

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 298 of 2010**

Omprakash Choudhary, S/o Shiv Prasad @ Chhuddu Chudhary,
aged about 24 years, R/o village Pateratola, P.S. Pendra, district
Bilaspur, Chhattisgarh.

---- Appellant**Versus**

State of Chhattisgarh through police station Gourella, District
Bilaspur, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Dharendra Mishra, Advocate.
For the Respondent/ State	:	Shri Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****07/10/2015**

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.3.2010 passed by the Learned Additional Sessions Judge (F.T.C.), Pendra Road, District Bilaspur, Chhattisgarh in Sessions Trial No. 54 of 2009 whereby and whereunder the learned trial Court after holding the Appellant guilty for committing house trespass and also for committing rape against will and consent of the prosecutrix (PW-1), convicted the Appellant under Sections 450 and 376 of the Indian Penal Code, 1860 (for short 'the IPC') and sentenced him to undergo rigorous imprisonment for 3 years, also to pay a fine of ₹1,000/- in default of payment of fine to further undergo R.I. for one month and RI for 7 years and also to pay a fine of ₹2,000/- in default of payment of fine to further undergo R.I. for one month, with a direction that both the substantive jail sentences shall run concurrently.

(2) Conviction is impugned on the ground that without there being any iota of evidence, Learned Court below has convicted and sentenced the Appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, on 12.09.2009 at about 11:30 pm, when the prosecutrix (PW-1) was sleeping in her room, the Appellant entered the room, removed clothes of the prosecutrix and committed intercourse forcibly. When the prosecutrix shouted for help, her father-in-law, mother-in-law and sister-in-law came to the spot and they caught the Appellant. Thereafter, on 13.9.2009 at about 4:00 pm, the prosecutrix lodged an FIR in Police Station Gourella which was registered as Crime No.198 of 2009 under Sections 450 and 376 of the IPC against the Appellant. After necessary permission from the concerned authorities, the prosecutrix was examined by PW-9 Dr. Nalini Singh who noticed no external injury or internal injury and also held that the prosecutrix is a married woman and habituated to intercourse and the report of the chemical analyst may be required to prove the intercourse. She gave her report Ex. P/10. The vaginal slide was also prepared, sealed and handed over to the concerned constable and also clothes of the prosecutrix were also sent to the chemical analysis. The Investigating Officer (the IO) (PW-10) Kabir Sai prepared the spot map, seized the articles from the spot and also from the Appellant and the prosecutrix. The Appellant was arrested and he was examined by Dr. A.L. Koram (PW-8), who opined that the Appellant is capable of committing intercourse.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

(5) After completion of the investigation, charge-sheet was filed before the Judicial Magistrate, First Class, Pendra, who, in turn, committed the case to the Court of Learned Additional Sessions Judge (FTC), Pendra Road, District Bilaspur, Chhattisgarh, who received the case on transfer and conducted the trial.

(6) During trial, the Court below framed charges under Sections 450 and 376 IPC. The prosecution examined 10 witnesses to prove the guilt of the Appellant. Statement of the Appellant was recorded under Section 313 of the Code wherein the Appellant denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.

(7) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the Appellant for the charges under Sections 450 and 376 of the IPC.

(8) Learned counsel appearing on behalf of the Appellant submits that he is not contesting the appeal on its merits regarding conviction under Sections 450 and 376 of the IPC. He is confining his argument to the quantum of sentence only. Learned counsel further submits that the Appellant was in jail during trial from 18.9.2009 to 29.9.2009 thereby he served jail sentence of 12 days and he also remained in jail after pronouncement of the judgment since 30.3.2010 and thereby he has served jail sentence of 5 years, 6 months and 7 days. He is the first offender and was aged about 24 years at the time of the incident. The

prosecutrix is a married woman aged about 23 years. The Appellant is not having any previous criminal antecedents. The incident is about more than six years old. During this period, he suffered a lot while defending him before the trial Court and also before the Appellate Court. Learned counsel for the Appellant further submits that as the present incident is of 12.9.2009 i.e. prior to the substitution of Criminal Law Amendment Act, 2013 with effect from 3.2.2013 (as the present incident is before the amendment), Legislature provides that for the adequate and special reasons mentioned in the judgment the court may impose the sentence of imprisonment of either description for a term of less than 7 years and the same may be considered. It was lastly submitted that looking to the above facts that no injury was noticed on the body of the Appellant as also on the body of the prosecutrix, the Appellant is in distant relation with the family of the prosecutrix, the period already undergone by the Appellant, he be given an opportunity to live peacefully in the village and society and the sentence imposed upon him may appropriately be reduced.

(9) On the other hand, Learned Counsel for the Respondent/State opposing the submissions advanced on behalf of the Appellant submitted that late night the Appellant committed house trespass and committed rape. Upon entire consideration, the trial Court moderately sentenced the Appellant and the same may not require any interference. Hence, the appeal may be dismissed.

(10) I have heard Learned counsel for the parties, perused the judgment impugned and records of the Court below.

(11) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(12) As the Appellant is not contesting the instant criminal appeal against the conviction imposed upon him under Sections 450 and 376 of the IPC and is contesting the appeal against the jail sentence imposed upon him and fine awarded by the trial Court on both the counts, the impugned judgment of conviction warrants no interference.

(13) Even otherwise on perusal of the entire evidence, I do not find any illegality or impropriety committed by the trial Court in passing the impugned judgment of conviction warranting interference. The trial Court awarded substantive jail sentence under section 450 of the IPC also sentenced the Appellant under Section 376 of the IPC to pay fine of ₹1,000/- in default of payment of fine to further undergo R.I. for one month and also to pay fine of ₹2,000/- in default of payment of fine to further undergo R.I. for one month, respectively and the same does not warrant any interference. Consequently, the same is affirmed.

(14) So far as the quantum of substantive jail sentence under Section 376 of the IPC is concerned, the Appellant has been awarded minimum sentence for 7 years. The Appellant, at the time of commission of offence, was at the age of 24 years. He is the first offender with no criminal antecedents and the Appellant pleaded that he will not commit any offence in future. He prays for an opportunity to live in the village and society peacefully as he has already served the sentence in total for 5 years 6 months and 19 days. Looking to the entire facts and

circumstances of the case, which are the adequate and special reasons on the basis of which the Appellant could be given an opportunity by awarding sentence of imprisonment for a term of less than 7 years.

(15) On due consideration, I am of the view that with regard to the sentence imposed upon the Appellant, the period already undergone by him would meet the ends of justice.

(16) Consequently, the appeal filed by the Appellant is allowed in part. The conviction awarded against the Appellant passed by the trial Court for both the counts is hereby affirmed. Fine sentences under sections 450 and 376 of the IPC awarded by the trial Court and the substantive sentence awarded under section 376 of the IPC are also hereby affirmed. However, the substantive jail sentence of RI for 7 years awarded under Section 376 of IPC is hereby reduced and the Appellant is now sentenced for the period already undergone by him.

(17) The Appellant be released forthwith if he has deposited the fine amount awarded by the trial court, and if not required in any other case. If he has not deposited the fine amount awarded by the trial court, he shall undergo the jail sentence as per the default clause mentioned in paragraph 17 of the impugned judgment till realization of the fine amount/serving of the default sentence.

(18) In view of above, the appeal is partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE