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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 816 of 2001

1. Hussain Chandra Prakash S/o Ramsahai Daharia, aged about 30 years, R/o Gorakhpur, P.S. Mungeli, District - Bilaspur.
2. Harendra Kumar Verma, S/o Bisoharam Verma, aged about 28 years, R/o Chourenga, P.S. Simga, District Raipur (CG)

---- Appellants

Versus

1. State of Chhattisgarh, Through P.S. Simga, District Raipur.

---- Respondent

For appellants : Shri S.C. Verma & Smt. Madhunisha Singh, Advocates
For Respondent/State : Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

21/08/2015

This appeal arises out of the judgment of conviction and order of sentence dated 28.8.2001 passed by II Additional Sessions Judge, Baloda Bazar in S.T.No.53/2000 convicting both the accused/appellants Sections 363, 366 of IPC and sentencing them to under RI for 3 years, to pay a fine of Rs.1000 and RI for 5 years, to pay a fine of Rs.5000/- respectively with default stipulations. Accused/appellant No.1 Husainchandra Prakash has also been convicted under Section 376 of IPC and sentenced to undergo RI for 7 years and to pay a fine of Rs.7000/- with default stipulation.

02. Brief facts of the case are that on 27.6.1998 FIR (Ex.P/1) was



lodged by prosecutrix (PW-1), aged 18 years, alleging in it that she was studying in government school, in which appellant No.1 Husainchandra Prakash was working as teacher and he influenced her to have affair with him. However, with her consent, her parents performed her marriage in some other place and since then she had broken all the relations with appellant No.1 Husainchandra Prakash. On 18.6.1998 deceased appellant No.2 Narendra Kumar Verma met her and informed that appellant No.1 Husainchandra wants to meet her, on which she replied that as she is now married she does not wish to meet him. However, deceased appellant No.2 further informed her that she should come at 4 pm near the field at Damakheda road. Accordingly, on 19.6.1998 at about 4 pm she reached the said place all alone. She has stated that there she saw the accused persons standing, then she asked appellant No.1 Husainchandra as to why he called her, on which appellant No.1 took out a knife and threatened her to sit on his motorcycle. The motorcycle was being ridden by appellant No.1 whereas deceased appellant No.2 was sitting on the backside. Thereafter, she was taken to Village-Damakheda and there deceased appellant No.2 Narendra Verma put a scarf on her nose as a result of which she became unconscious and when she regained consciousness, she found appellant No.1 sitting along with her. Appellant No.1 then informed her that they are at Raipur and further disclosed that he is going to marry her. Though she told appellant No.1 that she is already married, however, she was threatened by him by showing knife. Appellant No.1 also showed her a bottle saying that he is carrying poison in the said bottle. As she got scared she left herself at the discretion of God and did whatever appellant No.1 asked her to

do. She has further stated that in the night of 19.6.1998 and 20.6.1998 appellant No.1 Husainchandra Prakash committed forcible sexual intercourse with her despite her resistance on the point of knife. She has stated that on 21.6.1998 deceased appellant No.2 Narendra Verma came to her and informed that all the preparation has been made for marriage and despite her resistance, she was got married to appellant No.1 in Arya Samaj Mandir on 21.6.1998. Deceased appellant No.2 was the witness in the said marriage and some other persons were also present there. Her signatures were also obtained and then she was taken to the house one Pramila by bus. Based on this FIR, offences under Sections 363, 366 and 376/34 of IPC were registered against the accused persons. The prosecutrix was medically examined on 30.6.1998 by PW-4 Dr. Anita Verma, who noticed no injury on her body, found her hymen old torn and opined that she was habitual to sexual intercourse but there was no sign of recent sexual intercourse. After completion of investigation, charge sheet was filed against the accused persons under Sections 363, 366, 376, 34 of IPC. However, while framing charges, the trial Court framed charge under Sections 363, 366 and 376 of IPC against appellant No.1 Husainchandra Prakash whereas deceased appellant No.2 Narendra Kumar Verma was charged only under Sections 363 and 366 of IPC.

03. So as to hold the accused persons guilty, the prosecution examined as many as 10 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In his defence,

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appellant No.1 Husainchandra Prakash stated that he was having affair with the prosecutrix, they had exchanged number of love letters, he was compelled by the prosecutrix to marry her, she went along with him of her own first to Damakheda and then to Raipur where they performed marriage in Arya Samaj Mandir. He has further stated that the affidavits were filed by both of them in Arya Samaj Mandir. He and the prosecutrix had gone to Katghoda where the police and father of the prosecutrix reached and assured that they would perform their marriage as per customs. In defence, the accused persons examined three witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced them as mentioned in para-1 of this judgment.

