



सामला क्रमांक सन् २००

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
<u>CRIMINAL APPEAL NO.569/2004</u>		
<u>APPELLANT</u>		Karru @ Ram Kumar @ Raj Kumar Yadav, aged 32 years, S/o. Chaitu Yadav, R/O. Chucharangapar P.S. Simaga, Distt. Raipur.
Vs		
<u>RESPONDENT</u>		State of Chhattisgarh through P.S. Simaga, Distt. Raipur C.G.
<u>Present:</u> Mr. Abhay Kumar Tiwari, Advocate for the appellant. Mr. Vinay Harit, Dy. A.G. for the respondent-State.		
<u>ORAL JUDGMENT</u>		
(30 th May, 2007)		
<u>Dhirendra Mishra, J;</u> This appeal is directed against the judgment dated 18 th March, 2004 passed by learned 2 nd Additional Sessions Judge, Baloda Bazar in S.T. No.333/2003 whereby learned Additional Sessions Judge after holding accused/appellant guilty for commission of offence under Sections 376 (1) & 323 of the IPC, sentenced him to undergo R.I. for seven years and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for six months and RI for six months respectively. Both the sentences are directed to run concurrently.		
Case of the prosecution, in brief, is that on 11.08.2003 at about 11.00 a.m., the prosecutrix had gone to work in her field, when she was returning from there at about 1.00 p.m., accused/appellant Karru @ Ram Kumar @ Raj Kumar Yadav		

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	<p>caught her and threw her in a drain; ignoring her resistance assaulted her with hand and fist over her cheek and temporal region, took out her clothes and committed rape on her and thereafter ran away. The prosecutrix went to village Chuchungpur, narrated the incident to Bihari, son of Heera and thereafter she returned her home, told about the incident to her son & sister Sonarin Bai and lodged the report (Ex. P-1).</p> <p>During investigation spot map of Ex.P-3 was prepared. The prosecutrix was sent for medical examination to Community Health Centre, Singa where Dr. Farzana Khan (P.W.-8) examined her and gave her report vide Ex.P-7. Petticoat of the prosecutrix was taken into possession vide Ex.P-5. The underwear of accused/appellant was taken into possession under Ex.P-12. Seized articles were sent for chemical analysis to the Forensic Science Laboratory, Raipur vide Ex.P-15.</p> <p>After completing investigation, charge sheet was filed under Sections 376(1), 323 & 506-B of the IPC in the Court of Judicial Magistrate First Class, Baloda Bazar who in turn committed the case to the Court of Sessions Judge and the same was received on transfer by learned Additional Sessions Judge, Baloda Bazar for trial. Charge under Sections 376.(1), 323 and 506-B of the IPC was framed against the appellant, who abjured the guilt.</p> <p>The prosecution in order to establish charge against the appellant examined nine witnesses. Thereafter statement of the accused/appellant was recorded under Section 313 of the Cr.P.C.</p>	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication due to enmity. Learned trial Court after hearing counsel for the respective parties convicted and sentenced the accused/ appellant as mentioned above.</p> <p>Learned counsel for the appellant submits that the prosecutrix is a 62 years old woman and the allegation is that in the rainy season she was subjected to rape by the appellant who is aged 32 years, in the field which is highly improbable. Prosecutrix and other witnesses that are examined by the prosecution are related to each other and the appellant has been implicated in the case due to animosity. He further submits that the appellant is a poor boy; apart from sentencing the appellant to undergo RI for seven years, learned trial Court has also imposed a fine of Rs. 5,000/-, which is too excessive.</p> <p>On the other hand learned counsel for the State supports the impugned judgment.</p> <p>I have heard learned counsel for the respective parties.</p> <p>To establish the charge, the prosecution has examined the prosecutrix as P.W.-1, son of the prosecutrix Santosh Kumar Sen as P.W.-2, sister of the prosecutrix Sonarin Bai as P.W.-4, Bhagwat P.W.-6 & lady doctor Farzana Khan as P.W.-8 who examined the prosecutrix after the incident.</p> <p>The prosecutrix has stated in her deposition that the incident is of Monday i.e. one day before Rakhee festival. She had</p>	

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	<p>gone to her field and at about 12.00 -1.00 p.m. When she was returning it was drizzling. Accused/appellant Karru @ Ram Kumar @ Raj Kumar Yadav all of a sudden caught her from behind and fell her down in a rivulet near the field of Gupta. On being asked as to why he did, so the accused took out his pant and started nailing her. She tried to run away however he chased and fell her down and performed sexual intercourse. He used to hit her body with his elbow and thereafter he went to his village Chunchrungpur. She followed him to his village Chunchrungpur and narrated the incident to his mother. At the time of incident, son of Heera was grazing his animals in the field. Thereafter in the evening she returned to her home and told about the incident to her son and she went along with her to Police Station Singa to lodge the report. She also narrated the incident to her sister Sonarin Bai.</p> <p>In the cross examination, the defence has not been able to point out any significant omissions in her statement. This witness has stuck to her statement in the cross examination on material particulars. Statement of this witness is corroborated by the statement of P.W.-6 Bhagwat son of Heeralal who has stated that on the date of incident he was grazing his cattle in the outer side of his village. Around 3-3.30 p.m. one barber lady came there, at that time it was drizzling, she was drenched in mud and she had stated that Karru of her village has done this to her. Karru has also beaten her upon which he stated that go and tell</p>	

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	<p>in the house of Karru. However, this witness has been declared hostile. Though this witness has not stated about the fact that the appellant had made sexual intercourse with the prosecutrix but this witness corroborates the statement of prosecutrix in material particulars. The statement of prosecutrix is further corroborated by the statement of P.W.-8 lady doctor who has examined the prosecutrix and stated that on examination she has found abrasion on her right cheek and she was complaining of pain on her face, shoulders and back. On internal examination she had found reddishness over her private part. She was also complaining of pain in her private part.</p> <p>P.W.-2 Santosh Kumar Sen & P.W.-4 Sonarin Bai have also stated that after returning home the prosecutrix had informed that appellant had forcibly raped her in the field after beating her and she had sustained abrasion over her cheek.</p> <p>Thus from the statement of above witnesses it is established beyond reasonable doubt that the appellant had committed forcible sexual intercourse with the prosecutrix on the date of incident and the trial Court had not committed any illegality or infirmity in holding the accused/appellant guilty under Section 376 (1) of the IPC.</p> <p>Now coming to the question of sentence, the appellant has been sentenced to undergo RI for seven years, which is a minimum sentence prescribed under Section 376 (1) of the IPC, and to pay a fine of Rs.5,000/-, in default of payment of fine to</p>	

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	<p>further undergo RI for six months and similarly, under Section 323 of the IPC, the appellant has been sentenced to undergo six months RI, which is also just and proper. Apart from the substantive sentences, the appellant has also been imposed with a penalty of Rs.5,000/-. The appellant has preferred this appeal through legal aid as he was not able to engage counsel for prosecuting his appeal. It is stated that the appellant is a poor person and he is not capable of paying the fine amount and therefore imposition of fine of Rs.5,000/- may be reasonably reduced.</p> <p>Considering the financial status of the appellant and further considering that the appeal has been preferred by the appellant through legal aid, the argument appears to be just and proper.</p> <p>In the result, the judgment of conviction of the appellant under Sections 376 (1) & 323 of the IPC and jail sentences imposed on him is maintained. However, the imposition of fine amount under Section 376 (1) of IPC is reduced. Fine of Rs.500/- is imposed and in default of payment of fine amount, the appellant has to undergo R.I. for one month.</p>	<p>Sd/- DHIRENDRA MISHRA Judge</p>