

John and Others Vs. State of Madhya Pradesh

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Court : Chhattisgarh

Decided On : Jul-05-2011

Judge : Pritinker Diwaker

Appeal No. : Criminal Appeal Nos. 1505 of 1996 & 1553 of 1996

Appellant : John and Others

Respondent : State of Madhya Pradesh

Judgement :

(CRIMINAL APPEALS UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE.)

1. Since the aforementioned two appeals arise out of the same judgment and order dated 27.8.1996 passed by Additional Sessions Judge Durg, in Sessions Trial No. 281/1995 convicting the accused/appellants under Section 376 (2) (g) IPC and sentencing each of them to undergo rigorous imprisonment for ten years and pay fine of Rs. 1000, in default of payment of fine to further undergo rigorous imprisonment for three months, they are disposed of by this common judgment:

2. Case of the prosecution in brief is that on 30.3.1994 FIR Ex. P-3 was lodged by the prosecutrix (PW 4-A) aged about 14 years at the relevant time alleging that on 29.3.1994 at about 8 p.m. when she was returning after answering the

call of nature from behind the fences of one Jhaduram, accused/appellant Bhagat came there, caught hold of her hand, asked her to accompany him to a nearby barren field and on refusal by her, he slapped her twice and threatened to kill her in case she raised cries. Thereafter, it is alleged that he gagged her mouth with the handkerchief, lifted her away near the beshram shrubs, threw her down and after removing her salwar and underwear committed forcible sexual intercourse with her and when she tried to raise an alarm, he gave two-three slaps to her. It is further alleged that after the act was over, the accused/appellant was leaving the spot with her underwear and salwar but when she started weeping, he put the same back and ran away. Thereafter, she went to her house and narrated the incident to her maternal aunt, one Jhaduram (PW- 5) and Samari Bai (not examined) and then fell asleep. It is the further case of the prosecution that as father of the prosecutrix had gone to her sister's house, the report could not be lodged on the same day and it was lodged on the next day after he got back there from. Based on this FIR, offence u/s 376 IPC was registered against accused/appellant - Bhagat. On 31.3.1994, statement of the prosecutrix under Section 161 Cr.P.C. was recorded in which she has alleged that on the date of incident at about 8 p.m. she had gone to answer the call of nature, accused Palu, Kanahiya (juvenile), Radho and John were cleansing their teeth near a bore well and while getting back as soon as she reached near the said bore well, all four lifted her away near the beshram shrubs where she was subjected to forcible sexual intercourse first by Palu, then by accused Kanhaiya (juvenile), then by accused John and then by accused Radho and when she tried to raise alarm, all of them had threatened to kill her. It is alleged that her salwar and underwear were removed by accused John and rest three had held her. While leaving the spot after their act was over, all the four had threatened her to do away with in case she lodged a report naming them. It is alleged that in the incident, her bangles were also broken. She went on alleging that after the four accused i.e. Palu, Kanahiya (juvenile), Radho and John had left the place of occurrence and when she was going to her house, accused/appellant Bhagat who was standing near the bore well, asked her to accompany him to the nearby barren field and on refusal by her he gave her two slaps, gagged her mouth with the handkerchief, took her near the beshram

shrubs, threw her on the ground and after removing her underwear and salwar committed forcible sexual intercourse with her. When she started weeping, he gave her two-three slaps and started leaving the spot with her underwear and salwar but when she started weeping he left the same and went away. It is alleged that in the incident her bangles were broken and she had sustained injuries on her cheeks and left wrist. It is alleged that when Jhaduram (PW-5) and one Kanti asked accused Palu, Kanahiya (juvenile), Radho and John as to why they had ravished the prosecutrix, they bagged pardon, and then after reaching home she fell asleep and on the next day when her father got back, she narrated the entire incident to him and then the report was lodged. Subsequently, on 5.4.1994 her statement under Section 164 Cr.P.C. was recorded in which it is alleged that on the date of incident at about 8 p.m. when she was returning after answering the call of nature, near a bore well accused Bhagat met her and lifted her away. It is further alleged that on alarm being raised by her, he inserted a piece of cloth in her mouth and took her near beshram shrubs where accused Palu, Kanahiya (juvenile), Radho and John were already present. Then after being undressed by accused Bhagat she was subjected to forcible sexual intercourse by all of them one after another. It is alleged that first she was subjected to rape by accused John, then by accused Kanhaiya, then by accused Radho, then by accused Palu and then by accused Bhagat. After investigation, challan was filed by the police on 16.4.1994 for the offence under Section 376 (2) (g) IPC against all the accused persons include juvenile Kanhaiya.

3. In order to establish the guilt of the accused/appellants the prosecution has examined 09 witnesses. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties the trial Court has convicted and sentenced the accused / appellants as mentioned in paragraph No.1 of this judgment.

