

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1414 of 1999

- Siyaram aged about 30 years, S/o Kejan Nai, Cultivator, resident of village Bhalesar, P.S. Berla, District – Durg (M.P.) (now C.G.)

---- Appellant

Versus

- The State of Madhya Pradesh, through District Magistrate, Durg (Now the State of Chhattisgarh)

---- Respondent

For Appellant : Mr. Rajendra Tripathi, Advocate

For Respondent : Mr. Mahesh Mishra, Panel Lawyer.

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 27-08-2015

- 1) This appeal is directed against the judgment of conviction and order of sentence dated 29th April, 1999 passed by Additional Sessions Judge, Bemetara, District Durg in Sessions Trial No.62/96, whereby and whereunder the trial Court after holding the appellant guilty for trespassing the house of the prosecutrix and for commission of rape, convicted him under Sections 450 and 376(1) of the IPC and sentenced him to undergo R.I. for three years and to pay fine of Rs.300/-, in default of payment of fine, to undergo additional R.I. for one month and R.I. for seven years and to pay fine of Rs.500/-, in default of payment of fine to undergo additional R.I. for two months respectively. Both sentences were directed to run concurrently.
- 2) The facts, briefly stated, are as under :-
 - 2.1) Prosecutrix (PW/3) who was a well grown up married lady at the time of incident and on the date of incident, her husband

Shivdayal (PW/7) had gone to some other village for personal work, she was all alone in her house, on 27-10-1995 at about 11.00 p.m., when she was sleeping in her room accused/appellant entered the house and opened the door of her room and gagged her mouth, she started screaming, accused threatened to beat her, he removed her undergarments and committed rape on her. Again she screamed and after hearing her screaming, her father-in-law Harishchandra (PW/9), mother-in-law Firan Bai, sister-in-law Chameli Bai and some other villagers Prem (PW/5) and Manharan (PW/8) reached to the place of incident. Her husband came to his house after 6 -7 days of the incident. After coming her husband to village, she went to Police Station Berla, District Durg and lodged FIR vide Ex.P/.4 on 02-11-1995.

2.2) The prosecutrix was sent for medical examination to the hospital where she was examined by Dr. (Smt) Madhu Shrivastava (PW/2) who opined that prosecutrix was habitual to intercourse, but, on internal and external examination of the prosecutrix, no injury was noticed and she was not in a position to say that recent intercourse has been done or not. Her examination report is Ex.P/2. The appellant was also sent for medical examination, he was examined by Dr. B.P. Tiwari, who has given up by the prosecution. His report shows that there was no symptom to suggest that the appellant was not capable for performing sexual intercourse. His examination report is Ex.P/6.

2.3. During the course of investigation, petticoat of the prosecutrix was seized vide Ex.P/3, one underwear of accused was seized vide Ex.P-9. Swab slide of the prosecutrix was seized vide Ex.P-8. Spot map was prepared vide Ex.P/9 by Patwari Chabilal (PW/1). Seized articles were sent for chemical examination to the Forensic Science Laboratory, Raipur and report a report thereof has been received vide Ex.P/13.

- 3) 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 was filed before the Sessions Court, Durg.
- 4) In order to bring home the guilt of the accused/appellant, the prosecution examined as many as nine 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.
- 5) After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.
- 6) I have heard learned counsel for both the parties and perused the judgment impugned including the record of the trial Court.
- 7) Mr. Rajendra Tripathi, learned counsel appearing for the appellant, submits that there are major omissions and contradictions in the statement of the prosecutrix, which does not find support from

medical evidence, therefore, the prosecutrix is not reliable witness as her evidence is shaky. The entire prosecution story is patently false and fabricated. Testimony of the prosecutrix is not reliable and trustworthy. Evidence of other corroborative witness Harish Chandra (PW-9) is also not reliable because their Court statements are totally different from their diary statements.

- 8) *Per contra*, Mr. Mahesh Mishra, learned Panel Lawyer for the State opposing the appeal submits that the prosecution proved its case beyond shadow of doubt. Evidence of the prosecutrix (PW/3) and Harishchandra (PW/9) is sufficient to prove guilt of the accused/appellant. Therefore, the appellant does not deserve to be acquitted from the charges.
- 9) In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the prosecution.
- 10) Case of the prosecution is totally based on the evidence of the prosecutrix (PW/3), other corroborative witness Harishchandra (PW/9), Manharan (PW/8) and Prem (PW/5). Prosecutrix (PW/3) has deposed that on the date of incident, when she was sleeping at night, at the relevant time accused came to her house, opened the door and when she awoke, the accused gagged her mouth, removed her saree and petticoat, then he committed sexual intercourse with her. When she screamed, one Manharan and Paremu came there, thereafter her father-in-law (Harishchandra)

also came there, at that time accused was present in her room. She narrated the incident to all of them, Panchayat was organised but she did not narrate about the incident there, her husband was out of station and she reported the incident to Police Station vide Ex.P/4 after 5-6 days of the incident when her husband came to the village.

