



मामला क्रमांक Cr.A 894 सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<b><u>Criminal Appeal No. 894 of 2004</u></b>	
	<b><u>APPELLANT</u></b> IN JAIL	Ramdev S/o Lalsai, Aged about 21 years, Occupation Labour, R/o Lamori, P.S. Basantpur, Teh. Pal, Distt. Sarguja (C.G.)
	<b><u>RESPONDENT</u></b>	<b><i>Versus</i></b> The State of Chhattisgarh, Through: S.H.O. P.S. Shankargarh, Distt-Sarguja (C.G.)
	Present: Mr. Abhay Tiwari, learned counsel for appellant. Mr. Sudhir Bajpai, Dy. G.A. for the State/respondent.	
	<b><u>ORAL JUDGMENT</u></b> (31 <sup>th</sup> May 2007)	
	<b><u>Dhirendra Mishra, J</u></b>  This appeal under Section 374(2) of the Code of Criminal Procedure is directed against the judgment of conviction and order of sentence dated 30 <sup>th</sup> September 2004 passed in S.T.No.136/02 whereby learned Second Additional Sessions Judge, Ambikapur has convicted the appellant under Sections 342 and 376 (2)(g) of the Indian Penal Code and sentenced him to undergo R.I. for one year, to undergo R.I. for 10 years and pay a fine of Rs.50,000/-, respectively, in default of payment of fine to further undergo R.I. for 2 ½ years.	

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	<p>2. Allegation against the appellant and another co-accused Anik Kodaku is that on 18.12.2001 at about 6.00 p.m. they kidnapped 18 years old girl of village Mahadevpur on the gunpoint, kept her in their captivity for two hours and in between gang raped her. Co-accused Anil who is a juvenile offender, was prosecuted in the Court of Juvenile Justice Board. It is also not disputed that in connection with an incident of the same day, the appellant was prosecuted for commission of dacoity under Section 394, 397 of the IPC and in which he stands convicted.</p> <p>3. Case of the prosecution, in brief, is that the prosecutrix resides with her father. On 18.12.2001 when she was present at her home. The appellant along with Harinath Pando, Devroop Pando and 3 others came to her house and disclosed that they belonged to naxal party. They tied both the hands of her father with a towel. Seeing this the prosecutrix ran towards Butai Yadav's house whereupon two of the offenders chased and caught her and took her towards forest threatening that she shall be shot at if she shouts. After taking her to the forest they had thrown her on the earth and raped her in turn. They detained her there for two hours. After the incident she returned home and narrated the incident to her father and the villagers. Both the accused persons were caught by the villagers. Later on, they were known as Anil and Ramdev. On the following day, First Information Report of Ex.P/1 of the incident was lodged by her father in the Police</p>	

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	<p>Station Basantpur. She was referred to a lady doctor namely Dr. Manju Ekka for medical examination, who after her examination gave a report of Ex.P/16. During investigation, petticoat of the prosecutrix was taken into possession vide Ex.P/11. Slides of the vaginal secretion were prepared and seized vide Ex.P/5. Undergarments of the accuse persons were also taken into possessions vide Exs.P/3 &amp; P/4. All the seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur vide Ex.P/10.</p> <p>4. After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ramanujganj who in turn committed the case to the Court of Sessions Judge, Ambikapur and the same was received on transfer by learned Additional Sessions Judge for trial.</p> <p>5. Prosecution in order to establish the charges against the accused persons examined 14 witnesses in all. Thereafter, statement of the accused Ramdev was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. He has stated that Devroop and Harinarayan had a dispute with the complainant, on the day of incident they were sleeping in the house of Bifan Pando and due to animosity they were caught.</p>	

