
Santram Satnami Vs State Of Chhattisgarh

Criminal Appeal No. 488 Of 2022

Court: Chhattisgarh High Court

Date of Decision: Oct. 31, 2023

Acts Referred:

Indian Penal Code, 1860 " Section 376(2)(I), 450#Code Of Criminal Procedure, 1973 " Section 313, 374(2)

Hon'ble Judges: Ramesh Sinha, CJ; N. K. Chandravanshi , J

Bench: Division Bench

Advocate: Roop Ram Naik, Avinash Singh

Final Decision: Partly Allowed

Judgement

- 1,P.W. 1 Maternal grand mother of victim,,,
- 2,P.W. 2 Mother of the victim,,,
- 3.,P.W. 3 Father of the victim,,,
- 4,P.W. 4Ã, Brother of victim,,,
- 5., "P.W. 5Ã, Khilawan Das, Kotwar",,,
- 6., "P.W. 6 Sukdev Das, Kotwar",,,
- 7., "P.W. 7 Dwarika Ratre, Head Constable",,,
- 8., "P.W. 8 Gangotri Dhruv, Head Constable" ,,,
- 9., "P.W. 9 Brahaspat Pradhan, Patwari" ,,,
- 10., "P.W. 10 Dr. Suresh Khunte, member of Medical Board who examined the victim" ,,,
- 11., "P.W. 11 Balkaran Verma, Asstt. Sub Inspector",,,
- 12., "P.W. 12 Dr. Neha Gangeshri, Doctor who examinedÃ, the prosecutrix",,,
- 13,"P.W. 13 Dr. Rajkumar Sahu, who examined the accused" ,,,
- 14., "P.W. 14 Ishwar Toppo, Asstt. Sub Inspector",,,

15., "P.W. 15 Satyaprakash Khare, Constable" ,,,

16., "P.W. 16 Manoj Kumar Prajapati, Investigating Officer" ,,,

14, "Ex. P-12 Report of Dr. Neha Gangeshri regarding underwear of victim" ,,,

15, "Ex. P-13 Document of District Hospital, Balodabajar-Bhatapara" ,,,

16, Ex. P-14 Urine examination report ,,,

17, Ex. P-15-A Memo for examination of accused ,,,

18, Ex. P-15 MLC report of accused ,,,

19, Ex. P-16 Memo to Medical Board ,,,

20, Ex. P-17 Arrest memo ,,,

21, Ex. P-17A Information of arrest ,,,

22, "Ex. P-18 Memo to FSL, Raipur" ,,,

23, Ex. P-19 FSL report ,,,

24, Ex. P-20 Memo for preparation of Site Map ,,,

14. P.W. 2 is mother of victim and P.W. 3 is father of the victim. As per their deposition, at the time of incident, they were not on the spot, rather they" ,,,,

had gone to Kasdol. Hence, they were informed about the incident over phone. Both of them have stated that they were informed by P.W. 1 and" ,,,,

P.W. 4 about the incident that, the accused went in their house, demanded water and drank water and subsequently made physical relation with the" ,,,,

victim and fled from the spot by jumping from window. P.W. 2 mother of victim has further stated in her deposition that Chaddi (panty) of victim was ,,,,

stained with blood and her skirt was also stained with blood. She has further stated that underwear of victim was seized from her vide seizure memo ,,,,

Ex. P-7. Although the seizure of panty of victim has not been supported by P.W. 5 Khilawan Das and P.W. 6 Sukdev Das who are witnesses of ,,,,

aforesaid seizure, but the same has been well supported by the Investigating Officer Manoj Kumar Prajapati (P.W 16)." ,,,,

15. P.W. 4 is brother of the victim. He has also supported the statement of her grand mother (P.W. 1), but as per his deposition, at the time of" ,,,,

incident, he was not present in the house, rather he reached there after calling by his grand mother (P.W. 1). Hence, the deposition of grand mother" ,,,,

(P.W. 1) does not get support from brother of victim (P.W. 4) that her grand son saw and caught the accused. P.W. 4 has admitted in his cross ,,,,

examination that at the time of incident, only grand mother and victim were present in their house. He has also admitted that at the time of incident," ,,,,

Gauri Āçâ,~" Gaura pooja was going on outside their house, but no independent witness has been examined to support the case of prosecution. Dwarika" ,,,,

Ratre (P.W. 7), Gangotri Dhruv (P.W. 8), Brahapat Pradhan (P.W. 9) and Balkaran Verma (P.W. 11) are formal witnesses. Therefore, to examine" ,,,,

the case of prosecution, the medical report and FSL report are required to be considered." ,,,,

16. Dr. Neha Gangeshree (P.W. 12) has medically examined the victim and her report is Ex. P-6. She has deposed that on medical examination, she" ,,,,

found that there were scratch marks on the right buttock of victim size 0.2 x 0.1 x 0.1 cm, there were scratch marks on left side of libia majora and" ,,,,

her hymen was ruptured. The doctor has further stated that sings of struggle were present. Ex. P-19 is FSL report of Slide (Article A) and underwear ,,,,

