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IN THE HIGH COURT OF JUDICATURE AT JABALPUR, MP.

Criminal Appeal No. 683 /99.

APPELLANT
(IN JAIL)

: Raghuwa Pando S/o. Chandar,
Pando, aged about 25 years
Occupation Agriculture
R/o. Village- Madhna PS-
Basantpur District- Sarguja, MP

-Versus-

RESPONDENT

: The State of M.P. through
PS- Basantpur District-
Sarguja, MP.

CRIMINAL APPEAL U/S. 374(2) OF THE CODE OF
CRIMINAL PROCEDURE -1973.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 683 of 1999

APPELLANT

:

Raghuwa Pando

VERSUS

RESPONDENT

:

The State of M.P.
(now The State of C.G.)

POST FOR PRONOUNCEMENT OF JUDGMENT ON 15 JANUARY, 2015

Sd/-

Inder Singh Ubeweja
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Appeal No. 683 of 1999**

APPELLANT : Raghuwa Pando

VERSUS

RESPONDENT : The State of M.P.
(now The State of C.G.)

[Criminal Appeal u/s 374.(2) of the Code of Criminal Procedure, 1973]

Present:

Ms. Sangeeta Mishra, Advocate for the appellant.
Mrs. Shobha Kashyap, Dy. Government Advocate for the State.

SB: Hon'ble Mr. Inder Singh Uboweja, J.

J U D G M E N T

(Delivered on ..15..... January, 2015)

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 25.01.1999 passed by the Sessions Judge, Ambikapur in Sessions Trial No.213/98, whereby and whereunder after holding the appellant guilty for commission of rape, the trial Court has convicted him under Section 376(1) of the IPC and sentenced him to undergo R.I. for seven years and to pay fine of Rs. 2,000/-, in default of payment of fine, to undergo additional R.I. for six months.
2. Conviction is impugned on the ground that without there being an iota of evidence against the appellant, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed an illegality.
3. Prosecution case in brief is that on 24.06.1998 at about 12 O'clock at noon, prosecutrix (PW-1) left for searching out her cattle in the Akladand forest situated near village Gurmuti. At that time, accused /

appellant caught hold of the tuft of the prosecutrix from back side and dragged her and thereafter, committed rape on her. When the prosecutrix tried to run away from that place, accused again tried to commit sexual intercourse but by that time after hearing cry of the prosecutrix, Mst. Parbudhni (PW-2), Fulkunwar and Somaro reached to the spot and they released the prosecutrix from the hold of the appellant. Prosecutrix informed the incident to her mother, father and husband Ramnandan (PW-3). On 25.06.1998 at about 6:30 pm she reported the incident in police station Basantpur vide Ex.P-1.

4. Investigating Officer R.S. Mishra (PW-5) sent the prosecutrix for medical examination vide Ex.P-8. Dr. (Smt.) S. K. Paikra (PW-7) had examined the prosecutrix and gave the report vide Ex.P-8A. Dr.(Smt.) S.K.Paikra could not have given perfect opinion of commission of rape. So doctor has not confirmed the rape.
5. Investigating Officer has recorded statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). During the investigation, accused/appellant was arrested and sent for physical examination to the Government Hospital, Wadrafnagar. Dr. P.L. Verma (PW-4) has examined the appellant and found him to be competent for sexual intercourse. His report was marked as Ex.P-3. Spot map was prepared vide Ex.P-13. Broken bangles were seized from the spot vide Ex.P-11. Petticoat of the prosecutrix was seized vide Ex.P-9. Underwear of the accused was seized vide Ex.P-12. Sealed packet relating to prosecutrix was seized vide Ex.P-10. All the sealed materials were sent to the FSL for

chemical examination, but report has not been submitted by the F.S.L. in the case.

6. After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Ramanujganj, who in turn committed the case to the Court of Sessions, Ambikapur.
7. In order to prove the guilt of the accused/appellant, prosecution has examined as many as seven witnesses. The 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 the crime in question is claimed.
8. After providing opportunity of hearing to the parties, learned Sessions Judge has convicted & sentenced the appellant as aforementioned.
9. I have heard learned counsel for the parties, perused the judgment impugned and record of the Court below.
10. Learned counsel for the appellant has vehemently argued that the conviction is substantially based on the evidence of the prosecutrix, her evidence is not reliable and trustworthy and also her statement is not natural and believable. Case of the prosecution is also not supported by the alleged eyewitness and also not supported by the medical evidence, therefore, conviction and sentence awarded to the appellant is not sustainable and the appellant is entitled to be acquitted.
11. On the other hand, learned State counsel opposed the appeal and

supported the judgment of conviction and order of sentence passed by the trial Court.

12. In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence available on record.
13. In the present case, conviction of the appellant is substantially based on the evidence of the prosecutrix (PW-1). Prosecutrix (PW-1) has stated that she left for searching out cattle near the curve of village Gurmati, accused suddenly came there and hold her tuft of hair from back side. He dragged and pushed her down in the surface, she was crying, but he did not left her. Accused opened her sari and mounted upon her and committed sexual intercourse. Accused released her at 3 O'clock. Thereafter, the accused again followed her and by holding *gamcha* surrounding her neck asked her whether or not she will inform the incident to her husband, which was replied by her in positive. Parbudhni (PW-2), Somaro and Fulkunwar came there after hearing her sounds. They released her from the hold of the appellant. Eyewitness Parbudhni (PW-2) has not supported the incident. She was declared hostile. In her cross-examination, she has only supported this fact that the prosecutrix was searching out for her cattle. None other facts, which were narrated by the prosecutrix, was supported by her. Prosecution has also not examined other important eyewitnesses Somaro and Fulkunwar. Prosecution has also not clarified as to why very important and material witnesses have not been examined, therefore, adverse inference may be drawn against the prosecution. Prosecutrix statement is not corroborated

by the medical evidence (Ex.P-8A). She has no external injuries, therefore, it is also not reliable by her evidence that she was held by the accused on two occasions and he has forcefully held her tuft of hair, dragged her and pushed her in the surface and forcefully committed rape on her from 12.00 noon to 3.00 p.m. continuously. No wearing bangle was seized from the prosecutrix for matching with the broken bangles, which were allegedly seized from the spot. It is also not reliable testimony of the prosecutrix that she was in custody of the accused and he has committed rape on her from 12.00 noon to 3.00 p.m. and she has not received any internal and external injuries.

14. It is no doubt true that in law the conviction of an accused on the basis of the testimony of the prosecutrix alone is permissible, but that is in a case where the evidence of the prosecutrix inspires confidence and trustworthy and appears to be natural and truthful, but where the evidence of the prosecutrix was not of such quality and there was no other reliable and cogent evidence on record, which may even lend some assurance, short of corroboration that she was making a truthful statement the accused could not be saddled with the liability of committing the crime.
15. On close scrutiny of the evidence adduced on behalf of the prosecution, I am unable to uphold the conviction and sentence of the appellant on the basis of the evidence of prosecutrix alone. While convicting and sentencing the appellant, trial Court has committed an illegality.
16. Consequently, the appeal deserves to be allowed and is hereby



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allowed. Conviction and sentence of the appellant under Section 371(1) of the IPC is hereby set aside and he is acquitted of the said charges.

17. It is stated that the 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 Code.

Sd/-
Inder Singh Ubeweja
Judge

chandra