



2024:CGHC:46063

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on 20/11/2024

Judgment Passed on 25/11/2024

CRA No. 1114 of 2003

- 1. Radheshyam (In compliance of Court's order dated 18.12.2015, Appeal Stands abated and is dismissed.**
2. RamKhilawan S/o Bharatlal Kavar aged about 27 years, R/o Podibhata, Akaltara, P.S. Akaltara, District – Janjgir-Champa, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh.

---- Respondent

For Appellant : Mr. Abhishek Singh Kshatriya, Adv.
For Respondent/State : Mr. Sachidanand Yadav, P.L.

Hon'ble Shri Justice Sanjay Kumar Jaiswal

C.A.V. Judgment

1. The present appeal arises out of the impugned judgment of conviction and order of sentence dated 30.08.2003 passed by the learned 2nd Additional Sessions Judge (FTC), Janjgir, Sessions Block Bilaspur (C.G.) in Sessions Case No. 262/1999 whereby, the appellant has been convicted and sentenced as under:-

Conviction	Sentence
U/s 376 (2)(g) of IPC	R.I. for 10 years and fine of Rs. 100/-,

	in default of payment of fine amount additional rigorous imprisonment for 3 months.
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2. Due to the death of appellant No. 1 Radheyshyam, the appeal against him has been abated.
3. The brief facts of the case are that on 08.04.1999, the accused persons namely Radheshyam and Ramkhillawan came to the house of the prosecutrix and inquired about her father, she stated that she is alone in the house and finding her alone Radheshyam took her inside the house and committed rape on her at that time appellant/Ramkhillawan was standing on the door in the meanwhile prosecutrix shouted and one Rani came called her father as a result of which the accused persons ran away from the spot. The FIR was lodged by the prosecutrix and after completion of investigation, charge sheet was filed against the accused persons.
4. So as to hold the accused/appellant guilty, the prosecution has examined as many as 11 witnesses and exhibited 15 documents. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case. However, only one witness has been examined by the appellant in his defence.
5. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 30.08.2003, learned Sessions Judge has convicted & sentenced the accused/appellant for the offence as mentioned in para -1 of this judgment. Hence, the present appeal.
6. Learned counsel for the appellant submits that the learned trial Court is absolutely unjustified in convicting the appellant

for the offence punishable under Section 376(2)(b) of IPC. He further submits that the prosecutrix (PW-11) in her statement taken in the Court has stated her age to be 24 years that is on 08.10.2002. The incident took place on 08.04.1999. The prosecution has not produced any documentary evidence regarding the date or year of birth of the prosecutrix and the prosecution has failed to prove that the prosecutrix was minor on the basis of the ossification test. He further submits that there are many contradictions and omissions in the statement of the prosecutrix itself and not even a single witness has stated in their statement in the Court regarding the entry of the appellant inside the house of the prosecutrix. Thus, the offence under Section 376(2)(b) of IPC is not established against the appellant. The appeal is liable to be allowed and the appellant is entitled to be acquitted.

7. Learned counsel for the State opposes the submissions made by the counsel for the appellant and submits that the prosecution has proved its case beyond reasonable doubt against the appellant, therefore, the appeal is liable to be dismissed.

8. Heard learned counsel for the parties and perused the material available on record including the impugned judgment.

9. According to the prosecution case, the age of the prosecutrix (PW-11) was stated to be about 15 years at the time of the incident but no documentary evidence was produced regarding her date of birth. Dr. S. Chatterjee (PW-9) conducted X-ray of the prosecutrix on 10.04.1999 and submitted the test report vide Ex.P-5. According to which, age of the prosecutrix was estimated to be around 14 years and in the cross-examination, it was stated that heredity, food habits, climate etc. have an effect on the bones, therefore the opinion given in the

test report regarding the age of the prosecutrix may be 2-3 years more or less. Thus, it is clear that the prosecution has not produced any evidence of a conclusive nature that the prosecutrix was less than 16 years of age at the time of the incident.

10. The prosecutrix (PW-11) herself has stated her age as 24 years in the year 2002. In her cross-examination, she stated that her age was 18 years at the time of the incident. Thus, it could not be proved that she was less than 16 years of age at the time of the incident.

11. It is noteworthy that the prosecutrix (PW-11) has stated in her police statement (Ex.D-1) and also in her Court statement that she was married at the time of the incident. In her cross-examination, she stated that the name of her first husband is (B) and the name of her second husband is (K.D.).