05. Learned counsel for the appellants submits that as during pendency of this appeal, appellant No.2 Narendra Kumar Verma has expired, this appeal stands abated in respect of appellant No.2 and it is now confined only in relation to appellant No.1 Husainchandra Prakash. It has been argued that the prosecutrix was having affair with appellant No.1 Husainchandra Prakash, of her own sweet will she accompanied appellant No.1 to Raipur and several other places and ultimately performed marriage with him in Arya Samaj Mandir. He further submits that on the record there are number of love letters exchanged between both of them, which itself shows that their marriage was with the consent of both the parties. Lastly it has been argued that there is no conclusive evidence regarding age of the

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prosecutrix. As per evidence adduced by the parties, her age comes to more than 18 years at the relevant time and thus, even offences under Sections 363 and 366 of IPC are not made out.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no illegality in the same.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 prosecutrix has stated that she knew the accused persons. On 19.6.1998 deceased appellant No.2 Narendra Kumar Verma had met her on the way and informed that appellant No.1 Husainchandra Prakash wanted to meet her near the village pond and when she asked as to why she was called, he replied that appellant No.1 wanted to have some information about the school. Deceased appellant No.2 had told her that she should come at 4 pm near the field. When on 19.6.1998 at about 4 pm she reached the said place all alone, she saw both the accused persons standing there. When she asked appellant No.1 Husainchandra as to why he called her, appellant No.1 took out a knife and threatened her to sit on his motorcycle. The motorcycle was being ridden by appellant No.1 whereas deceased appellant No.2 was sitting on the backside. Thereafter, she was taken to Village-Damakhea and there deceased appellant No.2 Narendra Verma put a scarf on her nose as a result of which she became unconscious and when she regained consciousness, she found appellant No.1 sitting

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along with her. Appellant No.1 then informed her that they are at Raipur and further disclosed that he is going to marry her. Though she told appellant No.1 that she is already married, however, she was threatened by him by showing knife. Appellant No.1 also showed her a bottle saying that he is carrying poison in the said bottle. As she got scared she left herself at the discretion of God and did whatever appellant No.1 asked her to do. She has further stated that in the night of 19.6.1998 and 20.6.1998 appellant No.1 Husainchandra Prakash committed forcible sexual intercourse with her despite her resistance on the point of knife. She has stated that on 21.6.1998 deceased appellant No.2 Narendra Verma came to her and informed that all the preparation has been made for marriage and despite her resistance, she was got married to appellant No.1 in Arya Samaj Mandir on 21.6.1998. Deceased appellant No.2 was the witness in the said marriage and some other persons were also present there. Her signatures were also obtained under threat and then she was taken to Katghoda where she was again subjected to sexual intercourse by appellant No.1 Husainchandra Prakash. She has stated that on 27.6.1998 she went to Police Station - Simga from where she was taken back by the police personnel and her uncle to Katghoda and from there they returned to Smiga on the same day at about 3 in the night where she lodged FIR (Ex.P/1). She was sent to hospital for medical examination on 30.6.1998 where Dr. Anita Verma did her medical examination and her underwear was also seized vide Ex.P/2.

In her lengthy cross-examination she has stated that her date of birth is 2.5.1981, she studied up to Class-12th, however, in the school



documents her date of birth is recorded as 20.6.1980. She has stated that she knew appellant No.1 since Class-9th as he was her teacher. She has admitted the fact that once she had written a letter to appellant No.1. When she was shown Register (Article A) she admitted that various documents are in her handwriting. However, she has specifically denied that she has written any letter to appellant No.1 after her marriage with some other person. She was also shown certain other documents and in some of the documents she admitted her signature but in some other denied. She has stated that as knife was shown to her by appellant No.1 Husainchandra Prakash she got scared, she sat on his motorcycle, which was being ridden by appellant No.1 and deceased appellant No.2 Narendra Verma was sitting on the back side. She has stated that she did not meet any one on the way and she did not make any effort to get down from the vehicle. She has further stated that as a scarf was put on her nose, she fell unconscious and when regained consciousness she found her in a room at Raipur and appellant No.1 was sitting beside her. She has admitted the fact that she did not raise any protest even in absence of the appellant No.1. She has stated that she was taken to Arya Samaj Mandir where she was made to put her signature on number of documents, her photograph was affixed in the marriage form (Ex.D/3-A). She has further stated that she was taken by the accused persons to the office of lawyer for completion of paper formalities. She has admitted that she put her signature on the register (Ex.D/5) in Arya Samaj Mandir after her marriage and further added that she was made to do so on the point of knife.

