

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 848 of 1998

- Ganesh Ram, S/o Gondu, aged 27 years, R/o Village Jogadh Dumar, Thana Mainpur, Tahsil Gariyaband, District – Raipur (M.P.) (Now C.G.)

--- Appellant

Versus

- The State of M.P. (now C.G.) through the District Magistrate, Raipur.

--- Respondent

For Appellant	:	Mrs. Indira Tripathi, Advocate
For Respondent / State	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Passed on : 20/07/2015

- 1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.03.1998 passed by the 3rd Additional Sessions Judge, Raipur in Sessions Trial No.380/1997, whereby the trial Court has convicted the appellant under Section 376 of the IPC and sentenced him to undergo R.I. for 7 years with fine of Rs.1,000/-, in default, additional R.I. for 3 months.
- 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 on 04.08.1997 at about 3.00 p.m., prosecutrix lodged one written complaint vide Ex.P-1 in police station, Mainpur against the accused/appellant stating that he took her to his house for keeping her as wife, but his family members refused to keep her and said that later they would talk in this matter. Prior to this incident, for the last four months

accused/appellant on the pretext of marriage was making physical relation with her, but later on he denied to marry her, therefore, she reported the incident.

- 4) After receiving this report police lodged FIR vide Ex.P-2. After obtaining her consent vide Ex.P-3, prosecutrix was sent to Primary Health Centre, Gariyaband for medical examination vide Ex.P-17 where Dr. V. Kerketta (PW-9) examined the prosecutrix and found no external injury, but her hymen was found ruptured. She opined that sexual intercourse was committed upon the prosecutrix. Her report is marked as Ex.P-24. During the course of investigation, school transfer certificate (Ex.P-18) of the prosecutrix was seized at the instance of Rayomati (PW-2), mother of the prosecutrix vide Ex.P-5. Spot maps were prepared vide Exs. P-8 to P-10. Xerox of Entry Register (Ex.P-26) was seized at the instance of Jabal Singh Negi (PW-10) vide Ex.P-11. Slide of vaginal swab of the prosecutrix was seized vide Ex.P-14. Undergarment and petticoat of the prosecutrix were seized vide Ex.P-4. Accused was taken into custody, he made disclosure statement of undergarment vide Ex.P-6, same was recovered at his instance vide Ex.P-7. Accused was also sent for medical examination to Primary Health Centre, Mainpur where Dr. Kirti Chand Uraon (PW-5) has examined him vide Ex.P-12. Seized articles were sent for chemical examination to FSL Raipur vide Ex.P-22, from where FSL report (Ex.P-23) has been received.
- 5) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge-sheet was filed before the Court of Judicial Magistrate First Class, Gariyaband, who in turn committed

the case to the Court of Sessions, Raipur, from where learned Additional Sessions Judge received on case on transfer for trial.

- 6) In order to prove the guilt of the accused/appellant, the prosecution examined as many as ten 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. He has also examined Paltan (DW-1) and Smt. Anandi Sharma (DW-2) on his defence.
- 7) After providing opportunity of hearing to the parties, the trial Court convicted & sentenced the appellant as aforementioned.
- 8) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 9) Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of prosecutrix (PW-1), who has falsely implicated the appellant. The case of the prosecutrix cannot come within purview of Section 376 of the IPC. He further argued that neither her statement is believable nor her evidence is cogent, unimpeachable and trustworthy, therefore, the impugned judgment suffers from material illegality and deserves to be set aside.
- 10) On the other hand, learned Panel Lawyer for the State opposed these arguments and supported the judgment passed by the trial Court.
- 11) Entire case of the prosecution is based on the evidence of the prosecutrix (PW-1). She stated in examination-in-chief that accused

assured her to marry her and on the pretext of marriage he took her to his house and made sexual intercourse with her, but, in her cross-examination, she has stated that prior to the incident accused has never made physical relation with her. In her police complaint (Ex.P-1) she has not written that accused assured her that he would marry her and on this pretext accused made sexual intercourse, which clearly shows that in the Court statement prosecutrix has stated new fact against the accused, which was a clear improvement in her statement which cannot be believable. She had neither screamed, cried or called for anybody's help for her rescue during sexual intercourse nor narrated to anybody against the accused, which shows that she was an equal partner of consented sex.

- 12) On minute scrutiny of the evidence and considering above facts and circumstances of the case, I am of the opinion that conviction of the appellant was not proper and as such accused/appellant is entitled for acquittal. While convicting and sentencing the appellant, the trial Court has committed grave error in holding the appellant guilty for commission of offence under Section 376 of IPC.
- 13) Consequently, the appeal deserves to be allowed and is hereby allowed. Conviction and sentence of the appellant is hereby set aside. He is acquitted from the offence under Section 376 of the IPC.
- 14) 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