

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 663 of 2007

1. Satan S/o Tij Ram Sahu, aged about 20 years, R/o Akaltara, Podibhata, P.S. Akaltara, District Janjgir – Champa

---- Appellant

Versus

1. State Of Chhattisgarh Through : P.S. Akaltara, District Janjgir-Champa (C.G.)

---- Respondent

For Appellant.	-	Mr. Manoj Dubey, counsel.
For Respondent.	-	Mr. Chandresh Shrivastava, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board By

25/06/2015

This appeal is directed against the judgment and order dated 18.4.2007 passed by Sessions Judge Janjgir Champa in Sessions Trial No. 260/2006 convicting the accused/appellant under Section 307 IPC and sentencing him to undergo rigorous imprisonment for five years with fine of Rs. 1000/-, plus default stipulations.

2. Facts of the case in brief are that on 21.4.2006 at 10.45 pm FIR Ex. P-4 was lodged by victim Laxman (PW-2) alleging that on that day at about 10.15 pm while he was standing near his house, he saw the accused/appellant herein and one Brajesh Singh quarreling and when he tried to intervene in the matter, accused/appellant broke a glass

bottle lying nearby and caused injury with it on his stomach. Based on this report, offence under Section 307 IPC was registered against the accused/appellant. Victim was medically examined by Dr. Lalita Toppo (PW-8) who gave her report Ex. P-18 and also gave query report Ex. P-11-A stating that the injuries could have caused death if medical aid was not provided. After completion of investigation, charge sheet was filed by the police for the offence punishable under Section 307 IPC followed by framing of charge by the Court accordingly.

3. So as to hold the accused/appellant guilty, prosecution has examined 08 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits that even if the case of prosecution is taken as it is, accused/appellant cannot be convicted under Section 307 IPC and at best his act would lead to conviction under Section 326 IPC. He submits that Brajesh Singh – the important witness has not been examined by the prosecution and the statement of the victim is not sufficient to ensure conviction.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the

Court below convicting the accused/appellant under Section 307 IPC are strictly in accordance with law and there is no infirmity in the same. According to the State counsel, the Court below has already been lenient while sentencing the accused/appellant otherwise looking to his act more stringent sentence could have been imposed.

7. Heard counsel for the parties and perused the evidence on record.

8. Victim Laxman (PW-2) has stated that on the date of incident when the accused/appellant was hurling abuses, he asked him not to do so on which he (accused) told him that he is the murderer and can commit murder of anyone. Thereafter, according to this witness the accused/appellant picked up the bottle, broke it and inflicted a blow with it on his stomach as a result of which he became unconscious and fell down. This witness has stated that at the time of incident one Shiv Yadav and Brajesh Singh were there and they had seen all this and thereafter he was shifted to the hospital. In cross examination this witness has stated almost the same thing as in the examination in chief. Dr. Lalita Toppo (PW-8) is the witness who had medically examined the victim. According to this witness she noticed the following injuries on the body of the victim:

- (i) penetrating wound – size 2 x ½ x 2 cm on the left side of stomach and it was bleeding;
- (ii) penetrating wound – size 1 x ½ x 1 cm on the left side of stomach and it was bleeding. Both the injuries were caused with some sharp object.

According to this witness, the injuries could have been caused with the broken glass bottle which was shown to her. In the query report Ex. P-11-A she has stated that the injuries sustained by the victim could have caused death if medical treatment was not provided.

Ram Kumar Sahu (PW-1) is the Patwari who prepared spot map Ex. P-3. Chhotelal Yadav (PW-3) is the witness to seizure of articles made under Ex. P-5 who has duly supported the case of the prosecution. Shiv Yadav (PW-4) – the eyewitness to the incident has not supported the case of the prosecution and has been declared hostile. Naresh Sharma (PW-5) is the witness to seizure of articles made under Ex. P-8 in front of the house of victim Laxman (PW-2). K.P. Mishra (PW-6) is the investigating officer who has duly supported the case of the prosecution. Ram Niwas Yadav (PW-7) is the witness to seizure of broken glass made under Ex. P-8 who has duly supported the case of the prosecution.

10. Close scrutiny of the evidence of the witnesses makes it clear that on the date of incident the accused/appellant inflicted an injury with the broken glass bottle in the stomach of Laxman (PW-2). Record also goes to show that the FIR was also lodged promptly. Even the doctor (PW-8) who medically examined the victim has stated in the query report that the injuries suffered by the victim could have caused death if the medical treatment was not provided to him. Thus there is ample evidence to show that the accused/appellant has caused injury on the vital part i.e. stomach of the victim with broken glass bottle and being so the trial Court has been justified in convicting him under

Section 307 IPC by the judgment impugned. Accordingly, the judgment of the Court below under challenge in this appeal is hereby affirmed.

