

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1991 of 1999

- Kanshi Ram, son of Chheduram, Caste : Halba, aged about 32 years, resident of Jungera, P.S. Balod, Distt. Durg (C.G.)

--- Appellant

Versus

- State of M.P. through police Station Balod, Distt. Durg (C.G.)

--- Respondent

For Appellant : Mr. Rajkumar Pali, Advocate appears
on behalf of Mr. P.P. Sahu

For Respondent / State : Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Passed on : 16/07/2015

- 1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 27.07.1999 passed by the Additional Sessions Judge, Balod, District – Durg in Sessions Trial No.168 of 1999, whereby the trial Court has convicted the appellant under Section 376(1) of the IPC and sentenced him to undergo R.I. for 7 years.
- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
- 3) Prosecution case, in short, is that prosecutrix (PW-3) had married to one Ramswaroop (PW-6) 12 years ago from 07.12.1998. On 07.12.1998, the appellant entered in the house of the prosecutrix and committed sexual intercourse forcibly with her. It is also alleged that the prosecutrix was assured by the appellant that she would be married by the appellant and thereafter she was being subjected to sexual intercourse by the appellant continuously upto 07.12.1998 and the appellant was assuring her to get married, on

account of which, she became pregnant. A panchayat was held in this behalf and in the panchayat accused/appellant admitted that there is illicit relationship between the prosecutrix and himself and he refused to get her married. Ultimately prosecutrix reported the incident by written complaint (Ex.P-3) in police station, Balod.

- 4) After completion of investigation, challan under Section 376 of the IPC was filed against the accused.
- 5) In order to prove the guilt of the accused/appellant, the prosecution examined as many as seven witnesses. Statement of the accused was recorded under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.
- 6) After providing opportunity of hearing to the parties, the trial Court convicted & sentenced the appellants as aforementioned.
- 7) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 8) Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of prosecutrix (PW-3), who has falsely implicated the appellant. The case of the prosecutrix cannot come within purview of Section 376 of the IPC. Her statement is not believable and her evidence is not cogent, unimpeachable and trustworthy, therefore, the impugned judgment suffers from material illegality and deserves to be set aside.

- 9) On the other hand, learned Panel Lawyer for the State opposed these arguments and supported the judgment passed by the Additional Sessions Judge, Balod.
- 10) Entire case of the prosecution is based on the evidence of the prosecutrix (PW-3). She stated that when she was all alone present in her house, accused entered in the house and caught her hand, she opposed, then accused asked that not to say anybody, thereafter, accused made sexual relation with her and accused was continuously having sexual relation with her for the last one year. Ultimately, she conceived, then panchayat was organized where accused denied the responsibility for pregnancy. In the cross-examination, the prosecutrix admitted the fact that she had been in love with accused since last one year. She also admitted that if the accused would have married her, then she would not have reported the incident. Prosecutrix evidence shows that she was having love affair with the appellant and accused had never promised to marry with her before or after sexual relationship. Her evidence further reveals that she had sexual relations with the accused, due to which, she become pregnant. On perusal of her evidence, it can be safely inferred that the prosecutrix had given her consent in the belief that accused would marry her later. The prosecutrix is an adult and is well experienced lady and undisputedly is a consenting party and despite that she had never screamed, cried or called for anybody's help.
- 11) Prosecutrix was in love with accused and she enjoyed his company for eighteen months with her consent and had participated in sex with

him many times, hence it does not come under forcible act on part of the accused. Medical evidence (Ex.P-1) and statement of Dr. Smt. P. Baghel (PW-1) also did not support the case of the prosecution. Not a single piece of evidence shows that she had resisted while the appellant was doing so, which clearly shows that prosecutrix is a consenting party to sexual intercourse, therefore, conviction was not sustainable in law, therefore, accused is entitled for acquittal. The trial Court has committed grave error in convicting the appellant under Section 376 (1) of the IPC.

- 12) Consequently, the appeal deserves to be allowed and is hereby allowed. Conviction and sentence of the appellant is hereby set aside. He is acquitted for the offence under Section 376(1) of the IPC.
- 13) Appellant is on bail. His bail bonds shall continue for a further period of 6 months as per requirement of Section 437-A of the Cr.P.C.

Sd/-
(I.S.Uboweja)
JUDGE