(Article B) of the victim, in which, it has been reported that in Article A and B, stains of spermatozoa and human sperm were found. Learned counsel" ,,,,

for the accused has heavily stressed upon the fact that Dr. Neha Gangeshree (P.W. 12) has admitted that the scratches found on buttock and Libia ,,,,

majora can be caused by self-scratching with nails, but in the instant case, since there is direct allegation against the accused in respect of commission" ,,,,

of rape with mentally retarded victim, medical report and FSL report also supports this fact, and further accused was seen by her grand mother (P.W. " ,,,,

1) fleeing from window of that room, where she was sleeping, hence only on the basis of admission made by the doctor (P.W. 12) , it cannot be held" ,,,,

that those injuries were caused by the victim herself. ,,,,

17. Grand mother (P.W. 1), mother (P.W. 2), father (P.W. 3) and brother (P.W. 4) of victim have vehemently denied the suggestions that due to" ,,,,

money transaction dispute, they have falsely implicated the appellant in the instant case. Although aforesaid witnesses are relatives of victim but there" ,,,,

is no reason as to why they will depose a false statement. The question comes to core that even if the witnesses are stated to be relatives, why they" ,,,,

should implicate some innocent persons. ,,,,

18. The Supreme Court in the case of Mahesh Vs. State of Maharashtra [2008 (13) SCC 271] held thus :- ,,,,

54. This Court in Salim Sahab v. State of M.P. [(2007) 1 SCC 699] held that: (SCC pp. 701 & 703, paras 11 & 14-15)" ,,,,

11. [mere relationship] is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal actual" ,,,,

culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to" ,,,,

adopt a careful approach and analyse evidence to find out whether it is cogent and credible. ,,,,

*** ,,,,

14. in Masalti v. State of U.P. [AIR 1965 SC 202] this Court observed: (AIR pp. 209-10, para 14)" ,,,,

But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of" ,,,,

partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of" ,,,,

justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with" ,,,,

such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct. " ,,,,

15. To the same effect are the decisions in State of Punjab v. Jagir Singh [(1974) 3 SCC 277 : 1973 SCC (Cri) 886] , Lehna v. State of Haryana" ,,,,

[(2002) 3 SCC 76 : 2002 SCC (Cri) 526] and Gangadhar Behera v. State of Orissa [(2002) 8 SCC 381 : 2003 SCC (Cri) 32]
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55. As regards non-examination of the independent witnesses who probably witnessed the occurrence on the roadside, suffice it to say that testimony",

of PW Sanjay, an eyewitness, who received injuries in the occurrence, if found to be trustworthy of belief, cannot be discarded merely for non-",

examination of the independent witnesses. The High Court has held in its judgment and, in our view, rightly that the reasons given by the learned trial",

Judge for discarding and disbelieving the testimony of PWs 4, 5, 6 and 8 were wholly unreasonable, untenable and perverse. The occurrence of the",

incident, as noticed earlier, is not in serious dispute. PW Prakash Deshkar has also admitted that he had lodged complaint to the police about the",

incident on the basis of which FIR came to be registered and this witness has supported in his deposition the contents of the complaint to some extent",

It is well settled that in such cases many a times, independent witnesses do not come forward to depose in favour of the prosecution. There are many",

reasons that persons sometimes are not inclined to become witnesses in the case for a variety of reasons. It is well settled that merely because the",

witnesses examined by the prosecution are relatives of the victim, that fact by itself will not be sufficient to discard and discredit the evidence of the",

relative witnesses, if otherwise they are found to be truthful witnesses and rule of caution is that the evidence of the relative witnesses has to be",

reliable evidence which has to be accepted after deep and thorough scrutiny.

19. The Supreme Court in the case of Nagarjit Ahir Vs. State of Bihar reported in [(2005) 10 SCC 369], has held as under :-",

12. It was then submitted that in spite of the fact that a large number of persons had assembled at the bank of the river at the time of occurrence",

the witnesses examined are only those who are members of the family of the deceased or in some manner connected with him. We cannot lose sight",

of the fact that four of such witnesses are injured witnesses and, therefore, in the absence of strong reasons, we cannot discard their testimony. The",

fact that they are related to the deceased is the reason why they were attacked by the appellants. Moreover, in such situations though many people",

may have seen the occurrence, it may not be possible for the prosecution to examine each one of them. In fact, there is evidence on record to suggest",

that when the occurrence took place, people started running helter-skelter. In such a situation it would be indeed difficult to find out the other persons",

who had witnessed the occurrence. In any event, we have the evidence of as many as 7 witnesses, 4 of them injured, whose evidence has been found",

to be reliable by the courts below, and we find no reason to take a different view.

20. The Supreme Court in case of Sadhu Saran Singh Vs. State of UP. [(2016) 4 SCC 357] held thus :",

29. As far as the non-examination of any other independent witness is concerned, there is no doubt that the prosecution has not been able to",

Sr., Sentence u/S., sentence, Default stipulation, Default stipulation

1., "450,Ã, IPC", 5 years RI, Rs. 2500/-, 1 year RI

2., "376(2)(I), IPC", RI for 10 years, Rs. 2500/-, 1 year RI