



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

AFR

मामला क्रमांक Cr. A. 1038 सन् 2003

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. 1038 of 2003</u></b>	
	<b><u>APPELLANT</u></b> IN JAIL	1. Shrawan Kumar S/o Tarachand Aged about 21 years, R/o Qtr.No.308/A, Zone 3, B.M.Y. Charauda, Distt. Durg (C.G.)  2. Vinod Mahobia S/o Bhurelal Mahobiya, Aged about 26 years, R/o Charauda Basti, P.S. Bhilai-3, Distt. Durg (C.G.)  <b><u>Versus</u></b>
	<b><u>RESPONDENT</u></b>	: The State of Chhattisgarh, Through: G.R.P., Charauda, Distt. - Durg (C.G.)
	<hr/> <b>Present:</b> Mr. R.K. Jain, learned counsel for appellant No.1. Mr. M.K. Bhaduri, learned counsel for appellant No.2. Mr. Sudhir Bajpai, Dy. G.A. for the State/respondent. <hr/>	
	<b><u>ORAL JUDGMENT</u></b> (30 <sup>th</sup> May 2007)	
	<b><u>Dhirendra Mishra, J</u></b>  This appeal is directed against the judgment dated 19 <sup>th</sup> September 2003 passed in S.T.No.149/2003 whereby the learned 4 <sup>th</sup> Additional Sessions Judge, Raipur has convicted the appellants under Section 376 (2)(g) of the IPC and 145(B) of the Railways Act 1989 and sentenced each of them to undergo R.I. for 10 years and pay a fine of Rs.500/- and to undergo R.I. for one month,	

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	<p>respectively and in default of payment of fine to further undergo R.I. for one month each.</p> <p>Case of the prosecution in brief is that the prosecutrix who is undisputedly a married lady, aged 21 years, had gone from her village Kalartarai, Police Station Kota, District Bilaspur to Power House station for the purpose of meeting her uncle Pramod Kumar Gourha who was working at the relevant time as Constable in R.P.F. at B.M.Y. Charouda. She reached Power House station at about 6.00 p.m. and made enquiries regarding reaching Charouda and thereafter, she proceeded to Charouda by a Minidore. After reaching Charouda, she enquired about her uncle's quarter and proceeded towards the quarter of her uncle on foot. At this juncture, appellant Shrawan came on his Auto and took her in his Auto near a house. After stationing his Auto he introduced her with one D.P. Singh saying that he is the friend of Gourha. However, said D.P. Singh tried to outrage her modesty and on being objected to, he set her free and started talking to Shrawan. Shrawan again took the prosecutrix in his Auto and after moving around for some time, parked his Auto near his house and asked the prosecutrix to sleep in the Auto. Around 12.00 in the night, two boys came there and talked to Shrawan after taking him at a distance. The name of one of the boys was Vinod who later on came near her and started making indecent advances, on her objection he slapped her. Thereafter, the appellants dragged her in</p>	

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	<p>a nearby house, took out her wearing apparels and raped(Bura Kam) her. The act of forcible rape was further repeated after about an hour by both the appellants. In the morning both of them took her to the house of Gourha and called the younger brother of Gourha namely Vinod. After leaving her at the house of Gourha both the appellants went away in the Auto. She narrated the incident to Vinod Gourha and asked him to lodge a report whereupon he said that he is alone and the accused persons are rowdies, she should return to the village and as soon as his brother returns from Kharagpur, he will call her for the purposes of reporting the matter to the police. Thereafter, he left the prosecutrix at Raipur station by his motorcycle. After reaching Kota, she disclosed about the incident to her husband and brother-in-law. On return of Pramod Gourha, the prosecutrix was called and thereafter, she along with her uncle Pramod Gourha and Vinod Gourha lodged the report at Police Station G.R.P. Charouda. On the basis of report of the prosecutrix the offence against the present appellants as also the acquitted accused D.K. Singh was registered. Prosecutrix was sent for medical examination to District Hospital, Durg.</p> <p>After completing investigation charge sheet was filed in the Court of Special Railway Magistrate, Raipur who in turn committed the case to the Court of Sessions Judge, Raipur and the same was received on transfer by learned Additional Sessions Judge for trial.</p>	

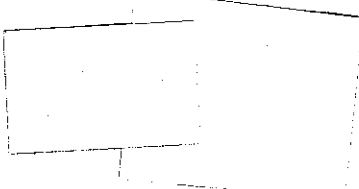
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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>Learned trial Court framed charges under Section 376 (2)(g) of the IPC and Section 145(B) of the Railways Act 1989 against the accused/appellants Shrawan and Vinod whereas charge under Section 354 of the IPC and 145(B) of the Railways Act was framed against accused D.K. Singh. Prosecution in order to establish the charges against the accused persons examined 8 witnesses in all. Thereafter, statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence and false implication. They also examined Gouribai (D.W.1) as a defence witness.</p> <p>After hearing counsel for the respective parties, trial Court convicted and sentenced the appellants Shrawan and Vinod as mentioned above. However, accused D.K. Singh was acquitted of the charges framed against him.</p> <p>Learned counsel for the appellants Mr. R.K. Jain and Mr. M.K. Bhaduri, vehemently argued that allegedly the incident occurred in the intervening night of 22<sup>nd</sup>/23<sup>rd</sup> February, however, report of the same was lodged by the prosecutrix only on 3<sup>rd</sup> March with a delay of 7 days which is indicative of the fact that the same was lodged as an afterthought in consultation with Pramod Gourha and Vinod Gourha. It was further argued that the prosecutrix has made material improvements in her deposition</p>	

