

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1339 of 1999

APPELLANT

: Hemu S/o Mandu Satnami aged
about 20 years, R/o Village –
Dongariya Police Station – Simga
District, Raipur (M.P.) now (C.G.)

VERSUS

RESPONDENT

: The State of Madhya Pradesh
(now the State of Chhattisgarh)
Through – Police Station – Simga
Distt. Raipur (M.P.) now (C.G.)

POST FOR PRONOUNCEMENT OF JUDGMENT ON 30 JANUARY, 2015

Sd/-
Inder Singh Uboweja
Judge

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

Present:

Mr. Avinash Singh, Advocate for the appellant.

Ms. Sangeeta Mishra, Panel Lawyer for the State.

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

J U D G M E N T

(Delivered on ..30.... January, 2015)

1. This criminal appeal is directed against the judgment of conviction and order of sentence dated 1st May, 1999 passed in S.T. No. 243/88, whereby the learned 1st Additional Sessions Judge, Baloda Bazar has convicted the appellant under Section 450 and 376 of IPC and sentenced him to undergo R.I. for 7 years & fine of Rs.1,000/-, in default, additional R.I. for six months and R.I. for 7 years & fine of Rs. 5,000/-, in default, additional R.I. for one year respectively.
2. Case of the prosecution, in brief, is that on 25.06.1988 at about 7.00 p.m., when the prosecutrix (name not mentioned) was alone present at her home, accused entered into the house of the prosecutrix and committed rape on her. Prosecutrix is a married lady who was residing with her parents as her husband has left her. After the

incident, she narrated the same to the parents of the accused and also her parents, Thereafter, she lodged the FIR (Ex.P-1) regarding the alleged incident on next day i.e. on 26.06.1988. On that very day, Saree of the prosecutrix, alleged to be contained stains, were seized by the police vide Ex.P-3. Police further seized underwear from the appellant vide Ex.P-4. Slide and pubic hair of the appellant were seized vide Ex.P-5. Sealed slide containing vaginal secretion of the prosecutrix was seized vide Ex.P-6. Prosecutrix was sent for medical examination to D.K. Hospital, Raipur, where Dr. (Smt.) Amita Jha (PW-6) has examined the prosecutrix. After examination, she gave her report vide Ex.P-7. Doctor stated in her report that no marks of external injury on her body were found, vagina admitted two fingers easily, no marks of external injury over private parts were found nor stains of blood or seminal were seen. Doctor stated that prosecutrix was aged about 18 years and for definite opinion regarding her age prosecutrix was referred to Radiologist. Dr. S.S. Bishnoi (PW-10), Radiologist, has stated that prosecutrix was 17-18 years of age. His report is marked as Ex.P-11. Vaginal slides & sealed articles were handed over for chemical examination. The appellant was also sent for medical examination on 27.06.1988 vide Ex.P-7A to PHC, Simga, where Dr. B.R. Joshi (PW-5) has examined the appellant and prepared report vide Ex.P-7. Doctor in his report stated that the appellant was capable of performing sexual intercourse. Underwear of the appellant, saree and petticoat of the prosecutrix, piece of rope were brought to him. The same was again sealed and handed over to the constable for onward chemical examination.



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3. After completion of investigation, charge sheet was filed before the Court of Additional Chief Judicial Magistrate, Baloda Bazar who in turn committed the case to the Court of Sessions, Raipur from where learned 1st Additional Sessions Judge received the case on transfer for trial.
4. The learned trial Court framed charge against the appellant for having committed offence for entering the house and rape on the prosecutrix, thereby committing offence under Section 450 and 376 IPC. Appellant abjured his guilt.
5. In order to bring home the guilt of the appellant, the prosecution has examined in all eleven witnesses. Appellant was examined under Section 313 of the Code in which he denied having committed any offence and pleaded innocence. The defence of the appellant has been that because of rivalry between prosecutrix's father and his father, he has been falsely implicated in crime in question.
6. After providing opportunity of hearing to the parties, learned Sessions Judge, relying upon the statements of the prosecutrix (PW-1) and her father Chaitram (PW-3), vide impugned judgment of conviction and order of sentence held that the prosecution has proved his case beyond reasonable doubt.
7. I have heard learned counsel for the parties, perused the judgment impugned and record of the Court below.
8. Shri Avinash Singh, learned counsel for the appellant, has assailed the conviction of the appellant not being based on cogent, reliable and unimpeachable evidence. Medical report and FSL report are

also not supporting the case of the prosecution, therefore, the appellant is entitled for acquittal from the charges.

