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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 207 of 2001

1. Lala Sahu, s/o Johan Sahu, aged about 24 years, r/o Yadav Nagar, Tifra, District Bilaspur (C'garh)

---- Appellant

Versus

1. State of M.P. (Now Chhattisgarh), Bilaspur

---- Respondent

For Appellant.
For Respondent.

Shri K.K. Singh, Advocate
Shri Mahesh Mishra, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

JUDGMENT

20/08/2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 30.01.2001 passed by the 6th Additional Sessions Judge, Bilaspur in S.T. No.74/2000 convicting the accused/appellant under Sections 342, 450 & 376 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for 01 year; R.I. for 05 years & fine of Rs.500/- & R.I. for 07 years & fine of Rs.500/- respectively with usual default clauses.
2. As per prosecution case, on 13.12.1999 the prosecutrix, a married lady aged about 20 years, lodged FIR (Ex.P-15) to the effect that on the same day at about 1.30 p.m. while playing her three years old daughter entered vacant house of her neighbour Rameshwar therefore she went there to bring her back and when she was returning with her daughter, the accused/appellant, who hidden himself near the door, dragged her inside, threw her on the ground, bolted the room from inside and committed forcible sexual intercourse with her after removing her clothes. She tried to raise cries but he gagged her mouth from his hand. After commission of offence, having worn saree when she opened the door and came out, she

saw that Ishwari and other persons of vicinity had gathered there. She narrated the entire incident to them. At about 6.00 p.m. when her husband returned from his work place, she informed him also about the incident and then the report is lodged. Based on the aforesaid allegations, the offence under Sections 342, 376 & 450 of the IPC was registered against the accused/appellant. The prosecutrix was medically examined by Dr. (Smt.) S. Chipde (PW-12) vide Ex.P-12, however, no injury was noticed by the lady doctor on the person of the prosecutrix and she has opined that no definite opinion can be given about the commission of rape. Accused/appellant was also examined by Dr. R. Jitpure (PW-5) vide Ex.P-3. After completion of investigation, charge sheet was filed against the accused/appellant for the offences punishable under Sections 342, 450 & 376 of the IPC and accordingly the charges were framed against him.

3. In order to convict the accused/appellant, the prosecution examined 14 witnesses in all. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication. The appellant has examined one witness in his defence namely Jhamanlal (DW-1) to prove the fact that there was affair between the accused/appellant and the prosecutrix.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as described above.

5. Learned counsel for the accused/appellant submits that:

(i) Present appears to be a case of consent as when the villagers had seen the accused/appellant and the prosecutrix in a vacant house bolted from inside, the report was lodged by her.

(ii) though the prosecutrix has stated that while being subjected to

sexual intercourse she received injuries but her medical report does not support the prosecution case.

(iii) an improbable story has been put forth by the prosecutrix where she was subjected to sexual intercourse in presence of her three years old daughter.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

7. I have heard learned counsel for the parties and perused the material available on record.

8. The prosecutrix (PW-3) has stated that her husband is working in the Home Guard Department. On the fateful day, she was sitting in the courtyard of Bajarhin where her daughter was also playing. After some time she noticed that her daughter is not there therefore she started searching her and in that process when she reached near a vacant house, she saw her daughter. The accused/appellant, who was hiding there, dragged her inside, gagged her mouth, threw her on the ground and committed forcible sexual intercourse after undressing her. On hearing her cries, Jailal & one another person came there. She met them outside the house and narrated the entire incident to them. In the evening when her husband returned from her work place, she informed her also about the incident and then the report was lodged. In the cross-examination this witness has admitted that earlier she lived near the house of accused/appellant for about three months. She has further admitted that place of incident is surrounded by several houses and numbers of persons used to move around frequently. She has further stated that at the time of recording of her statement by the police, she did inform the police that her

neck was pressed by the accused/appellant however if the same is not recorded then she cannot tell the reasons. She has stated that at the time of commission of offence, she had sustained injuries which she had disclosed to the doctor at the time of her medical examination. She has clarified that she sustained injuries in her legs and hands. She has further stated that she was dragged by accused/appellant upto about 10 feet.