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	<p>6. After hearing counsel for the respective parties, learned trial Court convicted and sentenced the accused/appellant as mentioned above.</p> <p>7. Learned counsel for the appellant submits that the appellant has been framed in the above offence out of animosity; he is a poor labourer and somehow earns his livelihood by labour. The trial Court has convicted the appellant and sentenced him to undergo imprisonment of 10 years and also imposed fine of Rs.50,000/-, which is too excessive and harsh.</p> <p>8. Reliance is placed on the judgment of Hon'ble the Apex Court in the matter of <u>Raju Vs. State of Karnataka</u> reported in <u>1994 Cri.L.J. 248</u> and it is argued that considering the age of the accused, even if the court reaches to the conclusion that the accused/appellant has been rightly convicted, some consideration in imposition of jail sentence and fine may be given.</p> <p>9. On the other hand, learned counsel for the State supported the impugned judgment of trial Court.</p> <p>10. I have heard learned counsel for both the parties and perused the impugned judgment as also the record of trial Court.</p> <p>11. The prosecutrix has lodged the report of Ex.P/1. She has been examined as P.W.1. The trial Court assessing her age as 16</p>	

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	<p>years recorded her statement without administering oath. She has stated in her evidence that the incident is of last year when she was at home along with her father Balbir and brother Shivrath Yadav. Anil, Ramdev, Harinarayan, Devroop and Jagdish came to their house and enquired about owner of the house, whereupon her father told them that he was the owner. Thereafter, they tied both the hands of her father from behind and started beating him. They demanded money on the threat of shooting him and claimed themselves belonging to the party (Naxal). Seeing this she started weeping, on which they assaulted her twice with club saying that she is making noise. She ran away from her house, upon which the appellant and Anil chased her, she ran towards forest rivulet passing through the house of neighbour Manohar, however, he was not in his house. Both of them caught her near the rivulet. They took out her clothing and warned her of making noise otherwise they will shoot her. She has further stated "firstly, Ramdev, who is present is the Court and whom she saw for the first time on the date of incident, caught hold of her and Ramdev torn her pant." However, she did not narrate the actual act despite being repeatedly asked and claimed that whatever has happened, she has already disclosed openly. She further stated that after Ramdev, Anil also did. After the incident she became unconscious and after regaining consciousness she came back home at about 8.00 p.m. and narrated the incident to her father that Ramdev and Anil had caught hold of her near the rivulet and robbed her honour. The</p>	

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	<p>accused persons remained in the house of Bifan Pando throughout the night, however, Rajnarayan, Dashrath and others had caught the three of them at about 4.00 in the morning. Anil, Jagdish and Ramdev were apprehended at the house of Bifan, they were taken to Baikuntpur and thereafter, Rajnarayan and Dashrath lodged the report. She has further stated that she was taken to Dr. Manju Ekka who had examined her. She was declared hostile and cross-examined by the prosecution, upon which she admitted the report of Ex.P/1. She also stated that the accused had inserted his penis into her vagina, both the accused had inserted their penis into her vagina and they did so forcibly without her consent and they had detained her in forest. Both of them had repeated this act twice. She has been cross-examined at length by the defence counsel, in which she has stuck to her version of examination-in-chief. In paragraph 14 she has denied the suggestion that accused persons did not rape her and has stated that the appellant and his accomplice had torn her pant, which was seized by the police.</p> <p>12. PW-2 Balbir Yadav, father of the prosecutrix, has stated that the appellant along with others had come to his house, some of them were armed with <i>danda</i> (club), they were claiming themselves to be naxals and demanded money. They had tied both his hands with towel, his daughter was present in the house, he sent his son to the house of neighbour to bring money. Thereafter, appellant</p>	

