

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2019 of 1998

- Vyas Narayan, S/o Gangaram Yadav, aged about 18 years, resident of Boridh, Police Station : Arang, District : Raipur (M.P.) (now C.G.)

---- Appellant

Versus

- The State of Madhya Pradesh (Now the State of Chhattisgarh)

---- Respondent

For Appellant : Mr. Suryakant Mishra, Advocate

For Respondent : Mr. Mahesh Mishra, Panel Lawyer.

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 26-08-2015

- 1) This appeal is directed against the judgment of conviction and order of sentence dated 31st August, 1998 passed by Special Judge, Raipur in S.T. No.38/97, whereby and whereunder the trial Court after holding the appellant guilty for commission of rape and trespass the house of the prosecutrix, convicted him under Sections 376 and 450 of the IPC and sentenced him to undergo R.I. for seven years and three years respectively. Both sentences were directed to run concurrently.

- 2) The facts, briefly stated, are as under :-

2.1 Prosecutrix (PW-6) who was a minor girl at the time of incident is the daughter of Pandit Lal (PW-6). When the prosecutrix was alone in her house, her parents had gone to other village and other members of the family were watching T.V. Serial in neighbour's house. The allegations of the prosecution are that on

the date of incident i.e. 03.03.1997 at about 9.45 p.m., when prosecutrix was sleeping in her room, accused / appellant entered the house and gagged her mouth, removed underwear and committed rape on her. She started screaming and after hearing her screaming, one Jagdish (PW-5) came there and caught hold the hand of accused, but he fled away from the spot. She reported the incident in police station, Aarang. First Information Report (Ex.P-12) was lodged on the same day at about 11.40 p.m. She named the appellant in the FIR. The prosecutrix was sent for medical examination to the hospital, where she was examined by Dr. (Smt.) Anita Jha (PW-13) 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-13/A. Prosecutrix was also referred for X-ray test for age determination where she was examined by Dr. (Smt.) Alka (PW-14), her examination report is Ex.P-23/B. She assessed her age about 14 to 15 years. The appellant was also sent for medical examination, he was examined by Dr. K.K. Sen (PW-8) who found that there was no symptom to suggest that the appellant was not capable for performing sexual intercourse.

2.2. During the course of investigation, underwear, Samij, Skirt were seized from the prosecutrix vide Ex.P-9. One pant and underwear were seized from the accused vide Ex.P-11. Swab slide of the prosecutrix was seized vide Ex.P-10. Spot maps were

prepared vide Exs.P-3 & 4. Seized articles were sent for chemical examination to the Forensic Science Laboratory, Raipur and the reports of FSL and Serological test were received vide Ex.P/22 and Ex.P/20 respectively.

- 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 Court of Special Judge, Raipur.
- 4) In order to bring home the guilt of the accused/appellant, the prosecution examined as many as fourteen 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. Suryakant Mishra, 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. Evidence of other corroborative witness Jagdish (PW-5) is also not reliable because his Court statement is totally different from his police statement and he has old animosity with the accused.

- 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-6) and Jagdish (PW-5) 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-6) and other corroborative witness Jagdish (PW-5). Prosecutrix (PW-6) has stated that on the date of incident, she was sleeping on cot, her parents, brother and sisters were out of the house, at the relevant time accused came there and gagged her mouth by a single hand and removed her underwear by another hand, then he committed sexual intercourse with her, thereafter, one Jagdish (PW-5) asked her as to how the door was opened, on hearing the sound accused fled away from the spot, at that moment Jagdish caught hold the hand of accused, but he escaped and ran away from the spot. She felt pain on her private

part oozing blood from there. She reported the incident at police station.

- 11) In her cross-examination, she admitted that she opened the eyes and saw a person pushing her both breast, but she has not offered any explanation as to why she did not raise any alarm for her rescue. She also admitted that her both hands were open when a person was doing sexual intercourse with her, she has not given explanation why she has not resisted at that moment. She has stated that she has not given statement of Ex.D-5 from A to A, B to B, C to C, D to D and E to E and also denied FIR statement A to A, B to B, C to C and D to D which shows that prosecutrix was denying important facts of the incident. There are major omissions and contradictions in her statement. Investigating Officer P.N. Shukla (PW-12) has specifically stated that all above statement of FIR and statement of witness under Section 161 of Cr.P.C. was given by the prosecutrix herself.
- 12) 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. There is no any single abrasion or redness on the body of prosecutrix. Thus, the conduct of the prosecutrix appears to be unnatural, her testimony does not inspire confidence and is not 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.

- 13) Other witness Jagdish (PW-5) has stated that at about 9.00 p.m. he was watching T.V. in the house of Mehtar Mehar, when he felt call of nature, he came out of the house, he saw and asked the prosecutrix as to how the door was opened then she replied that Vyas Narayan entered her house, then he saw the accused fleeing away from the spot. He tried to catch him, but could not succeed. In his cross-examination, this witness has further admitted that there is animosity with the accused. His police statement (Ex.D-4) shows that he has not stated before police that he came out from the house of Mehtar due to call of nature and saw the open door of the prosecutrix and when he asked her as to why the door was opened, then she replied him that Vyas Narayan entered her house, therefore, it is clear that this witness is not reliable because he has not stated story before police which he narrated before Court statement.
- 14) A bare perusal of the aforesaid evidence goes to show that prosecution has failed to prove the fact that the prosecutrix was below the age of 16 years on the date of incident and has also failed to prove that the appellant has committed house trespass by entering her house and commission of rape, thereby the appellant committed offence punishable under Sections 450 & 376 of the

IPC. Taking into consideration all the facts and circumstances of the case, I am of the considered opinion that the trial Court while convicting and sentencing the appellant under Sections 450 & 376 of the IPC, has not considered all the relevant aspects of the matter and thereby committed the illegality.

- 15) 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 of the IPC are hereby set aside. He is acquitted of the charges for commission of offence under Sections 450 and 376 of the IPC framed against him.
- 16) 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