

(2011) 10 CHH CK 0022
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 911 of 1995

Tirith Ram

APPELLANT

Vs

State of M.P. (Now State of C.G.)

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 342, 363, 366, 376

Citation : (2011) 3 CG.L.R.W. 303 : (2012) 1 Crimes 479

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the judgment dated 26th of June, 1995 passed in Sessions Trial No. 424/93 by the Fifth Additional Session Judge, Bilaspur, By the impugned judgment, the appellant has been convicted and sentenced in following manner with a further direction to run the sentences concurrently:

Conviction

Sentence

u/s 363 IPC

R.I. for 3 years

u/s 366 IPC

R.I. for 4 years

u/s 376(1) IPC

R.I. for 7 years

2. The facts, briefly stated, are as under:

The case of the prosecution is that on 6.9.93 at about 7.00 p.m. the prosecutrix (PW1) was caught by 4 accused persons in the outer area of the village. Accused Tirith Ram dragged her to a nearby pepal tree, threw her on the ground and committed forcible sexual intercourse against her. Thereafter the prosecutrix was taken to the house of Tirith Ram. There also she was subjected to forcible sexual intercourse. In the morning at about 4.00 a.m. the prosecutrix was taken by the accused persons to the house of accused-Tijaouram. She was locked in a room. There also she was subjected to sexual intercourse by accused Tirith Ram. Then, at about 8.00 p.m. the prosecutrix was brought to village Ranisagar and was set free to go to her house. The Prosecutrix (PW1) came to her house and narrated the story to her father Boujwa (PW2) and mother Chatur Bai (PW4). On 8.9.93 the First Information Report was lodged in police station Kota and offence under Sections 363, 342 & 376/34 IPC was registered. The prosecutrix was sent for her medical examination. She was examined by Dr. (Smt.) M. Sen (PW10). No external or internal injury was found on the person of the prosecutrix. There was no injury on her private part. Hymen was old ruptured and she was found to be habitual to sexual intercourse. No definite opinion was given regarding commission of sexual intercourse. The medical report is Ex.P13A. The prosecutrix was further sent for ossification test. She was referred to District Hospital, Bilaspur. Ossification test was performed by Dr. Shekhar Chattenee (PW5) who conducted X-ray examination and gave his opinion that the prosecutrix was aged about 16 years on the date of her examination i.e. on 25.9.93. The ossification test report is Ex.P6.

3. The learned Session Judge relied on the testimonies of prosecutrix (PW1), her father Boujwa (PW2) and mother Chatur Bai (PW4) and held that the prosecutrix was minor on the date of the incident and she was subjected to sexual intercourse by the appellant, therefore, the appellant was liable for punishment under the aforementioned Sections of IPC. The learned Sessions Judge, therefore, convicted and sentenced the appellant as above, however, the other co-accused persons were acquitted of the charges framed under Sections 363, 366, 342 & 376(2)(g) IPC.

4. Mr. M.D. Dhote, learned counsel appearing on behalf of the appellant, argued that the finding in relation to age is perverse; the version of the prosecutrix is unnatural and is not supported by medical evidence, she is not a reliable witness, her evidence does not inspire confidence: therefore, the judgment and findings of the Session Court be set aside.

5. On the other hand. Mr. R.R. Sinha, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Session Court.

6. I have heard learned counsel for the parties at length and have also perused the records of the session's case.

7. So far as age of the prosecutrix is concerned, the prosecution has not

produced any documentary evidence except the ossification test report in which she was found to be aged about 16 years. Boujwa (PW2) has deposed that he had 8 sons and 11 daughters. Though he mentioned about various facts, but he could not tell the correct age of the prosecutrix (PW1). In Para 7 of his cross-examination, he admitted that the prosecutrix was born at his house and village Kotwar had taken a report thereof in writing. No such entry of kotwari register etc. has been proved by the prosecution. Chatur Bai (PW4) has also given a vague statement about the age of the prosecutrix. Though she contended that the prosecutrix was aged about 13 years, but she did not depose about the year and month of the birth of the prosecutrix. Copies of school register have also not been filed by the prosecution. On appreciation, we find that the evidence of parents relating to age of the prosecutrix is shakey. So far as Radiologist report is concerned, in Modi's Jurisprudence (20th Edition), it is stated that too much reliance should not be placed on the table showing the age and years of the appearance and fusion of some of the epiphysis as observed by different authors as it merely indicates the average and is likely to vary in individual case even of the same province owing to the eccentricities of development. It is further stated that recent work has shown that the range of error may be up to 3 years on either side. The Radiologist has found that the prosecutrix was aged about 16 years on the date of incident. If we add 3 years to the said finding of 16 years recorded by the Radiologist, the age of the prosecutrix would come to 19 years. In fact, except the above Radiologist report, there is no reliable evidence regarding age of the prosecutrix. I am of the view that the in above facts and circumstances, the learned Sessions Judge has wrongly held that the prosecutrix was a minor on the date of the incident and the above finding cannot be sustained.

8. The prosecutrix (PW1) deposed that on the fateful day, in the evening, when she was going to answer the call of nature, accused Tirith Ram, Ved Prakash and Tijaouram came behind her. Accused Tirith Ram was armed with tabbal and knife. He dragged her to a nearby pepal tree and thereafter committed forcible sexual intercourse against her. After the sexual intercourse, the accused persons took her to the house of accused Tijaouram and locked her in a room along with the appellant. There also the appellant committed sexual intercourses 2-3 times. In late night, accused Tijaouram took her in a public bus to some place. She does not know the name of that place. Thereafter she was left free on the way to village Pipartarai. She reached to her house and narrated the story to her parents. A report then was lodged. The prosecutrix has given a new story in her court evidence. The story of travelling in a public bus alongwith accused Tijaouram is not mentioned in the F.I.R. This is also not mentioned in her case diary statements (Ex.D2). Even this was not the case of the prosecution. We gather from the record that out of 4 accused persons, accused Tirith Ram (appellant herein), Ved Prakash & Madho are real brothers. They are sons of Sahasram Satnami. The prosecutrix claims that Tirith Ram committed forcible intercourse in presence of the other accused persons. This appears to be

unnatural that 3 real brothers would involve themselves in such an act and one of them will commit forcible sexual intercourse in front of others at an open place. The prosecutrix further says that she was locked in a room of the house belonging to the accused persons and there also sexual intercourses were committed by the appellant. Admittedly there were other members of the family residing in the house, but they could not notice about all this. The learned Session Judge has discussed all these points in Para 17 of the judgment and has held that the version of the prosecutrix was not reliable. The Session Judge has quoted various instances for recording the finding that the version of the prosecutrix appears to be unreliable and it was not safe to rely on her testimony. Even after recording such finding in categorical terms in Para 17 (A), (B), (C), (D), (E) & (F), the learned Session Judge, while acquitting all the co-accused persons, has convicted the appellant.

9. No doubt, the evidence of a victim of sex offender is entitled to great weight absence of corroboration notwithstanding as she stands at par with an injured witness, but the fact remains that her evidence must inspire confidence of the Court.

10. In case on hand, the evidence of the prosecutrix does not inspire confidence of the Court. She gave new story in her court evidence. She has given an unnatural version of commission of sexual intercourse by the appellant in presence of his two real brothers. Though she deposed that the rape was committed at an open place in a field near a pepal tree by using considerable force, but she did not receive any external or internal injury. Her version is not supported by medical evidence. The learned Session Judge, even after recording positive findings with reasons at 2-3 occasions in Para 17 of the judgment that she was an unreliable witness, has convicted the appellant on her testimony.

11. I am of the view that the Sessions Judge certainly fell into error by resting the conviction of the appellant on the testimony of the prosecutrix.

12. For the foregoing reasons, the appeal is allowed. The conviction and sentences awarded to the appellant under the aforementioned Sections of IPC are set aside. The appellant is acquitted of the charges framed against him. It is stated that the appellant is on bail. His bail bonds are cancelled and surety stands discharged.