

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 584 of 1999

1. Mohanlal, S/o Parikshit Sahu, aged about 35 years, Teacher, R/o Village Kenapali, P.S. Dabhara, at present resident of Amlibahara, P.S. Pasan, District Bilaspur M.P. (Now C.G.)

--- Appellant

Versus

1. The State of Madhya Pradesh (now State of Chhattisgarh)

– Respondent

For Appellant : Shri Surfaraj Khan, Advocate

For Respondent / State : Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Passed on : 06/07/2015

- 1) This appeal is directed against the judgment of conviction and order of sentence dated 18.02.1999 passed by the Special Judge (Atrocity), Bilaspur in Special Criminal Case No. 315/96, whereby the trial Court has convicted the appellant under Sections 456 & 376 of the IPC and sentenced him to undergo R.I. for 2 years & to pay fine of Rs.500/-, in default of payment of fine to further undergo R.I. for two months and to undergo R.I. for 7 years & fine of Rs.500/-, in default of payment of fine to further undergo R.I. for two months with a direction to run both the substantive jail sentences concurrently.
- 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) Case of the prosecution, in brief, is that on 05.02.1996 at about 10.30 p.m., when the prosecutrix (name not mentioned) was found

present alone at her home; accused entered into the house of the prosecutrix and committed rape on her. She is a 30 years married lady, who was residing with her husband. At the time of incident, her husband had gone for teaching in literacy camp in his village Amlibahra. When he returned back and entered in the room the accused was present there. He and his wife tried to catch the accused, but they did not succeed and accused fled away from the spot. They narrated the incident to Sarpanch Indrapal Singh and Lalman in the night itself, thereafter, prosecutrix lodged FIR on next day at police station, Pasan vide Ex.P-1.

- 4) During the course of investigation, prosecutrix was medically examined after obtaining necessary permission. Dr. Smt. N. D. Ram (PW-11), after examination, noticed that prosecutrix was habitual in intercourse and no injury was found on her private part and her external body. She has not given any definite opinion regarding recent intercourse. Doctor prepared slide of vaginal swab and handed over to the constable concerned, which was seized vide Ex.P-11. Her report is Ex.P-15. Accused was also examined by Dr. K.S. Pendro (PW-6), who gave his opinion that the accused is able for sexual intercourse. 15 broken bangles were seized from the spot vide Ex.P-9. One bearing bangle, one blouse and one petticoat were seized at the instance of the prosecutrix vide Exs.P-10, P-17 and P-18 respectively. One underwear was seized from the accused vide Ex.P-7. Seized articles i.e. petticoat and swab slide were sent to FSL, Sagar vide Ex.P-12 for chemical examination, report of which was received vide Ex.P-14, which shows that human spermatozoa was present on petticoat and vaginal swab slide report was nil.

- 5) 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 was filed before the Court of Special Judge (Atrocity), Bilaspur.
- 6) During the trial, the accused was charge sheeted. In order to prove the guilt of the accused/appellant, the prosecution examined as many as twelve witnesses. 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. He has also examined three defence witnesses namely Dharam Singh (DW-1), Noharsay (DW-2) and Hemlal Sahu (DW-3).
- 7) After providing opportunity of hearing to the parties, learned Special Judge convicted and sentenced the appellant as aforementioned.
- 8) I have heard learned counsel for both the parties and perused the judgment impugned and record of trial Court.
- 9) Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of prosecutrix and her husband Mahipat (PW-2), but their statements are not based on cogent, reliable and unimpeachable. Medical and FSL reports have also not supported the case of prosecutrix. FIR is also lodged in an inordinate delay, therefore, the appeal deserves to be admitted and the appellant is entitled for acquittal from the charges.
- 10) On the other hand, learned Panel Lawyer for the State opposed the appeal and submits that the prosecution had proved its case beyond

shadow of doubt. Evidence of the prosecutrix and Mahipat (PW-2) is sufficient to prove guilt of the accused/appellant.