12. Dr. Veena Chandra (PW-4) has stated that she examined the prosecutrix after the incident date i.e. 08.04.1999 and gave a report vide Ex.P-1. According to which, the prosecutrix was used to sexual intercourse, hence clear opinion cannot be given regarding the recent sexual intercourse. A slide of her vaginal swabs was prepared and her undergarments were sent for chemical examination, according to the examination report of the State Forensic Science Laboratory, Sagar (Ex.P-15), semen stains and human sperm were not found in any of them. Thus, the statement of the prosecutrix has not been corroborated by the medical evidence and the chemical examination report of the FSL.

13. In this case, the important fact is that the incident is said to have taken place on 08.04.1999 at 12.00 hours and the report of the incident has been registered on the same day at 03.30 pm vide Ex.P-6. In the report (Ex.P-6) and the statement of the

prosecutrix recorded under Section 161 of the Code of Criminal Procedure, vide Ex.D-1, it is mentioned that the appellant Ramkhilavan had come to the house of the prosecutrix along with co-accused Radheshyam, but Ramkhilawan did not commit rape with the prosecutrix, rather he was standing at the door, outside of the house. Whereas on the contrary, the prosecutrix has stated in her Court statement that another companion had come along with co-accused Radheshyam and that companion had also committed rape on her. It is important to note that in the Court statement, the prosecutrix has not named that companion, whereas the report of Ex.P-6 is a named report against the appellant. In the court statement, the prosecutrix stated that she identified the appellant, but she has not named the appellant in her Court statement. Thus, there is a serious contradiction in the Court statement of the prosecutrix herself and the report lodged by her vide Ex.P-6 and her police statement recorded under Section 161 of the Code of Criminal Procedure vide Ex.D-1, as to whether the appellant Ramkhilawan had raped on her or not. Thus, the statement of the prosecutrix against the appellant is doubtful.

14. The prosecutrix (PW-11) has also stated in her Court statement that when she was being raped by co-accused Radheshyam, his companion i.e. the appellant had covered her mouth. But this too is not mentioned in her police statement Ex.D-1. Therefore, the involvement of the appellant-Ramkhilawan in the alleged incident becomes doubtful.

15. The PW-2, sister of the prosecutrix and PW-3, brother-in-law of the prosecutrix who lives in the neighbourhood have denied knowing the appellant. When PW-2, the sister of the prosecutrix denied knowing about the incident, the Public Prosecutor was allowed to ask leading questions, in which she stated that when she was returning carrying water, the appellant

and the co-accused were going back, but the prosecutrix herself did not tell her about the incident of rape.

16. Similarly, PW-3, brother-in-law of the prosecutrix has also stated that when Rani came to call him and said that boys had come to her house, he said, look who is it, but the prosecutrix did not tell him about the incident. Permission to ask leading questions was also sought by the prosecution from this witness. Then this witness stated that the prosecutrix did not tell him about the arrival of the appellant and co-accused. Rather, she only told him that another person had come along with co-accused Radheshyam, that is, even at that time the prosecutrix neither knew nor identified the appellant Ramkhilawan. In this situation, how did the name of the appellant get recorded in the First Information Report (Ex.P-6), when the prosecutrix did not even know him earlier? This becomes completely suspicious.

17. On the basis of the above discussion, when the identification of the appellant by the prosecutrix is doubtful and along with this the statement of the prosecutrix herself is completely contradictory on the point that the appellant Ramkhilawan had raped her. Then the conviction of the appellant Ramkhilawan in the crime of rape is not found to be proper in the absence of sufficient, reliable and clear evidence. Therefore, the conviction and sentence of the appellant for the aforesaid offence are not sustainable.

18. Looking to the entire evidence available on record, I am of the view that the guilt of the accused/appellant has not been proved by the prosecution beyond reasonable doubt. Therefore, the trial Court has committed serious illegality while convicting the appellant Ramkhilawan.

19. In the result, the instant appeal is **allowed**. The conviction and sentence imposed upon appellant-Ramkhilawan under

Sections 376(2)(g) of the IPC is hereby set aside and he is acquitted of the said charge levelled against him giving the benefit of doubt.

20. Appellant-Ramkhilawan is on bail. Fine, if any, deposited by appellant be refunded to him. Bail bonds of appellant shall continue for a further period of 6 months as per the requirement of Section 437-A of the Cr.P.C.

21. Record of the trial Court along with a copy of this judgment be sent forthwith for compliance and necessary action, if any.

Sd/-
(Sanjay Kumar Jaiswal)
Judge

H.L. Sahu