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## आदेश पत्रक (पूर्वानुबद्ध)

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	<p>before the Court which makes her version unreliable and untrustworthy. Though the allegation is that the prosecutrix was subjected to rape by two persons twice, however, on the medical examination of the prosecutrix no injuries was noticed on her person, therefore, in the aforesaid circumstances considering the fact that the report was lodged after 7 days of the incident and that no injury was found on the person of the prosecutrix, defence of the accused persons that act of sexual intercourse was with her consent, can be probablised. It has been further submitted that accused Shrawan Kumar and Vinod Mahobia were aged about 21 and 26 years respectively at the time of incident and as such, both are young boys and have been convicted to undergo R.I. for 10 years, therefore, considering the facts and circumstances of the case and further considering the age of the accused persons, the Court below ought to have convicted them with some lesser jail sentence.</p> <p>Reliance is placed on the judgments reported in <u>(2004) 9 SCC 699</u> in the matter of <u>State of Chhattisgarh Vs. Derha</u> and <u>(2006) 9 SCC 589</u> in the matter of <u>Raj Kumar alias Raju Yadav alias Raj Kumar Yadav Vs. State of Bihar</u>.</p> <p>On the other hand, learned counsel for the State supported the impugned judgment of trial Court.</p>	

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## आदेश पत्रक (पूर्वानुबद्ध)

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	<p>I have heard learned counsel for both the parties and perused the material available on record including the impugned judgment of the trial Court.</p> <p>It is true that date of offence is the intervening night of 22<sup>nd</sup> &amp; 23<sup>rd</sup> February and F.I.R. of Ex.P/1 has been lodged by the prosecutrix on 3<sup>rd</sup> March i.e. after 7 days of the incident. The explanation for delay in lodging this report given by the prosecutrix is that she had gone to Charouda to meet her uncle, however, before she could reach the quarter of her uncle she was subjected to rape by the appellants in the intervening night and thereafter, she reached her uncle's quarter only to find that he was not there as he had gone to Kharagpur, she narrated the incident to the younger brother of his uncle namely Vinod Gourha and on his advice that she should go back to Kota and will be called as soon as his brother Pramod Kumar Gourha returns from Kharagpur to lodge the report as accused persons are of bad character and it would not be safe to lodge report at this juncture, she left for Bilaspur and on return of her uncle she was called and report was lodged and in these circumstances, delay of seven days in lodging the report was occurred.</p> <p>Taking into consideration totality of the circumstances, the trauma that the prosecutrix had to suffer in the intervening night of 22<sup>nd</sup>/23<sup>rd</sup> February at the hands of the appellants, non-filing of</p>	



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	<p>report promptly does not make case of the prosecution doubtful and reasons assigned for lodging the report belatedly are satisfactory.</p> <p>To establish involvement of the accused persons in the crime in question, the prosecutrix has been examined as PW-1. She has stated in her deposition that while she was proceeding towards the quarter of her uncle Pramod Gourha at Charouda on foot, accused Shrawan came on the Auto, took her with him on the pretext that he shall be taking her to the desired destination and in the process, he first took her to the house of accused D.K. Singh, who tried to outrage her modesty. Thereafter, she was again taken near the house of Shrawan where she met appellant Vinod. The Auto was parked before a house, accused Shrawan asked her to sleep in the Auto. In the meanwhile, Vinod appeared there and after some time Vinod abused the prosecutrix with filthy language, started pulling her Sari and thereafter Shrawan dragged her to a nearby quarter. Accused Vinod followed him and after taking out her clothing firstly Shrawan committed rape upon her while Vinod was standing there with knife. After she was raped by Shrawan, Vinod took turn. This act was repeated by both the appellants twice and in the morning at about 5.00 they took her to the house of Pramod Kumar Gourha. However, Pramod Gourha was not present there. She met her younger brother Vinod Gourha in the quarter. She narrated the whole incident to Vinod Gourha. Vinod Gourha</p>	

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## आदेश पत्रक (पूर्वानुबद्ध)