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09. PW-2 Komal Singh, uncle of the prosecutrix, has stated that at the time of lodging of FIR, he accompanied the prosecutrix and she informed him that on the point of knife the accused persons had taken her on 19.6.1998 and under threat, marriage was performed with appellant No.1 Husainchandra Prakash. He admitted that whatever was disclosed by him to the police was based on the information given to him by the prosecutrix. PW-4 Dr. Anita Verma medically examined the prosecutrix vide Ex.P/4 and noticed that there was no injury on her body, she was fully developed, her vagina was admitting two fingers easily, hymen was old torn and in her opinion, she was habitual to sexual intercourse. However, there was no sign of recent sexual intercourse. PW-5 Yashwant Singh Verma, father of the prosecutrix, has admitted the fact that appellant No.1 used to visit his place to teach the prosecutrix and his other children. The prosecutrix was missing since 19.6.1998 but he did not lodge any missing report and then stated that his brother had lodged the report. He has denied the suggestion that the prosecutrix had left any letter before leaving the house. However, he has further admitted that though he had read the said letter, he did not take any action thereon and the report was lodged only after return of the prosecutrix by his brother. He has stated that on 6.5.1998 marriage of the prosecutrix was solemnized with one Lekhraj and the said marriage was attended by appellant No.1 as well. However, the prosecutrix returned back to his house after marriage and thereafter, the accused persons took her away. PW-6 Veer Singh turned hostile and did not support the prosecution case. PW-7 Bhushan Verma has not stated anything against the accused persons. PW-8 M.R. Singh, investigating officer, has supported the prosecution

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case. PW-9 Satyendra Pandey recorded FIR (Ex.P/1). PW-10 Dr. V.B. Agrawal, medically examined appellant No.1 Husainchandra Prakash and found him capable of performing sexual intercourse vide Ex.P/10.

10. DW-1 Smt. V. Bali has stated that the prosecutrix studied in her school and in the document Ex.P/9 her date of birth is recorded as 20.6.1980. However, she has stated that the said entry was not made by her in document Ex.P/9. DW-2 Alok Sharma, Advocate, was notary at the relevant time. He has stated that he had notarized the affidavit given by appellant No.1 and the prosecutrix and proved the same on the basis of his documents. He has stated that when the prosecutrix came to him, she signed the affidavit without any pressure and contents of the same were read over to her by him. Court Witness No.1 Bhuneshwar Prasad Sharma, Manager of Arya Samaj Mandir, has proved marriage of the prosecutrix with appellant No.1 Husainchandra Prakash. DW-3 Pt. Ramdev Vaidik has also proved marriage of appellant No.1 with the prosecutrix in Arya Samaj Mandir.

11. Close scrutiny of the evidence makes it clear that there is no legally admissible document in relation to age of the prosecutrix. Though in some places her date of birth has been mentioned as 2.5.1981 but in some places, it is mentioned as 20.6.1980. However, there is no conclusive evidence in respect of both these dates as to on what basis the said dates were recorded. The prosecution has utterly failed to prove that on the date of incident the prosecutrix was minor.

12. The evidence further reflects that on 18.6.1998 the deceased appellant No.2 Narendra Kumar Verma met the prosecutrix, asked her

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to come at a particular place to meet appellant No.1 Husainchandra on 19.6.1998 at 4 pm and accordingly, she went there all alone and it is alleged that from there she was abducted by the accused persons and then subjected to rape by appellant No.1.

13. True it is that conviction under Section 376 of IPC can be made solely on the basis of evidence of the prosecutrix provided the same is cogent, reliable, inspires confidence of the Court and free from the suspicion of falsity. From the evidence on record, it appears that there was affair between appellant No.1 Husainchandra Prakash and the prosecutrix, however, she was married to some other person. Even after marriage, on being asked by deceased appellant No.2, she went to meet appellant No.1 all alone without informing anyone in her family. From her evidence it also reflects that she accompanied the accused persons to certain places without any protest. Though it is alleged that she could not resist due to fear as the accused persons were having knife all the time, but in the totality of the facts and circumstances, the same does not appeal to reason. She went with the accused persons to Arya Samaj Mandir on 21.6.1998 where her marriage was performed with appellant No.1 and she returned back only after arrival of the police and her uncle at Katghora on the assurance that they would perform their marriage as per customs. This apart, according to DW-2 Alok Verma, Advocate, who had notarized the affidavit given by the prosecutrix, he has categorically stated that for getting the affidavit notarized the prosecutrix had come to him all alone and after reading over the contents of the affidavit to her, she put her signature without any pressure. Since the prosecutrix was already married, the opinion of



the doctor that she was habitual to sexual intercourse and her hymen was old torn etc. is of no consequence.

14. Thus taking into account the entire evidence, oral and documentary, the conduct of the prosecutrix during commission of the alleged offence and subsequent thereto, the possibility of the prosecutrix being a consenting party to the act of sexual intercourse with appellant No.1 Husainchandra Prakash and further, false implication of appellant No.1 under the pressure of her family members, cannot be ruled out. On the basis of evidence adduced, the prosecution has miserably failed to prove the basic ingredients of Sections 363, 366 and 376 of IPC and as such, the trial Court was not justified in holding appellant No.1 guilty under these sections and he deserves to be acquitted of the said charges by extending him benefit of doubt.

15. In the result, the appeal, so far as it relates to appellant No.1 Husainchandra Prakash, succeeds and is thus allowed. He is acquitted of the charges leveled against him by extending him benefit of doubt. Appellant No.1 is reported to be on bail, therefore, no further order is required.

Sd/-
Pritinker Diwaker
Judge