

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Appeal No. 1508 of 1999

- Chinta Ram, S/o Thukel Yadav, aged about 50 years, R/o Bodana, P.S. Arjunda, Distt. Durg (C.G.)

---- Appellant

Versus

- State of Madhya Pradesh (Now State of Chhattisgarh)

---- Respondent

For Appellant	:	Mr. Adil Minhaj, Advocate
For Respondent	:	Mr. Suryakant Mishra, Panel Lawyer.

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 17-08-2015

- 1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 04.05.1999 passed by the Additional Sessions Judge, Durg in Sessions Trial No. 212/98, whereby and whereunder the trial Court after holding the appellant guilty for trespass the house of the prosecutrix and for commission of rape convicted him under Sections 450 and 376 of the IPC and sentenced him to undergo R.I. for five years and to pay fine of Rs.500/-, in default of payment of fine to undergo additional R.I. for six months and to undergo R.I. for seven years and to pay fine of Rs.500/-, in default of payment of fine to undergo additional R.I. for six months. Both sentences were directed to run concurrently.
- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

- 3) As per case of prosecution, on 13.04.1998 at about 8.30 p.m., when prosecutrix (PW-1) (name not mentioned), a well grown up married lady of 30 years mother of four daughters, was alone in her house, accused entered the house of the prosecutrix, insulted and pounced on her. Her daughter Kumaribai (PW-2) went for watching TV to neighbours' house. When Kumaribai heard the cries of her mother, she along with her grandmother Rajbai reached there and saw the accused. Prosecutrix has also narrated the incident to one Bhikham Sahu. Thereafter, FIR was lodged by the prosecutrix at police station, Arjunda vide Ex.P-1.
- 4) The prosecutrix was sent for medical examination to Government Hospital, Durg vide Ex.P-14, where lady Dr.(Smt.) Pratibha Dani (PW-6) examined the prosecutrix and did not find any injury on her private part or over external body. She has not given any definite opinion regarding recent commission of sexual intercourse. Doctor prepared slide of vaginal swab and handed over to the concerned constable which was seized vide Ex.P-11. Spot map was prepared vide Ex.P-5. Patwari prepared spot map vide Ex.P-4. Accused was also sent for medical examination to Government Hospital, Arjunda vide Ex.P-12, where Dr. R.B.Agrawal (PW-5) examined him vide Ex.P-7 and opined that the accused was able to perform sexual intercourse. Petticoat and blouse of the prosecutrix were seized vide Ex.P-2. Broken bangles and one wearing bangle of

the prosecutrix were seized from the spot vide Ex.P-3. Seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur vide Ex.P-16 and a report thereof has been received vide Ex.P-18.

- 5) During the course of investigation, statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge-sheet under Sections 450 and 376 IPC was filed before the Court of Judicial Magistrate First Class, Durg, who in turn committed the case to the Court of Sessions, Durg from where the Additional Sessions Judge, Durg received the case on transfer for trial.
- 6) In order to prove the guilt of the accused/appellant, the prosecution had examined as many as seven witnesses to support its case. Accused was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question. Accused also examined 02 defence witnesses namely Bhojram (DW-1) and Samaliya Ram (DW-2) to support his case.
- 7) After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.
- 8) I have heard learned counsel for both the parties and perused the judgment impugned including record of trial Court.

- 9) At the outset, learned counsel appearing for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of prosecutrix (PW-1) and her daughter, Kumaribai (PW-2), but their evidence does not inspire confidence and is not trustworthy. There are major and material contradictions and omissions in their statements. There is also no medical and FSL report to support of the case of prosecution. Therefore, in absence of cogent and clinching evidence conviction and sentence of the appellant is not sustainable under the law and the appellant deserves to be acquitted from the charges.
- 10) *Per contra*, learned Panel Lawyer for the State opposed the appeal and submitted that the prosecution proved its case beyond shadow of doubt. Evidence of prosecutrix (PW-1) and Kumaribai (PW-2) is sufficient to prove guilt of the accused/appellant. Therefore, the appellant does not deserve to be acquitted from the charges.
- 11) In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the prosecution.
- 12) As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of prosecutrix (PW-1) and her daughter, Kumaribai (PW-2). As per evidence of prosecutrix (PW-1) at about 8.30 p.m., her children had gone for watching TV to the house of Dr.