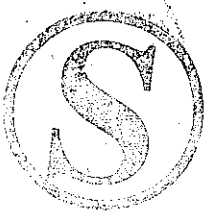
9. On the other hand, Ms. Sangeeta Mishra, Panel Lawyer for the State opposed the appeal and supported the judgment of conviction and order of sentence passed by the trial Court.
10. In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence available on record.
11. The prosecutrix (PW-1) stated that while she was all alone in the house the appellant entered the house, pushed the door of her room and entered in to the room whereupon she shouted "chor-chor". After that accused pressed her neck and thrown on the cot, he gagged her mouth and pressed her neck then removed her cloths and committed sexual intercourse on her. Thereafter, accused fled away then she followed the accused and went to his home, at there she narrated the incident to his parents and came to her home. On the next day at morning, when her father came, she reported the incident at police station.
12. In the cross-examination, the prosecutrix has stated that she was thrown, she further deposed that when she fell down and accused pressed her neck and gagged her mouth she was feeling pain. She has also deposed that door was broken by the accused, she has also stated that the sexual intercourse was painful which led to oozing of blood from her private parts and also her cloths have become wet. She has also stated that appellant was continuously committing intercourse for half an hour. Prosecutrix has further stated that she

has narrated in police statement about shouting of "*chor-chor*" and pressing her neck, but in Ex.P-1, that statement has not come. Investigating Officer T.S. Chouhan (PW-11) has clearly stated that the prosecutrix has not recorded such type of statement, which shows that prosecutrix has falsely recorded that statement. Prosecutrix (PW-1) has also stated that her as soon as her father came to house then they went to police station, but her father Chaitram (PW-3) has stated that her daughter met him in Ringi village then they went to police station. So, it is clear that the prosecutrix (PW-1) has given false statement. Chaitram (PW-3) stated that prosecutrix met her and stated about the incident, but prosecutrix never said that she has narrated to her father about the incident.

13. Dr. Amita Jha (PW-6), who examined the prosecutrix when she was brought to her after the alleged incident, has stated that the vagina admitted two fingers easily. Testifying her report Ex.P-7, she has neither stated that she was found any blood stains over private part of the prosecutrix nor she has stated that she found any external injury over the body nor found any kind of injury on the private part of the prosecutrix. It has been stated that no definite opinion regarding sexual intercourse could be given.
14. Dr. B.R. Joshi (PW-5), who has examined the accused has stated that accused was found capable of performing sexual intercourse, but he has not disclosed that he has seen any injury over the body of the accused. From the testimony of Dr. Amita Jha (PW-6), it is clearly revealed that the prosecutrix did not receive any injury whatsoever

deposed by her in her evidence that she was thrown on the cot, gagged her mouth and then pressed the neck twice. Thus, the medical evidence completely falsifies the version of the prosecutrix. Prosecutrix has stated in her cross-examination that sexual intercourse was painful and blood started oozing out, however, this version of the prosecutrix is not at all supported by the medical evidence, inasmuch as even slightest injury, abrasion or lacerations have not been found over private parts of the prosecutrix and in absence of any injury on the vaginal walls, it is difficult to accept the version of the prosecutrix that sexual intercourse was committed on her in the manner in which described by her in her testimony while it is not at all supported by the medical evidence and also from FSL report.

15. FSL report (Ex.P-15) has been submitted, which revealed that blood or seminal stains or spermatozoa were not found on the wearing cloths of the prosecutrix nor was found on piece of rope of cot, which was seized from cot of the prosecutrix. Chemical examination report was also not found to contain any spermatozoa and blood so as to establish the case of sexual intercourse. There is also no cogent and reliable evidence on record to establish presence of blood stains, vaginal discharge or seminal stains on undergarments of the accused, which was seized by the police during investigation. Dr. B.R. Joshi (PW-5) has also not found any injury on any part of the accused nor there was any bruise, scratch on the private part and genital organ of the accused.



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16. In a rape case – the testimony of the prosecutrix must be reliable and inspired confidence, it should be worthy of credit 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.
17. As the testimony of the prosecutrix itself was not reliable and also not at all supported by medical and FSL reports, therefore, I am unable to uphold the finding of guilt recorded by the learned trial Court on the basis of testimonies of the prosecutrix (PW-1) and her father Chaitram PW-3). The impugned judgment of conviction and order of sentence recorded by the trial Court cannot be sustained under law, and therefore, the same called for no interference.
18. In the result, the appeal is allowed. Conviction of the appellant – Hemu under Sections 450 and 376 of IPC and sentences imposed under that sections are hereby set aside. He is acquitted of the charges of commission of offence under Sections 450 and 376 of IPC framed against him.
19. 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 Uboweja
Judge