized clothes of the prosecutrix vide Ex.P4, seized a lady bicycle from the spot vide Ex.P12 and also", seized two gent bicycles and some books from the spot vide Ex.P13. He has further stated that he recorded the information given by Vijay Toppo,

(PW12), Headmaster in Rojnamcha Sanha (Ex.P16). In cross-examination, he has further stated that after recording the report of Vijay Toppo vide",
Ex.P16, he had gone out of the police station for search of the Appellants and the prosecutrix, but he did not find any of them. He has further stated",
that when he returned to the police station, the prosecutrix was already present there. He has further stated that he asked the prosecutrix to submit a",
written report. At that time, teachers Rajaram and Baijnath Gupta (PW9) were also present in the police station. He has further stated that since the",
prosecutrix was weeping, he had asked Rajaram to write a report on behalf of the prosecutrix and submit after getting her signature thereon.",
Thereafter, Rajaram had written the report on behalf of the prosecutrix and the same was signed by the prosecutrix. Rajaram has not been examined",
by the prosecution.,

16. S.D.O. (Police) B.P. Rajbhanu (PW18) is the witness who made further investigation into the offence in question.,

17. A minute examination of the evidence available on record makes it clear that the prosecutrix was a resident of Amravatipur and was a student of,

Xth Standard of High School Chalgali. As per her Court statement, on the date of incident, at about 10:30 a.m., both the Appellants had chased her",

near the drainage. After catching her, they took her towards the jungle wherein they committed rape with her one by one. As per her statement, her",

school bag and bicycle and bicycles of the Appellants were lying down near the drainage. From the statement of Phoolkunwar (PW4), a student of the",

same school where the prosecutrix was studying, it is also clear that she had seen Appellant Shrawan with a bicycle near the hand-pump and Shrawan",

had asked her whether the prosecutrix was coming or not. Narendra Kumar (PW7) has also supported the above fact and as per his statement, he",

also found that a lady bicycle had fallen down on the spot and two gent bicycles were standing there and some books had also fallen down there. This,

was also seen by Baijnath Gupta (PW9). Headmaster Vijay Toppo (PW12) has also supported the above fact and he informed the police station about,

the incident which was recorded in Rojnamcha Sanha (Ex.P16). As per medical examination report (Ex.P18) of the prosecutrix given by Dr.,

Subhadra Paikra (PW15), though no injury was found on the body of the prosecutrix yet symptoms of recent sexual intercourse with her were found.",

As per the statement of the prosecutrix, the sexual intercourse was committed with her by the Appellants forcefully in the jungle. Immediately after",
the incident, she reached Police Station Chalgali and the matter was reported by her. Though the written report (Ex.P1) has not been written by her",
yet the same was signed by her. No suggestion that contents of the written report (Ex.P1) were incorrect was put to her nor has any argument been,
advanced in this regard. Immediately after the incident, father and mother of the prosecutrix reached the police station where they found that the",
prosecutrix was weeping. The prosecutrix immediately told her mother about the incident. Bicycles of the Appellants were seized from the spot along,
with the bicycle and school bag containing school books of the prosecutrix from the spot, but no explanation has been offered by the Appellants in this",
regard in their statements recorded under Section 313 of the Code of Criminal Procedure.,

18. From the above discussion of the evidence available on record, it is established that the Appellants had committed rape with the prosecutrix and",
their offence is proved beyond reasonable doubt. Therefore, the finding of conviction arrived at by the Trial Court is just and proper and the same does",
not warrant any interference. Hence, the conviction imposed upon the Appellants is affirmed.",

19. It was argued on behalf of the Appellants that during trial, the Appellants remained in jail for about 1 year and during pendency of this appeal they",
remained in jail for about 2 years and 6 months, that is to say, the Appellants remained in jail for a total period of about 3 years and 6 months. At the",
time of commission of offence, the Appellants were young boys. They were released on bail by this Court in the year 2002. Looking to the above",
facts and circumstances, it would not be appropriate to send them back to jail again for undergoing the remaining sentence. Therefore, they may be",
sentenced with the period already undergone by them. On the contrary, it was contended by Learned State Counsel that minimum sentence prescribed",
for the offence under Section 376(2)(g) of the Indian Penal Code is 10 years' rigorous imprisonment. Therefore, the Appellants have rightly been",
sentenced by the Trial Court. It was further submitted that no special reason has been urged on behalf of the Appellants to sentence them with the,
period already undergone by them.,

20. Having regard to the facts and circumstances of the case, particularly, the fact that on the date of commission of gang rape by the Appellants with",
the prosecutrix, she was an 18 years school going girl, I am of the considered opinion that the sentence awarded to the Appellants by the Trial Court is",
just and proper and the same does not call for any interference. The Appellants do not deserve leniency on the sentence part. Hence, the sentence",
awarded to them is also affirmed.,

21. Consequently, the appeal is dismissed.",

22. The bail bonds of the Appellants are cancelled and they are directed to surrender before the Trial Court or they shall be taken into custody,
forthwith for undergoing the remaining part of the sentence imposed upon them.,

23. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.,