

(2018) 06 CHH CK 0214

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 174, 184 Of 2002

Roshni Minj

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: June 29, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 363, 366, 372, 376, 376(1), 376(2)(f), 506
- Code Of Criminal Procedure, 1973 - Section 313

Hon'ble Judges: Pritinker Diwaker, J

Bench: Single Bench

Advocate: Awadh Tripathi, Ravindra Agrawal

Final Decision: Allowed

Judgement

Pritinker Diwaker, J

01. As these two appeals arise out of the common judgment of conviction and order of sentence dated 8.2.2002 passed by the Sessions Judge,

Raigarh (CG) in S.T. No.56/2000 convicting the accused/appellant Bhuvneshwar under Section 376 of IPC and sentencing him to undergo RI for 5

years and to pay a fine of Rs.500/- with default stipulation, and accused/appellant Smt. Roshni Minj under Section 366 of IPC and sentencing her to

undergo RI for 3 years and fine of Rs.200/- with default stipulation, they are being disposed of by this common judgment.

02. As per prosecution case, on 17.8.1999, the prosecutrix (PW-6) was taken by accused No.1 Smt. Roshni Minj to the house of accused No.3

Yugadesh @ Sachidanand. At about 12 in the midnight she was subjected to forcible sexual intercourse by accused No.3. Next day she was taken to

the house of accused No.2 Bhuvneshwar @ Ramesh Yadav where he also subjected her to forcible sexual intercourse thrice in the night. It is further

said that accused No.1 Roshni Minj and the prosecutrix stayed in the house of accused No.2 Bhuvneshwar and on 21.8.1999 the prosecutrix was

taken to the house of mother of accused No.1 at Bandarchua. Thereafter, accused No.1 and the prosecutrix returned to Raigarh. On 23.8.1999 FIR

(Ex.P/7) was lodged by the prosecutrix narrating the entire incident and making allegation of rape against accused Nos. 2 & 3 and allegation of her

abduction by accused No.1 for compelling her to have illicit intercourse with accused Nos. 2 & 3. Based on this FIR, offence under Sections 363, 366,

376, 34 of IPC was registered against all the three accused persons. The prosecutrix was medically examined on 24.8.1999 vide Ex.P/2 by PW-2 Dr.

S. Ekka who did not notice any external or internal injury on the person of the prosecutrix, her hymen was old torn, two fingers easily inserted into her

vagina, and she prepared two vaginal slides. According to her, no definite opinion could be given regarding rape and for ascertaining the age of the

prosecutrix, she referred her to radiologist. However, as per FSL report vide Ex.P/16, no spermatozoa was found in the vaginal slides or clothes of the

prosecutrix or underwear of accused No.2 Bhuvneshwar @ Ramesh Yadav. As per X-ray report of the prosecutrix vide Ex.P/9, she was found aged

in between 16 ½ and 18 years with a margin of error of three years on either side. Accused No.2 Bhuvneshwar was also medically examined vide

Ex.P/11 by PW-11 Dr. RK Agrawal who found him capable of performing sexual intercourse. While framing charge, the trial Judge framed charges

against accused No.1 Roshni Minj under Sections 363, 366 & 372 of IPC whereas accused No.2 Bhuvneshwar was charged under Section 376(1)

and accused No.3 Yugadesh under Sections 376(2)(f) and 506 Part-II of IPC.

Accused No.1 Roshni Minj and accused No.2 Bhuvneshwar @ Ramesh Yadav were tried together, however, trial of accused No.3 Yugadesh was

conducted separately as he was absconding.

03. So as to hold the accused/appellants guilty, the prosecution examined 14 witnesses in all. Statements of the accused/appellants were also recorded

under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false

implication. In defence, they examined two witnesses.

04. 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/appellants as mentioned in para-1 of this judgment.

After trial of absconding accused No.3 Yugadesh @ Sachidanand being conducted separately, he stood convicted and sentenced under Sections

376(1) and 506 Part-II of IPC vide judgment dated 27.1.2004. Appeal preferred by him i.e. Cr.A.No.104/2004 was dismissed as having become

infructuous as he had already completed the entire sentence.

