

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1885 of 1999

- Hariram Devangan, S/o Madhuran Devangan, Aged about 24 years, R/o Metguda Para, Jagdalpur, District Bastar (MP) (Now CG)

---- Appellant

Versus

- State of Madhya Pradesh (Now State of Chhattisgarh)

---- Respondent

For Appellant	:	Mr. Keshav Dewangan, Advocate
For Respondent / State	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV Order

Passed on : /06/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 05.07.1999 passed by the Illrd Additional Sessions Judge, Jagdalpur in Sessions Trial No.315 of 1998, whereby and whereunder, after holding the appellant guilty for wrongful confinement and commission of rape, the trial Court has convicted the appellant under Sections 342 and 376 of the IPC and sentenced him to undergo R.I. for one year with fine of Rs.1,000/-, in default of payment of fine, additional R.I. for one month and R.I. for ten years with fine of Rs.5,000/-, in default of payment of fine, additional R.I. for six months respectively.

2. Conviction is impugned on the ground that without there being an iota of evidence against the appellant, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of prosecution, on 23.03.1998 at about 10.00 a.m., when prosecutrix (PW-1) was coming back to Nayapara after meeting her sister from Kunwarbada, the appellant met her near Samund Chowk, he forced her to sit on his Luna moped and thereafter both of them made a ride in the Jagdalpur town. After that appellant took her to the house of Dayaram at Hatkachora, where he committed sexual intercourse with her, thereafter, appellant took her on his Luna moped and dropped at Nayapara. She narrated the incident to the owner of Beauty Parlour, where she was working as a maid servant. Thereafter, she reported the incident at police station, Jagdalpur.
4. During the course of investigation, prosecutrix was sent for medical examination. Dr. A. Chandra (PW-5) examined her and found her hymen torn, no external injury was found. Doctor opined that she was habitual for intercourse and her report was marked as Ex.P-12. Appellant was also examined by Dr. Vinay Kumar and his report was marked as Ex.P-6. Police officer seized articles sent from the hospital, thereafter the articles were

sent to FSL, Raipur, from where report (Ex.P-11) has been received.

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 Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to the Court of Sessions, Jagdalpur, from where learned Additional Sessions Judge received the case on transfer for trial.
6. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as five 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.
7. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.
8. I have heard learned counsel for 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 (PW-1), but her evidence does not inspire

confidence and is not trustworthy. In her statement, contradictions and omissions find place. Learned counsel further submits that the prosecutrix, on her own will, went along with the appellant, she was known to the appellant prior to the incident. Even her veracity is doubtful and not corroborated with any cogent evidence and that her evidence itself shows that she was a consenting party.

10. On the other hand, learned Panel Lawyer for the State opposes the appeal and supported the judgment passed by the trial Court.
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. As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on solitary testimony of the prosecutrix. As per her statement, while she was returning back from her sister's house, appellant met her in public road, he forcibly took her on his Luna moped and made a ride in the Jagdalpur town, thereafter, they reached at Hatkachora which is a densely and crowded area, where he committed rape on her, after that she came back to her duty place. Madam of beauty parlour took her to hospital, thereafter she reported the incident at police station.

13. In her cross-examination, she admits that when the appellant was driving Luna she was sitting behind him. She also admits that incident place was adjacent to many houses, but, she has not stated that she had tried for any help. Her statement shows that incident place is a over crowded and densely populated area, she did not raise any alarm or make hue and cry though there were many houses adjacent to the place of incident. After the incident, she returned back to her duty place with the appellant, but, she has not tried to go to police station from the place of incident. In her statement, there are full of omissions and contradictions and she has also tried to improve her statement in Court rather than police station.
14. Medical report (Ex.P-12) and statement of Dr. A. Chandra (PW-5) also did not support the statement of the prosecutrix. There is nothing corroborative and cogent evidence in this case. No ossification test was done though advised by the doctor, even otherwise, the prosecutrix herself admitted her age to be of 16 years at the time of recording of her police statement.
15. Evidence and circumstances show that prosecutrix and appellant were known to each other prior to the incident and prosecutrix was freely and voluntarily moving with him and it also appears from the statement of the prosecutrix and by the medical report (Ex.P-12) that the prosecutrix was a consenting party.

16. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality. In my considered opinion no offence is proved against the appellant beyond reasonable doubt.
17. Consequently, the appeal is allowed. Conviction and sentence of the appellant under Sections 342 and 376 of the IPC are hereby set aside. Appellant is acquitted of the charges framed against him. 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/-
(I.S. Uboweja)
JUDGE