

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL No. 953 of 2000**

1. Fullu, S/o. Madhuri Panika, aged about 42 years, Occupation-Agriculture, R/o. Village Narsinghpur, P.S.-Rajpur, District-Sarguja (M.P.)

----Appellant

Versus

1. State of Madhya Pradesh, Through : P.S.- Rajpur, District-Sarguja (M.P.)

----Respondent

For Appellant : Mr. Rishi Rahul Soni, Advocate

For State/Respondent : Mr. Anil S. Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****13/04/2016**

1. This is an appeal against the judgment of conviction and order of sentence dated 30.03.2000, passed by the 2nd Additional Sessions Judge, Ambikapur, in Sessions Trial No.32/1999, whereby the appellant has been convicted under Section 376 (1), 341 and 506 (1) of Indian Penal Code and sentenced to undergo R.I. for 7 years and fine of Rs.200/-, fine of Rs.200/- and R.I. for 1 year respectively and in default of payment of fine, additional R.I. for one month was awarded for each offence.
2. The briefly stated facts of the prosecution was that on 26.09.1998 at village Narsinghpur, Turajhariya, the appellant taking the aid of his wife had committed forceful sexual intercourse with the prosecutrix against her will. Thereafter, confined her in the forest for the whole night and thereby committed wrongful confinement. Subsequently, the matter was reported to the police and the offence under Section 376 (2) (g), 341 and 506 of I.P.C. was registered against the appellant and her wife namely Savitri. The report of the incident was made on

11.10.1998. The delay was explained to be that of because of death of brother of the prosecutrix, delay in lodging the FIR was caused. It was stated that on the date of incident, the prosecutrix alongwith the wife of the appellant went to fetch the woods from the forest and when they went to forest, the appellant committed forceful intercourse.

3. During the course of trial, the appellant abjured his guilt and claimed to be tried.
4. The prosecution on their behalf had examined as many as 8 witness in this case. The prosecutrix, Kavilaso was examined as (P.W.-1), husband of the prosecutrix Sahdev as (P.W.-2), Khiru Ram as (P.W.-3), Sukur Ali as (P.W.-4), Shivmangal as (P.W.-5), Dr. Kiran as (P.W.-6), Subhash Das as (P.W.-7) and B.S. Pulast, investigating officer as (P.W.-8).
5. The learned Court below after evaluating the evidence on record had convicted the appellant as aforesaid. Hence this appeal.
6. Learned counsel appearing on behalf of the appellant would submit that the appellant has been wrongly convicted as it is the case of consent. He further submits that the prosecutrix was major lady of 30 years and she was consenting party to the entire incident and while the appellant was in compromising position with the prosecutrix, they were noticed as such report was made. It is further submitted that the incident had occurred on 26.09.1998 but the FIR was made on 11.10.1998. It is stated that delay in lodging the FIR has not been explained by the prosecution. Therefore, it was contended that under the circumstances, the appellant deserves to be acquitted of the charges.

7. Per contra learned State counsel supported the judgment of conviction and would submit that the prosecutrix in her statement has categorically stated that she was sexually assaulted without her consent and as the prosecutrix was threatened, initially she did not disclose the incident to any one, however, subsequently, the report was made and thereby the offence was committed.
8. I have heard the learned counsel for the parties at length and perused the evidence and documents on record.
9. The prosecutrix in this case was examined as (P.W.-1). The prosecutrix has been shown to be a lady of 35 years, wife of Sahdev. It was stated before the Court that she was called by the wife of the appellant, Savitri to fetch the wood from the forest and when they went to the forest, the appellant caught hold of her hand and also extended threat thereafter committed sexual intercourse at that time, the wife of the appellant fled away from the scene. It was further stated that she was given threat of killing, if she discloses the fact to any one. Subsequently she assured the appellant that she would not disclose the incident to any one, then she was allowed to go. In the cross examination, the witness has stated that she went alongwith the wife of the appellant, Savitri to forest and after reaching the forest, she met with the appellant, wherein he was earlier collecting the wood. It was further admitted that the appellant had earlier gone to the forest. She further stated that appellant had caught hold of her thereafter, made her to lay down. Subsequently at para-9 of the cross-examination, it is stated that after she was made to lay down, the appellant had opened his cloths thereafter, opened the cloths of the prosecutrix. Subsequently she was made to lay down over the cloths. She further stated that appellant caught hold of her waist and

at that time, she pulled up her leg in up direction. It is further stated that when she came back after the incident, she had not disclosed about the incident to any one including her husband. At para-17 it is stated that while the appellant was committing rape at that time, her wife Savitri came there, therefore, she had shouted.

10. Sahdev (P.W.-2), in his statement has stated that when his wife came after two days, many times he asked where she had gone but she had not disclosed anything. In the cross-examination, this witness has stated that a dispute had existed with the appellant in respect of the land. P.W-3, Khiru in his statement had stated that panchayat was called for the reason that the prosecutrix was missing from the village and only for that reason, the panchayat was convened. The doctor i.e. Dr. Kiran in this case was examined as PW-6. She has stated that after the examination of the prosecutrix, no injury either on the back or waist was found on the body of the prosecutrix. The medical report was marked as Ex.P/5. The report also shows that no definite confirmation of recent rape could have been given.
11. Survey of the evidence of the prosecutrix would indicate that prosecutrix has made to lay down on the floor and after she was made to lay down, the cloths were opened. Therefore, inference can be drawn had there been any forceful intercourse, the prosecutrix could have easily objected to it or could have fled away from place of incident. Further the way the incident is said to be committed it shows that there was enough time during such happenings. Medical report do not show any injury on the body of the prosecutrix. Therefore, if forceful intercourse is committed on earth/floor, it may cause certainly the injury and the way the offence is said to have been committed, the prosecutrix could have easily resisted. Further the prosecutrix has

stated that when the appellant was committing rape, the wife of the appellant came down therefore, she had raised alarm. Further the incident was said to be committed on 26.09.1998, however, FIR was lodged on 11.10.1998 and no plausible explanation has been given except for the fact that she was given threat and after the incident she went to see her ailing brother. Considering the statement of the prosecutrix alongwith the medical evidence, it appears that the prosecutrix was a consenting party to the entire incident and since the prosecutrix was seen in compromising position by the wife of the appellant, subsequently report was lodged.

12. Therefore, the basis of statement of the prosecutrix do not inspire the confidence of credibility. So considering the facts and circumstances of the case and on consideration of the statement of prosecutrix, it becomes highly improbable to sustain the conviction.
13. In a result, the appeal is allowed and the judgment passed by the learned Court below is set aside. The appellant is acquitted of the charges. If the appellant is on bail, his bail bonds shall continue for a period of six months subject to the provisions of Section 437 Cr.P.C.

Sd/-
(Goutam Bhaduri)
JUDGE