



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक Cr.A. 821 सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p style="text-align: center;"><u>Criminal Appeal No. 821 of 2004</u></p> <p>Appellant : Rohito son of Hundaru Mahkul, aged 48 years, Resident of village- Bagbudapara, Supkalo, P.S.-Kapu, Tah.- Dharmjaigarh, Distt.- Raigarh (Chhattisgarh)</p> <p style="text-align: center;"><i>Versus</i></p> <p>Respondent : State of Chhattisgarh, Through: P.S. Kapu, Distt. - Raigarh (Chhattisgarh)</p> <hr/> <p>Present: Mr. Vijay Kumar Pandey, counsel for the appellant. Mr. Satish Gupta, Dy. G.A. for the State/respondent.</p> <hr/> <p style="text-align: center;"><u>ORAL JUDGMENT</u> (28th May 2007)</p> <p><u>Dhirendra Mishra, J</u></p> <p>The appellant has preferred this appeal against the judgment dated 29th July 2004 passed by Special Court, Raigarh in Special Case No.19/2003 whereby learned Special Court after holding the accused/appellant guilty of committing rape with a 12 years old prosecutrix belonging to scheduled tribe, has convicted him under Sections 376. of the IPC and 3 (1)(xii) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and sentenced him to undergo R.I. for 10 years and pay a fine of Rs.3,000/-, in default of payment of fine to further undergo R.I. for three months and to</p>	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>undergo R.I. for 4 years and pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for two months, respectively.</p> <p>2. Case of the prosecution in brief is that the prosecutrix lodged a report vide Ex.P/1 in Police Station Kapu on 11.10.2002 mentioning therein that on Thursday i.e. 10.10.2002 the accused came to their residence in the morning to engage her as a labourer and thereafter she along with the accused and his wife went to the groundnut field of the accused for weeding. Around 11.00 O'clock his wife returned home for cooking. Thereafter, the accused at about 11.30 a.m. expressed his intention to the prosecutrix to have sexual intercourse with her and on her refusal he abused her in the name of her caste. The accused threw her on the earth, took out her underwear by tearing it and forcibly raped her. When she tried to cry, he gagged her mouth with his hand and threatened her of life and reprimanded her not to disclose this incident to anyone. She narrated the incident to her grand-mother Jugiya (PW-2) and maternal uncle Vichitram (PW-3). Thereafter, her grand-father Budhiyar and Vichitram asked Rohito to come in Panchayat, however, he did not come. Thereafter, the report was lodged. After registration of the crime, PW-5 Chhatar Singh, Head Constable, seized bloodstained pieces of cloth and underwear from the prosecutrix vide Ex.P/3 and thereafter sent the First Information Report to Scheduled Castes and Tribes Welfare Police</p>	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>Station for registration of the offence. During investigation caste certificate of the prosecutrix was taken into possession vide Ex.P/4. The prosecutrix was sent for radiological examination to K.G. Hospital, Raigarh where Dr. D.K. Tandon (PW-4) examined her and submitted his report of Ex.P/5. The prosecutrix was also sent for medical examination and Dr.(Smt.) Susma Ekka (PW-7) examined her and gave her report of Ex.P/7. The slides of vaginal smear were taken into possession vide Ex.P/6. Site plan of the incident is Ex.P/10. The offence was formerly registered vide Ex.P/4 in the special police station. Clothing of the prosecutrix and slides of vaginal smear were sent for chemical examination to Forensic Science Laboratory, Raipur vide Ex.P/16. The Station House Officer also prepared the spot map of Ex.P/14. The accused was also sent for medical examination to District Hospital, Raigarh where Dr.V.K. Mehta (PW-13) examined him and submitted his report of Ex.P/17.</p> <p>3. After completing the investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Raigarh who in turn committed the same to the Special Court, Raigarh. Charges under Sections 376 of IPC, 3(1)(xii) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and 506-B of the IPC were framed against the appellant, who abjured his guilt. Prosecution in order to establish the charges examined 13 witnesses in all. Thereafter, statement of the accused was recorded under Section</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>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 also pleaded that he has been implicated in the above crime with an intention to oust him from the village so that his property may be grabbed and they may receive a sum of Rs.50,000/- from the Government. He also pleaded that he was not capable of performing sexual intercourse. However, learned trial Court after hearing counsel for the parties, convicted and sentenced the accused/appellant as mentioned above.</p> <p>4. The fact that the prosecutrix belongs to scheduled tribe and at the relevant time she was aged about 12 years, has not been seriously disputed. Even otherwise, from the statement of PW-8 D.S. Kanwar, Naib Tehsildar who has given the caste certificate of Ex.P/8 in which her caste is shown as Uraon which comes under scheduled tribe community, it is established that the prosecutrix belongs to scheduled tribe community. From the statement of Dr. D.K. Tandon, Radiologist, who assessed the age of the prosecutrix after conducting radiological examination 12 years and from the statement of her grand-mother who has stated that age of the prosecutrix at the relevant time was 10-12 years, it is established that the prosecutrix was 12 years old at the time of incident.</p> <p>5. Conviction of the appellant is based on the statement of the prosecutrix (PW-1) as also the statements of PW-2 Jugiyabai,</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>grand-mother of the prosecutrix, PW-3 Vichitram, maternal uncle of the prosecutrix and PW-10 Budhiyarsai, father of the prosecutrix and PW-7 Dr.(Smt.) Susma Ekka who examined the prosecutrix after the incident.</p> <p>6. Learned counsel for the appellant submits that there is no eyewitness to the incident, conviction is based on the solitary testimony of PW-1 the prosecutrix. He further submits that the account given by the prosecutrix before the Court is in complete variance with the F.I.R. lodged by herself. Her version is also contradicted by the medical evidence as the prosecutrix has claimed in her deposition that at the time of incident she became unconscious and sustained various injuries on her knees, back, neck, legs, hands and nose and blood was oozing, however, in the medical examination no external injury was found on the person of the prosecutrix. He further submits that all the witnesses examined by the prosecution are highly interested witnesses as they are close relatives of the prosecutrix, though it has been claimed that Panchayat was convened after the incident, however, none of the independent witnesses of the Panchayat has been examined by the prosecution. Moreover, there is no explanation for delay in lodging the F.I.R. as the same has been lodged after more than 24 hours of the incident. The prosecutrix herself admitted in her deposition that there are only two families belonging to Mahkul caste in her village and her elders want to oust them from the</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>village as they are skunk and on this ground the appellant has been falsely implicated in the above crime.</p> <p>7. On the other hand, learned counsel for the State supported the impugned judgment of the trial Court and submitted that even on the uncorroborated testimony of the prosecutrix conviction can be based. In the instant case, version of the prosecutrix is duly corroborated by PW-2 Jugiyabai, PW-3 Vichitram and PW-10 Budhiyar Singh, before whom the prosecutrix disclosed about the incident immediately after the incident as also from the statement of PW-7 Dr.(Smt.) Susma Ekka, who after examination of the prosecutrix found her hymen torn.</p> <p>8. I have heard learned counsel for the respective parties and perused the oral and documentary evidence available on record.</p> <p>9. It is settled law that in a case under Section 376 of the IPC, conviction can be based even upon the uncorroborated testimony of the prosecutrix if the same inspires confidence and corroboration is not a rule of law as the prosecutrix is not an accomplice but victim of the incident.</p> <p>10. Firstly, so far as the argument of learned counsel for the appellant that there is unexplained delay in lodging the F.I.R. which is indicative of the fact that the same was lodged after premeditation and pre-consultation is concerned, admittedly the</p>	