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	<p>stated that Pramod Gourha is not present, as soon as he comes back, he shall be informing her and only then she should come back and in these circumstances, she should return to Kota and come back after arrival of Pramod Gourha. In paragraph 20 of her evidence it has been suggested by defence that act of intercourse was in fact done at 4.00 a.m., which has been denied by the prosecutrix who has stated that she was raped at about 2.30 to 3.00 a.m. It has been further suggested in paragraph 21 that she had a consensual intercourse with Vinod which has been denied by her. Similarly in paragraph 45 of her cross-examination the prosecutrix has denied the suggestion that with her consent Shrawan had intercourse with her and that she had lodged the report against them at the instance of Pramod Gourha.</p> <p>The evidence of the prosecutrix is duly corroborated by the statements of Vinod Gourha (PW-2) and Pramod Gourha (PW-3). PW-2 Vinod Gourha has stated that on the morning of incident accused Vinod and Shrawan came to the quarter of his brother and woke him up and asked about Pramod Gourha stating that a girl has come. They took him near the railway quarter where the prosecutrix, who is his nephew in relation, was sitting. Thereafter, he came back with the prosecutrix to the quarter of his brother. The prosecutrix started weeping and on enquiry, she narrated that Vinod and Shrawan had beaten her and raped against her wishes. He has corroborated the version of the prosecutrix to a great</p>	



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आदेश पत्रक (पूर्वानुबद्ध)

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	<p>extent. Pramod Kumar Gourha (PW-3) has also stated that he had gone to Kharagpur as he was on leave for seven days. He returned from there on 28<sup>th</sup> February 2003 and on his return his brother Vinod Kumar Gourha informed that the prosecutrix had come in the intervening night of 22<sup>nd</sup>/23<sup>rd</sup> February 2003, her modesty was outraged by accused D.K. Singh and in the night she was ravished by appellant Shrawan and Vinod. After learning about the incident, he called the prosecutrix from village and lodged the report. Thus, from the statements of the above three witnesses, the fact that both the appellants had sexual intercourse with the prosecutrix, is established.</p> <p>So far as defence of the appellants that intercourse was done with the consent of the prosecutrix is concerned, in a prosecution for gang rape under Section 376 (2)(g) of the IPC where sexual intercourse by the accused persons is proved, there is a presumption as to absence of consent. Section 114A of the Evidence Act is reproduced as under:</p> <p><b><u>114A. Presumption as to absence of consent in certain prosecutions for rape.</u></b> - In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, 1860 (45 of 1860) where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been</p>	

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## आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 10	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>raped and she states in her evidence before the court that she did not consent, the Court shall presume that she did not consent.</p> <p>Taking into consideration the evidence of the prosecutrix who has categorically stated that she was searching the quarter of her uncle Pramod Kumar Gourha in Charouda which was a new place for her, the appellants Shrawan met her and promised to take her to the quarter of her uncle, however, instead of taking her to the quarter of her uncle he and another accused Vinod had forcibly sexual intercourse with her and further considering the circumstances under which the prosecutrix was subjected to rape by both the appellants who were absolutely strangers to the prosecutrix till they met her in the night of the incident, defence of the accused persons that act of sexual intercourse was done with the consent of the prosecutrix cannot be accepted.</p> <p>On the basis of aforesaid analysis, I am of the considered opinion that the trial Court has not committed any illegality or infirmity in convicting the appellants under Section 376 (2) (g) of the IPC. However, from the evidence available on record, no ingredients of Section 145 of the Railways Act, 1989 has been established during the trial and conviction of the appellants under Section 145(B) of the Railways Act, cannot be sustained.</p>	

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	<p>Now coming to the arguments of learned counsel for the appellants that looking to the age of appellants Shrawan and Vinod Mahobia, who were admittedly 21 and 26 years of age, respectively at the time of incident, the Court below ought to have imposed lesser jail sentence upon them than the prescribed minimum, learned counsel have relied upon the judgment in the matter of State of Chhattisgarh Vs. Derha (supra) where the Hon'ble Supreme Court considering the age of the accused which was admittedly 18 years at the time of incident and who had already served 6 ½ years of imprisonment consequent to the sentence imposed upon him by the trial Court and had a family, reduced the sentence from 10 years to 7 years of R.I. Similarly, in the matter of Raj Kumar Vs. State of Bihar (supra) the Hon'ble Apex Court while dealing with the sentence under Section 376 (1) of the IPC reduced the sentence of the appellant of that case from 7 years to 3 ½ years considering that there was a delay of 3 days in lodging the F.I.R. and that the doctor who had examined the victim did not notice any confirmatory evidence of rape on the victim. In the instant case also, the appellants are stated to be aged 21 and 26 years respectively, the report has been lodged with a delay of 7 days, therefore, considering the overall circumstances available on record and further considering the age of the accused persons, the jail sentence of 10 years imposed upon them deserves to be reduced.</p>	

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	<p>In the result, the appeal is partly allowed. Conviction of the appellants under Section 376(2)(g) of the IPC is maintained. However, their conviction under Section 145(B) of the Railways Act, 1989 is set aside. They are acquitted of that charge. Jail sentence of 10 years R.I. imposed upon the appellants is hereby reduced to 7 years of R.I. In addition, the appellants shall pay a fine of Rs.5,000/- each and in default of payment of fine, they have to further undergo R.I. for six months each.</p> <p>The appeal is disposed of accordingly.</p>	<p>Sd/- Dhirendra Mishra Judge</p>

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