11. As the accused/appellant is already in jail in connection with some other case, no further order regarding his arrest etc. is required to be passed.

12. Appeal dismissed.

(Pritinker Diwaker)
Judge

Jyotishi

HIGH COURT OF CHHATTISGARH AT BILASPUR

Hon'ble Mr. Justice Pritinker Diwaker

Criminal Appeal No. 2643/1998

APPELLANT

Deviprasad

Versus

RESPONDENT

State of Madhya Pradesh

Shri Rajesh Jain counsel for the appellant.
Ms. Sunita Jain counsel for the respondent/State.

**CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF
CRIMINAL PROCEDURE**

JUDGMENT

(20.06.2014)

This appeal is directed against the judgment and order dated 17.10.1998 passed by Additional Sessions Judge Durg, in Sessions Trial No. 205/1998 convicting the accused/appellant under Section 376 (2)(g) IPC and sentencing him to undergo rigorous imprisonment for ten years with fine of Rs. 2000/-, plus default stipulations.

2. Facts of the case in brief are that on 10.4.1998 FIR Ex. P-1 was lodged by prosecutrix (PW-1) aged about 13 years alleging that on that day at about 10.30 p.m. she along with her brother Omprakash had gone to the house of the accused/appellant for watching TV. As her brother expressed the desire of sleeping, she came to her house and after dropping him back when she was again going to the house of the accused/appellant, on the way the accused/appellant caught hold of

her and co-accused Hiramani shutting her mouth by one of his hands dragged her to the nearby courtyard of Ramkumar, made her lie down on the ground and then first co-accused Hiramani committed forcible sexual intercourse with her and then the accused/appellant also took his turn. While doing this act, both the accused persons had pressed her breasts and that on account of the sexual intercourse she was feeling acute pain and her private part was bleeding. She has alleged that accused persons had even threatened her of death in case she disclosed the incident to anyone. Based on this report, offences under Sections 376, 450/34 IPC were registered against the accused/appellant and co-accused Hiramani. Prosecutrix was medically examined by Dr. (Smt.) M. Pandey (PW-8) who gave her report Ex. P-17 stating that there was bleeding in and around the recent torn hymen, one finger entered vagina with difficulty and that for determination of age she was referred to radiologist. After completion of investigation, charge sheet was filed by the police on 25.4.1998 against the accused/appellant herein and the co-accused for the offences punishable under sections 376 (2) (g) and 450/34 IPC. However, the Court below framed the charge under Section 376 (2) (g) IPC only.

3. So as to hold the accused persons guilty, prosecution has examined 08 witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits that statement of the prosecutrix is not reliable and looking to her conduct she appears to be a consenting party. He submits that statement of the doctor who medically examined the prosecutrix does not appear to be reliable because the injuries received by the prosecutrix have been termed as recent though her medical examination took place on the next day after the incident. He submits that even the FSL report is not on record. Lastly, he submits that as the accused/appellant has already remained in jail for more than six years, it would be in the interest of justice if the sentence imposed on him is reduced to the rigorous imprisonment for seven years.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 376 (2) (g) IPC are strictly in accordance with law and there is no infirmity in the same. According to the State counsel, statement of the prosecutrix has been duly supported by the medical report.

9. Heard counsel for the parties and perused the evidence on record.

10. Prosecutrix (PW-1) has stated that on the date of incident she along with her brother Omprakash had gone to the house of accused/appellant herein for watching TV. As her brother wanted to sleep, she went to her house for dropping him back and while again coming to the house of accused/appellant, on the way both the accused persons caught hold of her hands, shut her mouth and dragged her to the nearby enclosure of one Ramkumar putting under threat of being killed if she cried. In the said enclosure, she was stripped off and then the accused/appellant herein asked co-accused Hiramani to first make physical relations with her and accordingly Hiramani made her lie down, removed his clothes, mounted on her and committed forcible sexual intercourse with her pressing breasts at the same time. She has stated that while accused Hiramani was subjecting her to rape, accused/appellant herein had pressed her mouth. Thereafter, accused/appellant also subjected her to rape in the same manner as by accused Hiramani. According to her, on account of forcible sexual intercourse, her private part bled profusely and her underwear was smeared with blood. According to her, on account of acute pain she was not able to walk and for that the accused/appellant had lifted her up to the well and while leaving both of them had threatened her of being killed and dumped in the well in case of disclosure of incident to anyone. Thereafter, taking support of the wall, she somehow reached home and as she was feeling excruciating pain, she could not narrate her agony to her father who had opened the door for her. Thereafter on being scolded by her father to disclose the cause of her weeping, she informed him about the heinous act of

the accused persons. Disbelieving all this, her father took her to the house of accused/appellant who being the son of her aunt happened to be her brother and on seeing them he was trembling in fear and after being asked by her father he denied the commission of anything wrong. Her father also went to the house of co-accused Hiramani but he was not found. After all this, she accompanied her father to the police station and lodged the report under her signature. Cross-examination contains nothing new to be put down but the same agony as described by this witness in the examination-in-chief.