- 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) The prosecutrix (PW-1) stated that while she was present all alone in the house, the appellant entered the house and opened the door and entered into the room, thereafter, he slept over her body and committed intercourse with her. Accused threatened her to shut her mouth otherwise he will press her neck. At that moment her husband Mahipat (PW-2) entered in the room and asked her who is inside, then she answered "Chote Sahu" entered in the house, thereafter, they tried to catch the accused, but he escaped from the spot. They narrated the incident on the same night to Lalman (PW-4) and Sarpanch Indrapal Singh (PW-3), who suggested them to report the matter to police. Thereafter, on the next day morning, she reported the incident to police station, Pasan.
- 13) FIR (Ex.P-1) shows that prosecutrix put bolt of the door from inside and if that was so it was not possible for the accused to enter and open the door and it was with the help of the prosecutrix that the accused could enter inside the room. Prosecutrix has never said that immediately after finding the accused inside the room she raised alarm and called for help. Apart from the above, she has not stated that she had tried to protect herself by making hue or cry by hook or crook. Her statement is also not reliable for the reason that when the accused focussed torch light on her face she saw him and as and when light was focussed on her face it was not possible for her to see

the accused, therefore, this part of evidence is also not reliable and acceptable. She admitted that when she was in compromise position, at that time, her husband entered in her room. This evidence also shows the conduct and character of the prosecutrix. She also admitted that firstly, she married with appellant's uncle, and then she fled away with the appellant. Villager Amarlal and Nanki alias Kewla had also tried to make physical relation with her. These circumstances and evidence shows that prosecutrix is not of a strong character as she had changed many persons in her life. Therefore, her evidence about the incident cannot be relied on above circumstances.

- 14) Statement of Dr. Smt. N.D. Ram (PW-11), medical evidence and FSL report also have not supported the contention of the prosecutrix. Her husband Mahipat (PW-2) has also not supported her evidence that when he entered into the room at that time she was in compromise position with the appellant.
- 15) Mahipat (PW-2) is husband of the prosecutrix, who stated that after hearing sound he rushed his house. He asked his wife, how she opened the door of house, then prosecutrix said "Chote Sahu" entered in the house. After that he tried to catch the accused, but he ran away. Thereafter he informed Lalman (PW-4) and Sarpanch Indrapal (PW-3) about the incident. Prosecutrix never said that she had called for any help at the time of incident. She had never said that she cried for help or any quarrel took place at the time of incident, therefore, statement of Mahipat (PW-2) is not reliable that after hearing sound or quarrel he rushed his house. This witness has not stated that he has seen accused with her wife in compromise

position. Lalman (PW-4) and Indrapal (PW-3) have also not supported the version of prosecutrix and her husband Mahipat. Therefore, statements of the prosecutrix and her husband Mahipat (PW-2) are not reliable that they have narrated the incident to these two persons in the night of the incident. For the above reasons, statements of the prosecutrix and her husband Mahipat (PW-2) are not proved by cogent and clinching evidence. Their evidence is not conversing nature.

- 16) Prosecutrix stated that on the very next day of the incident, she lodged the report, but, FIR (Ex.P-1) purports that the report was lodged after two days of the incident. Prosecutrix and prosecution have not explained as to how such delay has been caused, therefore, belatedly lodged FIR is also suspicion.
- 17) Having considered the facts and circumstances of the case, the impugned judgment of conviction and order of sentence recorded by the trial Court cannot be sustained under law, and therefore, the same is called as not sustainable.
- 18) In the result, the appeal is allowed. Conviction of the appellant under Sections 456 and 376 of IPC and sentence imposed thereunder are hereby set aside. He is acquitted of the charges for commission of offence under Sections 456 and 376 of the IPC framed against him.
- 19) It is stated that the appellant is on bail, his bail bond shall continue for a further period of 6 months as per requirement of Section 437A of the Cr.P.C.

Sd/-
(I.S.Uboweja)
JUDGE