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	<p>incident is of 10.10.2002 (at about 11.30 a.m.) and the report of the same was lodged by the prosecutrix on 11.10.2002 (about 12.30 hours). In the report it has been mentioned that the same was lodged belatedly because of convening of Panchayat. PW-3 Vichitram, maternal uncle of the prosecutrix has stated that on the date of incident itself they had gone to lodge the report, however, the police did not register their report on that date and on next day their report was registered. Though convening of Panchayat is given as the reason for delay in lodging the report, no evidence of Panchayat has been adduced and no independent witness has been examined. Therefore, the reason for lodging the report belatedly has not been explained satisfactorily. PW-1 the prosecutrix has stated in her deposition that she resides in village with her parents, some 4-5 months back the accused came to her house, at that time her father, uncle, aunty and grand-mother were present there, he asked her to come for weeding his groundnut field, her aunty also expressed her willingness to accompany them for weeding, however, the accused declined to take her. At the time of weeding, the accused and his wife were present in the field and after some time at about 12.00 noon the accused sent his wife to home for cooking and thereafter committed rape after throwing her on the earth. At that time the accused was putting on <i>Lungi</i> and underwear. After committing the offence, she fell unconscious, at that time she had shouted, however, the accused threatened to kill her. He had also asked her</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>to wash her undergarment which was stained with blood. After the incident she returned home and narrated the incident to her grand-mother and uncle Mahavir. At that time her parents were not present at home. She has further stated that Panchayat was convened in the village in which the accused was also called, however, he did not come there. From perusal of her statement it is evident that she has made improvements upon her statement in the F.I.R. regarding falling unconscious which has been duly pointed out in the cross-examination. In paragraph 10 of her deposition she has stated that she had sustained injuries over knees, back, neck, legs, hands and blood was oozing from all the injuries. She has also stated that blood started oozing from nose. In her cross-examination in paragraph 3 she has denied the portion of F.I.R. of Ex.P/1 that her grand-father Budhiyar and Vichitram had called Rohito for Panchayat. In paragraph-4 she has further stated that after she was thrown on the ground she became unconscious, thereafter, she does not know in what manner her honour was robbed and she regained consciousness after one hour and then only she learnt that she has been ravished. It is true that she does not know that accused had inserted his penis into her vagina because she was unconscious at that time. PW-2 Jugiyabai, grand-mother of the prosecutrix, has stated that she had proposed to the accused that she and her grand-daughter both will come together for wedding, however, the accused told her not to come and send her grand-daughter alone.</p>	