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	<p>Ramdev and Anil started chasing his daughter and by chasing took her towards forest. They untied him only when Rs.200/- was given to them. Out of fear he slept in the house of the neighbour. In the morning when he returned his house, he met his daughter near his house, who told him that the thieves had taken her towards forest and both of them had raped her. Eight to ten persons from Baikuntpur had come before dawn and made enquiries from him. Thereafter, they caught the three from the house of Bifan Pando. Rape was committed by Anil and Ramdev as informed by her daughter. In the cross-examination he has stated that he did not lodge the report out of fear as the accused persons belonged to party and they had threatened him not to report. He has admitted that he did not make noise when his daughter was being chased by two persons and did not raise alarm because he feared that he would be beaten. He also did not go in search of his daughter out of fear. He has admitted that he did not recognize accused Ramdev and Anil since before. PW-6 Ramnarayan Singh has stated that he recognized Ramdev and Anil as also the prosecutrix. He calls Balbir Mama in village relation. They had reached from Baikuntpur to Mahadevpur in the morning and had gone to the house of Balbir who informed him that his daughter was missing since evening, she was taken by accused Ramdev, who had raped her near forest and left her thereafter. The accused persons were caught by the villagers thereafter. He and others had taken them to Baikuntpur. He has been declared hostile and cross-examined</p>	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 8	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>by the prosecution in which he has admitted his statement of Ex.P/6. He has further stated that the prosecutrix had stated before them that Ramdev and Anil had raped her near forest and left her thereafter. PW-4 Dashrath Khairwar has also stated that accused persons claiming themselves to be naxals used to collect rice and money from the villagers. PW-14 Dr. Manju Ekka has examined the prosecutrix after the incident on 20.12.2001 and had given her report of Ex.P/16. She had noticed that her hymen was torn, abrasion was present on her vagina, on insertion of two fingers she was complaining excessive pain, abrasions were also present on her back and she has opined on the basis of examination of her vagina that due to presence of abrasions and excessive pain, possibility of rape was there. Two slides of vaginal secretion were prepared and given to the constable. In the cross-examination she has stated that swelling and reddishness was not present on the private parts of the prosecutrix, however, abrasions inside the vagina and nearby were present which she has described in her report.</p> <p>13. Thus, from the statement of the prosecutrix which is duly corroborated by the statements of her father Balbir (PW-2) as also that of Dr. Manju Ekka (PW-14), who noticed injuries described above on the private parts of the prosecution, commission of rape by the appellants upon the prosecutrix is established.</p>	



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	<p>14. Now coming to the question of imposition of jail sentence and penalty, so far as argument of counsel for the appellant that the accused/appellant is a 21 year old boy and therefore, he should have been punished with a lesser jail sentence is concerned, the manner in which the appellant in association with other accused person had entered into the house of the prosecutrix, demanded money on the gunpoint from her father, assaulted the prosecutrix, drove her out of her house and thereafter, after chasing raped her twice on the gunpoint, imposition of 10 years jail sentence which is a minimum jail sentence prescribed under Section 376(2)(g) of the IPC cannot be faulted. However, learned counsel for the appellant could not demonstrate any compelling reason for leniency in imposition of jail sentence.</p> <p>15. In the matter of Raju Vs. State of Karnataka (supra), the Hon'ble Apex Court considering the age of the accused and further considering the fact that they could not overcome fit of passion and committed the offence of gang rape, reduced the sentence to 3 years R.I. However, in the present case, the appellant along with other co-accused forced their entry in the house of the prosecutrix, drove her out of her house on the gunpoint, chased and caught her and thereafter, brutally raped her, in these circumstances, I am of the considered opinion that learned trial Court has rightly convicted the appellant under Section 376(2)(g) of the IPC and</p>	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश /c	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>sentenced him to undergo R.I. for 10 years. Conviction of the appellant under Section 342 of the IPC on the finding that the appellant detained the prosecutrix for two hours on the gunpoint, is also proper. However, considering the socio-economic status of the appellant who is stated to be earning his livelihood as manual labourer in the village background, imposition of penalty of Rs.50,000/- is admittedly too excessive and the same deserves to be reduced.</p> <p>16. In the result, impugned judgment of the trial Court convicting the appellant under Sections 376(2)(g) and 342 of the IPC and jail sentence imposed thereon, are maintained. However, imposition of fine of Rs.50,000/- under Section 376(2)(g) of the IPC is modified and reduced to Rs.5,000/- and in default of payment of fine to further undergo R.I. for six months.</p> <p>The appeal is accordingly disposed of.</p>	<p style="text-align: right;">Sd/- Dhirendra Mishra Judge</p>

Mishra/-