05. Learned counsel for the appellants submits as under:

in respect of accused No.1 Roshni Minj, it is submitted that the prosecutrix was admittedly a minor girl and therefore, the question of her abduction

does not arise and further, considering the story put forth by the prosecutrix, which is per se improbable, her conviction under Section 366 is not at all

tenable in the eye of law.

as regards accused No.2 Bhuvneshwar, it has been argued that a very improbable story has been put forth by the appellant, her version is also not

supported the medical evidence and further considering her conduct, it appears that either a false report has been made against this appellant for some

ulterior motive or the act allegedly committed was consensual one.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellants is strictly in

accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.

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

08. PW-6 prosecutrix has stated that she knew accused No.1 Smt. Roshni Minj and accused No.2 Bhuvneshwar. On 17.8.1999 she accompanied

accused No.1 who took her to a small house and left her there all alone saying that she would return soon. While she was coming out of the house,

watchman came there, pushed her inside the house and detained her in the house for the whole night and also committed rape with her on the threat

of life. On the next day, accused No.1 came there and asked her to flee from there. Thereafter, accused No.1 took her to Paththalgaon in a jeep where she was kept in a house and there she was subjected to forcible sexual intercourse by accused No.2 Bhuvneshwar. In the next morning, accused No.1 returned and took her to the house of her (A-1's) mother and kept her there for two days. Thereafter, she (prosecutrix) returned to her house and narrated the entire incident to her mother and other family members. She was medically examined and her undergarments were seized. She states that accused No.1 used to visit her house frequently and take her along with her with the permission of her mother and on the date of incident also she (A-1) had taken her with the permission of her mother. She states that as she was threatened by accused No.1, she did not disclose the incident to anyone. While she was being taken in a bus, number of passengers were there but she did not disclose to them about the incident and even in the house of accused No.1 she did not disclose about the incident to mother of accused No.1. She states that for the first time she is seeing accused No.2 Bhuvneshwar in the court. She further states that her clothes were torn by accused No.2, he threw her on the floor and then committed rape upon her repeatedly for four times in the night. She admits that while she was going to the place where she was subjected to rape, on both sides of the road shops were there and likewise, number of persons were residing near the room where she was kept. She further states that on account of she being thrown on the floor she suffered injury on her back and this fact was disclosed by her to the treating doctor. According to her, while the accused No.2 was subjecting her to rape, she pushed him, pulled his hair and also scratched him with her nails on his cheek.

09. PW-2 Dr. S. Ekka medically examined the prosecutrix on 24.8.1999 vide Ex.P/2. However, she did not notice any external or internal injury on the person of the prosecutrix, her hymen was old torn, two fingers easily inserted into her vagina and that she prepared two vaginal slides. According to her, no definite opinion could be given regarding rape and for ascertaining the age of the prosecutrix, she referred her to radiologist. However, as per FSL report vide Ex.P/16, no spermatozoa was found in the vaginal slides or clothes of the prosecutrix or underwear of accused No.2 Bhuvneshwar @

Ramesh Yadav. PW-9 Dr. MD Joshi did x-ray examination of the prosecutrix and as per X-ray report vide Ex.P/9, she was found aged in between 16

1½ and 18 years with a margin of error of three years on either side. PW- 11 Dr. RK Agrawal medically examined accused No.2 Bhuvneshwar vide

Ex.P/11 and found him capable of performing sexual intercourse.

10. PW-3 Heeralal, Village Kotwar, is a formal witness. PW-4 Santosh, PW-7 Jamal Sai and PW-8 Jeetaram have Kumar turned hostile. PW-5

Yadiyus Kujur, father of the prosecutrix, states that his wife informed him on 17.8.1999 that accused No.1 had taken the prosecutrix along with her.

He lodged missing report, which was not recorded by the police. PW-12 Shamshuddin Khan, PW-13 Dilip Kumar assisted in the investigation and

PW-14 Prakash Soni is the investigating officer.