Sahu, her husband was also not present in the house, she was sleeping in her house, door was closed, but not locked, accused entered the room and when he was trying to commit sexual intercourse upon her, she shouted, then her daughter Kumaribai (PW-2) came there and saw the incident, thereafter, accused left her house. She also stated that accused attacked her, while resisting she received injury over her elbow, blood was oozing and her blouse was torn and bangles were broken.

- 13) In her cross-examination, she admitted that her house is situated within the village and public road is passing nearby her house. House of Tikam, Lalgi, Pritam, Domar and Kamal Ram are situated nearby her house. She also admitted that prior to giving her statement in the Court she had consulted with Advocate as to how to give statement. She also admitted that nearby her house public used to move every time for using tank. She stated that she has kicked the accused. She denied that in her report (Ex.P-1) she reported that after her shouting, her mother-in-law and daughter came in the house, but that version is not mentioned in the FIR (Ex.P-1). It is confirmed by FIR writer Investigating Officer R.K.S. Yadav (PW-7). She also denied that she has not narrated in police statement (Ex.D-1) that her mother-in-law came to house when she shouted, but R.K.S. Yadav (PW-7) stated that he has written whatever the prosecutrix deposed in her report (Ex.P-1) and diary statement (Ex.D-1). She has not stated that accused /appellant committed

rape upon her, she has only reported that accused attacked upon her modesty, therefore, it is clear that she has given exaggerated statement in Court which cannot be relied upon.

- 14) On consideration of statements given in the examination-in-chief and in cross-examination by the prosecutrix, it appears that there are major & material contradictions and omissions in her police report, diary statement and Court statement, therefore, her evidence does not inspire confidence and also not cogent & trustworthy.
- 15) Kumaribai (PW-2), daughter of the prosecutrix, stated in her deposition that at about 8.00 p.m. she had gone to watch TV to the house of Dr. Uday Sahu, when she came out to answer the call of nature she heard the sound of her mother, she rushed towards her home and saw that accused slept upon her mother, she caught accused hair, then accused slapped her nose and fled away from the spot, then her mother narrated that accused committed sexual intercourse with her twice or thrice times.
- 16) In her cross-examination, she stated that in her diary statement she has narrated all stories which she stated in examination-in-chief, her diary statement (Ex.D-2) shows that she has not stated that she felt natural call and came out from TV room, and then she heard sound of her mother. She has also not stated that she caught hold the hair of accused and accused slapped her nose. She has admitted that her grand-mother was not present in the house on the date of incident and has not

narrated about the incident to her grand-mother, but Investigating Officer R.K.S. Yadav (PW-7) has stated that this witness claimed that grand-mother was also present on the date of incident.

- 17) On consideration of statement of Kumaribai (PW-2), it is clear that there are many major and material contradictions in her statement, therefore, her statement also does not inspire confidence and trustworthy.
- 18) Dr. Pratibha Dani (PW-6), who has examined the prosecutrix when she was brought to the hospital after the alleged incident, has stated that her vagina admitted two fingers easily. Testifying her report (Ex.P-14), she has neither stated any injury over the hand nor any oozing of blood over the hand and also she has neither found any external or internal injury over her body nor any kind of injury on private part of the prosecutrix. It has been stated that no definite opinion regarding recent sexual intercourse could be given. FSL report (Ex.P-18) is also totally negative and has not supported the case of the prosecution.
- 19) Dr. R.B.Agrawal (PW-5), who has examined the accused, has also not found any injury on any part of the accused or any bruise, scratch on the private part and genital organ of the accused.
- 20) In a rape case – the testimony of the prosecutrix must be reliable and inspired confidence, it should be worthy of credit and it should not suffer from basis infirmity and the probability

factors should also not render it untrustworthy of credence. The medical evidence & FSL as have come in the present case completely belies the testimony of the prosecutrix and renders entire prosecution case doubtful.

- 21) As the testimony of the prosecutrix itself was not reliable and is also not supported by medical and FSL reports, I am unable to uphold the finding of guilt recorded by learned trial Court on the basis of testimonies of the prosecutrix (PW-1) and her daughter Kumaribai (PW-2). The impugned judgment of conviction and order of sentence recorded by the trial Court cannot be sustained under the law, therefore, interference is called for by this court.
- 22) In the result, the appeal is allowed. Conviction and sentence of the appellant under Sections 450 & 376 IPC are hereby set aside. He is acquitted of the charges framed against him.
- 23) It is stated that the appellant is on bail, his bail bond shall continue for a further period of 6 months, in view of Section 437A of the Code.

Sd/-
(I.S.Uboweja)
JUDGE