- 11) In her cross-examination, she admitted that she knew the accused very well as they had worked together in the house of Kamli. She also admitted that she did not know whether she pushed or kicked the accused to resist her during the course of sexual intercourse. She has stated that after coming of Manharan and Paremu, 15 minutes later her father-in-law Harishchandra (PW/9) came there, they enquired the accused as to why he came here. On being enquired, the accused replied that he came here for money recovery. She also admitted that she has a money transaction with the accused, but she has already paid him that money which was borrowed by her.
- 12) Manharan (PW/8) stated in his examination-in-chief that he heard sound from the house of prosecutrix then he went to Harishchandra (PW/9) and came along with him in the house of the prosecutrix. Harishchandra (PW/9) also stated that Manharan (PW/8) came to his house and was standing in front of house of the prosecutrix and he asked the prosecutrix why she was shouting, then prosecutrix replied that somebody came here. At that moment, accused came out of her room and she did not say

anything on that day, after coming of his son, prosecutrix went to police station and narrated the incident that accused did the bad work.

- 13) Manharan (PW/8) stated in his cross-examination that it is right that he heard whisper sound inside the house of prosecutrix, it is clear from his evidence that he has not heard screaming sound of the prosecutrix for help. Therefore, evidence of the prosecutrix that she screamed for help is totally false and fabricated. It is also not reliable statement of Manharan (PW/8) that he entered house of the prosecutrix with Harishchandra (PW/9) because Harishchandra (PW/9) has clearly stated that Manharan was standing in front of house of the prosecutrix. Statement of Harishchandra (PW/9) is also not reliable because prosecutrix has clearly stated in her cross-examination that after passing 15 minutes of coming of Manharan and Paremu, her father-in-law came there. Therefore, Manharan (PW/8) and Harishchandra (PW/9) are also not reliable witnesses about reaching to the place of incident after the incident occurred.
- 14) Prem (PW/5) stated that when he was passing near the house of prosecutrix, he heard sound, then father-in-law of the prosecutrix came with Chimni, accused was present there where he admitted his fault and the prosecutrix stated that she was raped by accused, but, Harishchandra (PW/9) has clearly stated that prosecutrix has not stated any thing against accused, he has also not stated the presence of Prem at the incident place. Manharan (PW/8) has also

not stated that Prem was also present on the spot after incident. Thus, presence of Prem (PW/5) is suspicious, therefore his evidence is also not reliable. There are major contradictions and omissions in the statements of prosecutrix about her police statement and Court statement.

- 15) Considering the statement of the prosecutrix, it is clear that neither she tried to scream for attention of neighbours nor tried to resist or pushed the accused while committing sexual intercourse with her. There is no any single abrasion or redness on the body of prosecutrix. After incident, she kept mum for 6-7 days, thereafter, she reported the incident. Thus, the conduct of the prosecutrix appears to be unnatural, her testimony does not inspire confidence and is not also trustworthy and it should not suffer from basis infirmity and the probability factors should also not render it untrustworthy of credence. The medical evidence as has come in the present case completely belies the testimony of the prosecutrix and renders entire prosecution case doubtful. Delay in lodging the first information report in Police Station has not been properly explained by the prosecution, therefore, it cannot be ruled out that after planing they have lodged FIR on their terms.
- 16) Taking into consideration all the facts and circumstances of the case and on minute scrutiny of the entire evidence, I am of the considered opinion that the trial Court while convicting and sentencing the appellant under Sections 450 & 376(1) of the IPC,

has not considered all the relevant aspects of the matter and thereby committed the illegality.

- 17) In the result, the appeal filed by the appellant is allowed. Conviction and sentence awarded to the appellant by the trial Court under Sections 450 and 376(1) of the IPC are hereby set aside. He is acquitted of the charges for commission of offence under Sections 450 and 376(1) of the IPC framed against him.
- 18) 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