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मामला क्रमांक ८४.७.१२१ सन् २००८

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश ७	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>At about 1.00 p.m. her grand-daughter came back and complained that the accused after sending his wife home robbed her honour when she was alone throwing her on the earth and after taking out her underwear. The above incident was also narrated to her maternal uncle on the same day. Thereafter, she had gone to call the elders of the village. She has been declared hostile and in the cross-examination by the prosecution, she has stated that the prosecutrix had informed her that the accused forcibly did "Bura Kam" and had threatened her with life against shouting. The place where the offence was committed was just 200 steps away from her house and if someone shouts from near the house of Rohit, the same is audible from their house. However, she did not hear the shouts of her grand-daughter. This witness has further stated that after the incident blood was oozing from the legs, knees and back of the prosecutrix and she had stated this fact before the police. This witness has also admitted that they wanted that the accused should not live in the village as he was a wicked person. PW-3 Vichitram has also stated in the similar lines. He has stated that the prosecutrix had told him that when she had gone to the field of Rohito for weeding, he had thrown her on the ground and forcibly rapped her. Rohito had asked the prosecutrix to go to her home after washing the clothe and further not to disclose about the incident else he would kill her. In the cross-examination this witness has stated that on the date of incident in the evening they went to lodge the report, however, their report was registered on</p>	

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मामला क्रमांक Ex A. 821 सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश /०	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>the next day morning. In paragraph-6 this witness has stated that they had not convened any Panchayat and only 3-4 persons of the locality had gathered. FW-10 Budhiyarsai, father of the prosecutrix, has stated that on the date of incident he returned home at about 12.00 noon, at that time her daughter informed that Rohito has rapped her in the groundnut field where she had gone for weeding. This witness has been declared hostile and cross-examined by the prosecution. In his cross-examination he has denied the suggestion that his daughter had informed him that Rohito had threatened her not to disclose about the incident or else he shall kill her. In paragraph 6 of his cross-examination this witness has admitted that after lodging the report they have received Rs.10,000/- from the Government.</p> <p>11. From the statement of Dr. (Smt.) Susma Ekka (PW-7) the version of the witnesses who are close relatives of the prosecutrix and that of the prosecutrix that she sustained various injuries over her person during the incident stands falsified. PW-7 Dr.(Smt.) Susma Ekka in paragraph 2 of her statement has categorically stated that no external or internal injuries was found on the person of the prosecutrix.</p> <p>12. Learned trial Court in paragraph 17 of the judgment has brushed aside the above discrepancy in the statement of the prosecutrix by simply mentioning that though no external injuries</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

