

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Appeal No. 496 of 1998

- Dev Shankar, S/o Nandu Ram Gond, aged about 25 years, R/o Village Podipa, P.S. Surguja, District – Surguja.

--- Appellant

Versus

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

For Appellant : Mr. Rishi Rahul Soni, Advocate
For Respondent / State : Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 29 /04/2016

- 1) This appeal is directed against the judgment of conviction & order of sentence dated 13.02.1998 passed by the Second Additional Sessions Judge, Ambikapur in Sessions Trial No.225/92 convicting the appellant under Section 376 of the IPC and sentencing him to undergo rigorous imprisonment for seven years and to pay fine of Rs.200/-, in default of payment of fine, to undergo additional R.I. for three months.
- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
- 3) As per case of prosecution, on 28-01-1991 at about 2.00 pm, when prosecutrix (PW-1) was in her father's home, the appellant came there, abducted her and took her to his own house and committed sexual intercourse upon her, thereafter the appellant along with

other five co-accused persons took her to forest and again accused / appellant committed rape on her, the appellant and the prosecutrix had gone to Ambikapur, where in the Court both have sworn two affidavits (Exs.D-4 & D-5). It is further alleged that the appellant kept the prosecutrix as a wife in his house for long time, thereafter prosecutrix left the house of appellant and came to his father's house. She narrated the incident to her father, who alongwith others lodged the First Information Report (Ex.P-1) on 05.04.1991 and the police registered the offence under Sections 363, 366 and 376/34 of the IPC against the appellant and five other co-accused persons, who were acquitted by the trial Court.

- 4) Charges were framed against accused / appellant and same were read over to him, who denied the charges levelled against him and stated that prosecutrix was living with him as his wife and thereafter because of some dispute she left his house and she was married to his maternal uncle according to village custom. He further stated that when the prosecutrix left his house, he had reported the matter to the police on 25.02.1991 vide Ex.P-7 and to save herself she has lodged false report against the appellant and the appellant has also filed a complaint case under Section 494 of the IPC.
- 5) In order to bring home the charges of accused, the prosecution examined as many as eleven witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure (for short, 'the Code') in which he denied the charge levelled against him, pleaded innocence and

false implication and also stated that he is incompetent for sexual intercourse.

- 6) After providing opportunity of hearing to the parties, the trial Court convicted & sentenced the appellant as aforementioned.
- 7) I have heard learned counsel for the parties, perused the judgment impugned including the record of the trial Court.
- 8) Learned counsel for the appellant submits that prosecutrix is the wife of accused and neither any incident took place in the house of the accused, nor prosecution adduced any legally admissible evidence in respect of her rape and also there is no medical evidence in support of the prosecutrix version.
- 9) On the other hand, learned State counsel opposing the appeal submitted that findings recorded by the Court below are strictly based on the evidence adduced by the prosecutrix and there is no infirmity in the same.
- 10) In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the prosecution.
- 11) Case of the prosecution is totally based on the evidence of prosecutrix (PW-1), therefore, I shall minutely observe her statement. Prosecutrix (PW-1) deposed that the incident was of four years back. She was married at Bilaro, she came to her parents house to celebrate *cherchera* festival at village Podipa. On the date of incident at about 2.00 p.m., while she was working in the field at that moment accused / appellant came there and caught hold her hand, dragged and brought

her in the corridor of his house and committed rape on her, she was squeaking then mother of accused came there, she subjugated to accused than he relinquished her, thereafter, she came to her house and narrated the incident to her mother and her mother conveyed the same to her father. Her father called *panchayat* in the village and they punished the accused / appellant by imposing penalty of Rs.300/-. After passing three days, when she went to field for bringing mouth-stick, accused again committed rape on her, thereafter, accused and his friends had threatened her if she would not go to Ambikapur, then they would kill her, she went to Ambikapur and signed the Court papers on pressure. When they were returning back to village, in the midway accused again committed rape on her, thereafter she reported the incident in police station vide Ex.P-1. In her cross-examination, she admitted that her marriage was solemnized since 8-9 years back and she is about 25 years old day, she also admitted that she has clicked photo session after the executing the document, she also admitted that accused house is 200 yards from the field where she was working and on midway she was regularly calling for help, but no one has come forward for her help, she also admits that accused brought her to Ambikapur by bicycle and also admits that she came back by bicycle.

- 12) Above circumstances clearly shows that if prosecutrix was brought to field by dragging within the village and prosecutrix cried for help, certainly some villagers would have come forward to rescue her. Prosecution has not examined the mother of the accused for

supporting the version of prosecutrix, when prosecutrix was going to Ambikapur and coming back to village with the accused by the help of bicycle and she was not calling any body for her help, it shows that she is clearly a consenting party.

- 13) Dr. Smt. Shipra Shrivastava (PW-11) deposed that she has examined the prosecutrix on 06.04.1991 and she opined that no definite opinion can be given about recent intercourse with her. Her medical report is Ex.P-12. On perusal of the medical report it is clear that no forceful intercourse was done with the prosecutrix, therefore, medical evidence has also not supported the prosecution story.
- 14) Minute examination of the evidence available on record, in particular the evidence of prosecutrix, it is clear that she went along with the accused / appellant to several places of her own will without making any protest and during this period neither she resisted nor called for any help which shows that she was a consenting party. Conduct of the prosecutrix in keeping silence and not disclosing the act of the accused to the persons, who met her in the street during her visits to several places goes to demonstrate that she was a consenting party.
- 15) In the result, the appeal is allowed. Judgment impugned is set aside. Accused / appellant is acquitted of the charges levelled 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