Huliabai (PW-2) – mother of the prosecutrix has stated on seeing her daughter weeping she asked her about the reason there-for on which she told her about the entire incident and the manner in which the accused/appellant herein and accused Hiramani had ravished her. According to this witness, at the relevant time the prosecutrix was aged about 13 years and not 17. In cross-examination also just reiteration of the version given in the examination-in-chief is there. Mahabir (PW-3) – the father of the prosecutrix has also supported the case of the prosecution and stated almost the same thing as by Huliabai PW-2. As regards age, he has stated that at the relevant time the prosecutrix was 13. Firtaram Verma (PW-4) – the headmaster of the school has proved the admission register Ex. P-5 on the basis of which certificate Ex. P-5 mentioning the date of birth of the prosecutrix as 1.4.1985 was issued by him. However, in cross examination he has stated that in village if the parents do not have any document regarding date of birth, it is recorded on the basis of

assumption. S.P. Shukla (PW-5) is the investigating officer who has duly supported the case of the prosecution. Dr. S.A. Ali (PW-6) is the witness who medically examined the accused/appellant and gave his report Ex. P-11-A stating therein that he was capable of performing sexual intercourse. Ghanshyam Prasad Verma (PW-7) is the witness to seizure of clothes of the prosecutrix and the accused persons made under Ex. P-3, P-7 and P-8. Dr. (Smt.) M. Pandey (PW-8) is the witness who medically examined the prosecutrix vide report Ex. P-17 and stated that her hymen was recent torn with redness coupled with bleeding in and around and the vagina entered one finger with difficulty. This witness also suggested for radiological examination for determination of age.

11. Evidence of the minor prosecutrix (PW-1) having in its fold the pathetic experience of being victimized by the accused/appellant herein and the co-accused namely Hiramani at the cost of her never-to-be-repaired damage to the image where her chastity has been robbed by them, appears to be fully reliable. Testimony of the prosecutrix is supported by her parents (PW-2 and PW-3) as well as the doctor (PW-8) who medically examined the prosecutrix. All this apart, there is a prompt report lodged by the prosecutrix under her signature leaving nothing for this court to doubt her otherwise trustworthy and reliable testimony supported by the evidence of other witnesses. Furthermore, there is full consistency in the FIR and the court statement of the prosecutrix. Record also goes to show that the accused/appellant being the son of aunt of the prosecutrix happened

to be her brother and in a case where the relations are put at stake, the doer loses the soft corner, if any.

10. View of conviction taken by the Court below is absolutely as per the evidence on record. Judgment impugned carries what the accused/appellant deserves and the same is hereby affirmed. Reduction in sentence to seven years as prayed for is also liable to be turned down looking to the brutal act of the accused/appellant. Order accordingly.

11. As the accused/appellant is on bail, bail bonds furnished by him stand cancelled and he is directed to be taken into custody and sent to jail forthwith for serving out remaining part of the sentence.

12. Appeal dismissed.

Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Hon'ble Mr. Justice Pritinker Diwaker

Criminal Appeal No. 1965/1998

APPELLANT

Atmaram

Versus

RESPONDENT

State of Madhya Pradesh

None appears for the appellant.
Shri Mazid Ali PL for the respondent/State.

**CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL
PROCEDURE**

JUDGMENT

(20.06.2014)

This appeal is directed against the judgment and order dated 17.8.1998 passed by Sessions Judge Durg, in Sessions Trial No. 339/1997 convicting the accused/appellant under Sections 450 and 376 IPC and sentencing him to undergo rigorous imprisonment for seven years with fine of Rs. 1000/- under each section, plus default stipulations.

2. Facts of the case in brief are that on 17.6.1997 FIR Ex. P-2 was lodged by prosecutrix (PW-3) aged about 15 years alleging that she was residing with his brothers namely Phoolchand and Santosh Kumar and that on 22.2.1997 at about 8.30 p.m. she was all alone in her house and at the time when she was sleeping, accused/appellant came to her house and committed forcible sexual intercourse with her and when she tried to raise the cries, he gagged her mouth. It is also alleged that while leaving the spot after committing sexual intercourse, the accused/appellant had threatened her not to disclose the incident to anyone. Even thereafter the accused/appellant used to visit her house and have physical relations with her and when she became pregnant by 3-4 months, she informed the incident to her neighbour

Mangtin and after her brother came to know about the incident, the report was lodged by her. Based on this report, offence under Section 376 IPC was registered against the accused/appellant. On being medically examined, she was found carrying pregnancy of about 20 weeks but no sign of recent intercourse was noticed by the concerned doctor. However, the doctor conducting medical examination has not been examined before the Court. After completion of investigation, charge sheet was filed by the police on 10.7.1997 for the offence punishable under section 376 IPC and the charge was also framed accordingly.