9. Shashi Kumar (PW-1) is the husband of the prosecutrix. He has stated that at the time of incident, he was not in the house and had gone to his work place and when he came back in the evening, he came to know about the incident. He has stated that he was informed by his wife and the gathered crowd told him that on knocking the door of house, it was opened by the accused/appellant and the crowd gathered there beat him also. He has admitted the fact that he was informed by Jailal (PW-8) that the house where the incident took place was vacant and owner of the house had gone out to earn livelihood. He has further stated that at the time of incident, bangles of her wife were broken and she sustained injuries.
10. Dr. R. Jitpure (PW-5) had medically examined accused/appellant and opined that he is capable of performing sexual intercourse.
11. Bajarhin Bai (PW-7), Jaipal (PW-8) & Santosh Sahu (PW-9) have not supported the prosecution case and they have been declared hostile. However, Santosh Sahu (PW-9) has stated in the cross-examination that he was informed by Jailal (PW-8) that one boy has taken a girl inside a vacant house.
12. Chhatlall (PW-10) is the Patwari who prepared the spot map of Ex.P-11.
13. Dr. (Smt.) A. Chipde (PW-12) had medically examined the prosecutrix vide Ex.P-12. She has not found any external or internal injury on the person of the prosecutrix. She has opined that the prosecutrix was habitual to sexual intercourse, her hymen was old ruptured and no definite opinion

regarding rape can be given.

14. Baldau Prasad (PW-13) has not supported the prosecution case therefore he has been declared hostile.
15. Leela Devi (PW-14) is the investigating officer and has duly supported the prosecution case.
16. Jhamanlal (DW-1) has stated that he knew the accused/appellant, he has three children and his conduct is good. In the cross-examination this witness has stated that on the date of incident, he and the accused/appellant were sitting together. The accused/appellant and the prosecutrix used to make amorous gestures at each other.
17. On going through the entire evidence available on record, the only inference which could be drawn is that the prosecutrix was a consenting party. She has stated in her evidence that accused/appellant dragged her inside the house, threw her on the ground, bolted the doors from inside and committed forcible sexual intercourse with her and after commission of rape, she herself opened the doors and came out. But it has come in the evidence that one boy and girl went inside the vacant house and when the villagers knocked the doors which was bolted from inside, the accused/appellant opened it. Shashi Kumar (PW-1), husband of prosecutrix, has also stated that he was informed by the prosecutrix and the crowd gathered on the spot that it was accused/appellant who opened the door of said house and thereafter they beat him. The prosecutrix has stated that while being subjected to sexual intercourse she had sustained scratches on her hands & legs, whereas the doctor who had medically examined her has specifically stated that she has not found any injury on her body. All these things go to show that had she not been seen in the company of accused/appellant by the villagers, probably the report would not have been lodged by her presenting herself as a victim of rape.

18. As regards the conviction of accused/appellant under Section 342 of the IPC, when the prosecutrix has been held to be a consenting party to the case, the question of accused/appellant keeping her in wrongful confinement does not arise.
19. As regards the conviction of accused/appellant under Section 450 of IPC, the prosecution has not adduced any evidence to show that house in question belonged to the prosecutrix and the accused/appellant had gained entry thereto forcibly. Rather the evidence has come that while making search of her daughter the prosecutrix went to a vacant house situated in the vicinity where the accused/ appellant was already present. Even the owner of house where the prosecutrix was taken into has not made any complaint whatsoever. In these circumstances, the appellant cannot be held guilty for committing an offence under Section 450 of the IPC.
20. For the foregoing discussions, this Court has no hesitation to say that the prosecution has utterly failed to prove its case beyond reasonable doubt and further the Court below was also not justified in making assessment of the evidence while recording its finding. Of course, in the circumstances the benefit of doubt has to go to the appellant. Ordered thus.
21. In the result, the appeal succeeds. Judgment impugned is set aside and the accused/appellant is acquitted of the charges levelled against him by extending him benefit of doubt. Since the appellant is on bail, no further order is necessary.

Sd/-
Pritinker Diwaker
Judge