11. DW-1 Chamar Sai and DW-2 Rajesh Kumar Yadav have not stated anything specific in favour of the appellants.

12. Close scrutiny of the evidence makes it clear and according to the prosecutrix on 17.8.1999 she was taken by accused No.1 Smt. Roshni Minj to

the house of accused No.3 Yugadesh @ Sachidanand and having left her there she went away saying that she would come back soon and in the

midnight she was raped by accused No.3. She further alleges that next day she was taken to the house of accused No.2 Bhuvneshwar @ Ramesh

Yadav by accused No.1 where accused No.2 also subjected her to forcible sexual intercourse 3-4 times in the night. However, considering the case

diary statement of the prosecutrix, the FIR lodged by her as well as her Court statement together, it appears that she is not consistent while deposing

in the Court and making allegations against the accused/appellants. She admits that while she was being taken from one place to other by accused

No.1, she came across number of people, however, she did not disclose about the incident to anyone, nor did she offer any protest or raise hue and

cry. Though she states that she did not do so because of being threatened by accused No.1, however, the same does not inspire confidence and

appears to be a bit improbable because nowhere it has been stated by her that accused No.1 was having any weapon to threaten her or accompanied

by other accused persons preventing her from raising hue and cry. Rather, in the given facts and circumstances of the case, the prosecutrix had ample

opportunities to escape from the clutches of accused No.1 or seek help from the people she was coming across while moving from one place to

another. Furthermore, in the Court she has stated that for the first time she is seeing accused No.2 Bhuvneshwar @ Ramesh Yadav in the Court,

however, she has lodged a named report against this appellant also. This apart, according to the prosecutrix, accused No.2 threw her on the floor and

then committed rape upon her repeatedly for four times in the night and on account of she being thrown on the floor she suffered injury on her back

and this fact was disclosed by her to the treating doctor. She further states that while accused No.2 was subjecting her to rape, she pushed him, pulled

his hair and also scratched him with her nails on his cheek. However, medical evidence negates the version of the prosecutrix as PW-2 Dr. S. Ekka

who medically examined the prosecutrix on 24.8.1999 vide Ex.P/2 did not notice any external or internal injury on the person of the prosecutrix, her

hymen was old torn, two fingers easily inserted into her vagina. Further, in the vaginal slides prepared by the doctor, clothes of the prosecutrix as well

as underwear of accused No.2 Bhuvneshwar @ Ramesh Yadav, no spermatozoa was found as per FSL report Ex.P/16. PW-11 Dr. RK Agrawal

who medically examined accused No.2 Bhuvneshwar vide Ex.P/11 also did not notice any injury on his person. Thus, considering the overall evidence

of the prosecutrix and her conduct during the alleged offence and subsequent thereto, she does not appear to be a trustworthy witness and as such,

her evidence does not inspire confidence of the Court and rather it appears to be a case of false implication of the appellants or if any such act was

committed, it was consensual one.

13. So far as offence under Section 366 of IPC is concerned, the evidence on record goes to show that the prosecutrix was a major girl on the date of

incident. PW-9 Dr. MD Joshi did x-ray examination of the prosecutrix vide Ex.P/9 and found her aged in between 16 ½ and 18 years with a margin

of error of three years on either side. Even otherwise, the prosecutrix in the Court has stated in cross-examination that accused No.1 used to visit her

house frequently and take her along with her with the permission of her mother and on the date of incident also she (A-1) had taken her with the

permission of her mother. In these circumstances, it cannot be said that accused No.1 had abducted the prosecutrix for compelling her to have illicit

intercourse with the other accused persons and as observed above, if any such act was committed, the possibility of the prosecutrix being a consenting party to such act cannot be ruled out.

14. On the basis of aforesaid discussions, this Court is of the considered view that the prosecution has not been able to prove guilt of the appellants

beyond all reasonable doubt based on the evidence adduced by it and as such, they deserve to be acquitted of the charges leveled against them by

giving them benefit of doubt.

15. In the result, the appeals are allowed. The impugned judgment 8.2.2002 is hereby set aside, acquitting the appellants of the charges leveled against

them. The record shows that the appellants are on bail, therefore, their bail bonds stand discharged and they need not surrender.