5. Heard counsel for the parties and perused the material available on record including the judgment under challenge.

6. Counsel for the accused/appellants submit that a very improbable story has been put forth by the prosecution because initially in the FIR lodged on 30.3.1994 the allegation of rape was made only against accused/appellant Bhagat whereas in her statement recorded under Section 161 Cr.P.C. the prosecutrix has made the allegations against all the accused/appellants including juvenile accused Kanhaiya. They further submit that in the FIR and in the statements recorded u/s 161 and 164 of the Code of Criminal Procedure three different versions have been given by the prosecutrix and in this view of the matter the entire case of the prosecution becomes doubtful and the conviction u/s 376 2 (g) IPC cannot be based thereon.

7. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellant being in accordance with the evidence of the witnesses, are just and proper and cannot be interfered with in these appeals.

8. Prosecutrix (PW-4A) has stated in her evidence that on the date of incident at about 8 P.M. while she was returning after answering the call of nature, all the accused/appellants met her near the bore well; took her to the field; when she tried to raise an alarm, accused Palu inserted a piece of cloth in her mouth, all the four had removed her salwar and underwear and then first accused Palu committed forcible sexual intercourse with her which then was followed by accused Bhagat and Kanhaiya (juvenile) also. Then she has stated that could not tell the sequence as to who committed the offence first but according to her other two accused persons have also committed rape on her. Thereafter, according to this witness, she came weeping and narrated the incident to Jhaduram (PW-5). She has stated that after her father returned home from her sister's house in the next morning, she narrated the incident to him also and then the matter was reported to the police. According to her, in the FIR she had made allegation against all the accused persons but if it is not recorded against

all, she could not tell the reason for that. She has further stated that she narrated the entire incident to Jhaduram (PW-5) and Samari Bai (not examined) while she was returning to her house. She has further stated that at the time of incident it was dark, that she knew the accused persons even prior to the incident though she did not know their names and address which however were later disclosed to her by her neighbours. Then this witness has stated that near the place of incident, no houses were there. According to her, while being subjected to rape by the accused persons, blood was oozing from her private part and this was also disclosed to the doctor who had medically examined her.

Jhaduram (PW-5) whom the prosecutrix is said to have narrated the entire incident, has not supported the case of the prosecution and has been declared hostile whereas one Samari Bai whom also she is stated to have narrated the incident has not been examined by the prosecution. Vishwanath (PW-6) - the father of the prosecutrix has stated that when he returned home next day of the incident, the prosecutrix narrated the entire incident to him and then the report was lodged. Dr. H.K. Joshi (PW-1) who had medically examined the accused persons and given his report Ex. P-2 has stated that they were capable of performing sexual intercourse. Dr. Alpana Agrawal (PW-2) who had medically examined the prosecutrix and given her report Ex. P-9 has stated that there were certain injuries on the person of the prosecutrix and she was not habitual to sexual intercourse as on entering two fingers in her vagina, she was complaining pain. Dr. G.S. Thakur (PW-3) who had done ossification test of the prosecutrix and given his report Ex. P-12 has stated that at the relevant time she was aged about 15 years carrying three years margin on either side. Sub Inspector - Patiram Netam (PW-4) is the witness who had done part of the investigation. Anup Kumar (PW-7) is the Patwari who had prepared spot map Ex. P-15. Inspector - R.K. Sharma (PW-8) is the investigating officer who has supported the case of the prosecution.

9. Having thus closely seen the material available on record including the evidence of the witnesses, it becomes apparent that from very beginning the prosecutrix has been very inconsistent in stating the things. In the FIR she has stated that she was subjected to rape only by accused/appellant Bhagat but in

her statement recorded under Section 161 Cr.P.C. she has stated that first she was subjected to rape by accused John, Palu, Radho and Kanahiya (juvenile) and when she was returning home, accused/appellant Bhagat also took her to the field and committed rape on her. In yet another statement recorded under Section 164 Cr.P.C. on 5.4.1994 she has given altogether a different story that all the five accused persons met her near the bore well, took her to the field and after removing her cloths committed forcible sexual intercourse with her. Thus at three places she has given three different versions which makes very difficult for this Court as to which of these has to be believed. The prosecutrix has further stated that at the time of incident it was dark and though she knew the accused/appellants, their names and address were not known to her which subsequent were informed to her by her neighbours but there is no evidence on record to this effect. Though, during the incident the prosecutrix is said to have sustained injuries on her person but merely on that basis it will not be safe for this Court to up-hold the findings of the Court below convicting the accused/appellants under Section 376 (2) (g) IPC. Such inconsistent statement of the prosecutrix assuming three forms on three occasions i.e. at the time of recording FIR and the statements u/s 161 and 164 Cr.P.C. does not inspire the confidence of this Court and that being so the benefit of doubt goes in favour of the accused/appellants.

10. Consequently, the appeals are allowed. Judgment impugned is hereby set aside. Accused/appellants are acquitted of the charge levelled against them. Appellants are on bail. Their bail bonds stand discharged.