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	<p>was found on the person of the prosecutrix but since the prosecutrix has categorically stated that the accused has robbed her honour and her statement is corroborated by the statement of Dr.(Smt.) Susma Ekka, who on her internal examination found that hymen of the prosecutrix was torn, therefore, the medical evidence corroborates the evidence of the prosecutrix. In this regard-Dr. Ekka in paragraph 2 of her statement has categorically stated that she did not find any external injury on the private parts of the prosecutrix though hymen was ruptured, however, no blood secretion, injury or reddishness was noticed and her vagina admitted two fingers. She has further stated that after examination she could not give definite opinion about rape and has prepared two slides of vaginal smear and sent it for chemical examination. In the cross-examination, she has categorically stated that she has not mentioned in the report that since when the hymen was ruptured. Thus, in view of the medical examination report of the prosecutrix, finding of the trial Court that version of the prosecutrix is corroborated by the medical evidence, on the face of it, is erroneous.</p> <p>13. It is true that version of the witnesses related to the prosecutrix cannot be discarded only because they happen to be the interested witnesses, however, duty is cast upon the Court to examine the interested witnesses related to the prosecutrix with caution before acting upon their versions. The defence of the</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 12	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>appellant who is admittedly 48 years old married man is that he and his brother are only two families in the village belonging to Mahkul caste and rest of the villagers are tribe by caste, the complainant party with an intention to grab their property want to oust them from the village and therefore, they have implicated him in a false case. All the witnesses are family members of the prosecutrix and as such highly interested witnesses and they have implicated the accused in a false case by tutoring a 12 years old girl i.e. the prosecutrix. The version of the prosecutrix who is admittedly 12 years old girl does not inspire confidence and possibility of her being a tutored witness cannot be ruled out for the following reasons:</p> <p>(i) As already detailed above that in the deposition of the prosecutrix before the Court she has made material improvements upon her earlier versions given in the report of Ex.P/1 and diary statement of Ex.D/1. Her version that she became unconscious after being thrown on the ground and remained unconscious for a period of one hour, that she sustained numerous injuries over various parts of her body stands contradicted by the statement of Dr.(Smt.) Susma Ekka (PW-7) who has not noticed any external or internal injuries over the person of the prosecutrix.</p> <p>(ii) In the examination-in-chief the prosecutrix claims that she was ravished upon by the accused, however, in the</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 13	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>cross-examination, she states that after she was thrown on the earth she became unconscious and therefore, she has no knowledge regarding the act of intercourse by the appellant and came to know only when she regained consciousness.</p> <p>(iii) The seized underwear and vaginal slides were sent for chemical examination for confirmation of bloodstains and spermatozoa, however, report of the F.S.L. in this regard has not been filed.</p> <p>(iv) The incident is of 11.30-12.00 hours of 10th October, however, report of the same was lodged after 24 hours and the reason assigned for delay in the F.I.R. is contradicted by the prosecutrix as also the other witnesses who have denied convening of any Panchayat. On the contrary, they have stated that they had gone to lodge the report on the same evening, however, it was recorded only on the following morning. The prosecution has failed to explain the delay in lodging the report satisfactorily.</p> <p>(v) There is evidence available on record that the accused and his brother are the only two families belonging to Mahkul community and the complainant party wanted to oust them by branding him as skunk and as such they had a purpose to implicate the appellant in a false case.</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

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	<p>(vi) The incident allegedly occurred in the broad day light at about 11-12 hours in a field near the residence of the prosecutrix and the accused as is evident from the site plan of Ex.P/10 as also from the statement of the witnesses, which is highly improbable.</p> <p>14. On the basis of aforesaid analysis, I am of the considered opinion that the account given by the prosecutrix is not wholly reliable and the same does not inspire confidence of the Court. The Court below has ignored the material discrepancies present in the statement of the prosecutrix and the fact that her version has been contradicted by her medical examination report. It is not safe to base the conviction of the appellant on the sole testimony of the prosecutrix and other interested related witnesses who nourished animosity towards the appellant and his family members and therefore, possibility of false implication by tutoring the prosecutrix cannot be ruled out.</p> <p>15. In the result, the appeal succeeds. Conviction of the appellant under Section 376 of the IPC and Section 3 (1) (xii) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and sentences imposed thereon, are set aside and he is acquitted of the above charges. He be set at liberty forthwith, if not required in any other case.</p>	<p>Sd/- DHIRENDRA MISHRA Judge</p>