3. So as to hold the accused/appellant guilty, prosecution has examined 05 witnesses in support of its case. Statement of the accused /appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

5. Accused/appellant remained unrepresented before this Court.

6. However, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Sections 450 and 376 IPC are strictly in accordance with law and there is no infirmity in the same.

12. Heard counsel for the State and perused the evidence on record.

13. Thannulal (PW-1) - the witness to village Panchayat has stated that before the Panchayat the prosecutrix had informed that she was carrying pregnancy through the accused/appellant. However, according to this witness, the accused/appellant denied any such

incident. This witness has however been declared hostile. Kanahiya Lal (PW-2) is the retired teacher who had proved the admission register Ex. P-1 and stated that in the said document date of birth of the prosecutrix was recorded as 4.7.1981. However, in cross examination this witness has stated that the entry in the said document was not made by him and he could not tell as to which teacher had made it and on what basis. He has stated that at times the date of birth is recorded on the basis of assumption but he could not tell whether the entry in the above-mentioned register is correct or not. Prosecutrix (PW-3) has stated that two-three year prior to the date of incident when she was all alone in her house as her brother had gone to watch TV, accused/appellant gained an entry to her house and committed forcible sexual intercourse with her. According to her, when her menstrual cycle stopped, she informed her brother about the incident and then the report came to be lodged. Till about 3-4 months after the incident, she had not informed anyone including her brothers about the same. This witness has further stated that accused/appellant had physical relations with her many a time and that he always used to come to her house in the night. She went on to state that whenever the accused/appellant came to her house, she used to bolt the door from inside and that after committing the sexual intercourse, he used to leave her house. According to her, the seminal discharge was being washed out by her and that during the moments of discharge she used to feel good. She has further stated that had her period not stopped, she would not have made the disclosure of the incident. It has also come in her evidence that after she fell sick, she informed the incident to her neighbour but not to her brothers. According to her, she did not know her date of birth and the disclosure of the same in the report was based on assumption. According to this witness, she used to go to the house of Mansaram for sleep and her brothers suspected her to have illicit relations with his son Ajit. According to her, had the accused/appellant not denied the incident before the Panchayat, report would not have been lodged by her. She has stated that report would not have been lodged if Mangtin had not come to know about

the incident. Phoolchand (PW-4) – brother of the prosecutrix has stated that he was informed by his sister-in-law Mangtin that prosecutrix was carrying pregnancy and on being enquired, she (prosecutrix) informed him that the accused/appellant had committed forcible sexual intercourse with her. He has denied the factum of village meeting and that his sister (prosecutrix) used to go to the house of Mansaram for sleep. He has also denied the fact that he used to suspect the existence of love affair between Ajit and the prosecutrix. N.K. Suryavanshi (PW-5) is the investigating officer who has duly supported the case of the prosecution.

14. Evidence of the prosecutrix goes to show that the physical relations between her and the accused/appellant which went on to exist for about 3-4 months were without any resistance on her part. Prosecutrix herself has stated that had her period not come to a halt and Mangtin could not come to know about the pregnancy, she would not have lodged the report. Thus her version that the accused/appellant gained an entry to her house and committed forcible sexual intercourse with her is not trustworthy.

10. As regards age, though in the school register (Ex. P-1) date of birth of the prosecutrix is mentioned to be 4.7.1981 yet the origin of the same on the basis of which such date of birth was recorded is missing in this case. Even (PW-2) – the retired teacher has stated that the said date of birth was not entered by him and he was not aware as to by whom and on what basis this entry was made. Said teacher (PW-2) has also stated that normally in the village the date of birth is recorded on the basis of assumption. Thus there is nothing on record to show that on the date of incident the prosecutrix was below 16 years of age. In all these circumstances, this Court is of the considered opinion that benefit of doubt has to be given to the accused/appellant. Doing so, the judgment impugned being contrary to the material available on record is set aside. Accused/appellant is acquitted of the charge levelled against him. He is in jail since 21.4.2014 when he was

arrested after issuance of non-bailable warrant, he be set free forthwith if not required in any other case.

11. Appeal is thus allowed.

Sd/-
(Pritinker Diwaker)
Judge