



Checked & Verified, 2013

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Single Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

Criminal Appeal No. 1947 /97..

APPELLANT ^B Basant Ram Bargah aged about 30 years
(IN JAIL) son of Karm Say R/o village Chorkideeh
PS Dhaupur, District Sarguja

-Versus-

Respondent State of Madhya Pradesh

CRIMINAL APPEAL U/S 374(2) Cr.P.C.

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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1947 of 1997

1. Basant Bargah aged about 30 years son of Karam Say R/o village Chorkideeh PS Dhorpur, District Sarguja MP (Now CG)

---- Appellant

Versus

1. State Of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant	-	Shri Jitendra Shrivastava, Advocate.
For Respondent	-	Shri Avinash Singh PL

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

22 /07/2016

This appeal is directed against the judgment and order dated 01.07.1997 passed by Additional Sessions Judge Ambikapur (Sarguja) in Sessions Trial No. 275/1996 convicting the accused/appellant under Sections 376 (1) and 506-B IPC and sentencing him to undergo rigorous imprisonment for seven years with fine of Rs. 1000/- u/s 376 and rigorous imprisonment for three years u/s 506-B IPC, plus default stipulations.

2. Case of the prosecution in brief is that on 16.5.1996 FIR (Ex.P-1) was lodged by the prosecutrix (PW-1) - a married lady aged about 30 years alleging that on 12.5.1996 she herself, her children and maternal grand father were there in the house whereas her husband had gone to attend some marriage in the village. It is alleged that on that day when she was about to set out

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for answering the call of nature, the accused/appellant came there, inquired about her husband, pressed her neck and when she resisted his act, he gagged her mouth, took out the knife and threatened her of being finished in case she cried out. Thereafter, he is alleged to have thrown her on the ground, upturned her sari and petticoat, slid down his own full-pant and underwear to the knee and committed forcible sexual intercourse with her and after the act was over, he left the spot. At that time, one Krishna Panika (PW-3) came to her house and after informing him about the incident she accompanied him to her husband and disclosed the incident to him. On the next morning incident was disclosed to *Sarpanch* of the village and when nothing was done by him, finally the report was lodged on 16.5.1996. Based on the said report, offences under Sections 376 and 506-B IPC were registered against the accused/appellant and the prosecutrix was medically examined on 17.5.1996 by Dr. Pratibha Rajul Jain (PW-5) who gave her report Ex. P-10 stating that she did not notice any injury on her person and that she was habitual to sexual intercourse. After completion of investigation, charge sheet was filed by the police for the offence punishable under Sections 376 and 506-B IPC followed by framing of charge accordingly.

3. So as to hold the accused/appellant guilty, prosecution has examined 06 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 charges 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 there is five days delay in lodging the FIR which has not been explained by the prosecution as required under the law. He submits that conduct of the prosecutrix is very unnatural because after being subjected to forcible sexual intercourse by the accused/appellant she went to inform her husband but thereafter remained inactive and did not do anything till 16.5.1996 i.e. the date on which the report was lodged. He further submits that according to the case of the prosecution the incident took place on 12.5.1996 i.e. in summer season but the prosecutrix has stated that the occurrence was of winter season. Counsel for the appellant submits that according to the prosecutrix the accused/appellant was not known to her whereas her husband has stated that he used to visit his house quite often. According to him, at the relevant time, apart from her children, her maternal grand-father was also in the house and therefore the story cooked up by the prosecutrix does not appear to be trustworthy for the reason that in presence of elderly male member, such incidents are literally impossible. Last but important submission of the counsel for the appellant is that the accused/appellant is alleged to have pressed her neck, gagged her mouth, threw her down and committed forcible sexual intercourse with her, but medical report does not mention any injury on her body, external or internal, and therefore the only inference which

can be drawn is that she did not offer any resistance or made any effort to come out of his clutches and the sexual intercourse with her was consensual.

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/appellants under Sections 376 and 506-B IPC are strictly in accordance with law and there is no infirmity in the same.
7. Heard counsel for the parties and perused the evidence on record.
8. Prosecutrix (PW-1) has stated that on the date of incident her husband was not at home and she was there along with her children and maternal grand father. She has stated that on that day at about 7 PM when she was to set out for answering the call of nature, accused/appellant pressed her neck and on the point of knife started threatening her to be finished in case she raised cry. He then threw her on the ground, slid down his full pant and underwear, upturned her sari and petticoat, mounted over her, committed forcible sexual intercourse with her and on seeing the torch light he left the place. Just thereafter Krishna Panika (PW-3) is stated to have come to her house whom she disclosed the entire incident and thereafter on the next day when her husband got back, incident was disclosed to him also. In cross-examination this witness has admitted that the report was lodged by her 5 days after the incident but the reason therefor has been assigned to be the absence of her husband who had gone to attend some

marriage. Incident, according to her, had taken place in the courtyard and in the front side of the said courtyard there is a passage where people keep passing by. This witness has stated that she had three children who at the relevant time were sleeping inside whereas her maternal grand-father was sleeping in the veranda. The incident is stated to have taken place in the winter and not summer. Now changing her version she has stated that Krishna (PW-3) had come to call her and she accompanied him to see marriage procession where her husband also met her. She has stated that she informed the incident to her husband at the place of marriage and then in her house also. According to this witness, though the appellant was also there at the place of marriage but her husband did not ask him anything about the incident. She has admitted that when the accused/appellant was to leave the place of incident after committing the offence, she did not raise any hue and cry. According to her, on the date of incident she wore bangles in her hands but they did not break and remained intact, nor did she suffer any injury. She went on to state that when the accused/appellant pressed her neck, she herself lay on the ground and for that she did not receive any injury. Bal Sai (PW-2) is the husband of the prosecutrix who has stated that on the date of incident he had to been to a marriage function in the village and when he was busy there, his wife came and informed him about the entire incident. According to him, he told his wife that he could not go with her leaving the work half done and when after completing the work he returned home, she again narrated the Incident to him. Thereafter, the matter was reported to *Sarpanch*

and when nothing was done by him, the FIR came to be lodged. According to this witness, whenever, the accused visited the village he used to come to his house. Krishna Das (PW-3) is the witness who is said to have visited the house of the prosecutrix immediately after the incident and after seeing whom the accused had left the spot, has not supported the case of the prosecution and has been declared hostile. He however has stated that at the time of incident it was getting dark and when he reached the house of the prosecutrix, she was standing at the door and on being asked to accompany him to the place of marriage she changed the clothes and came along with him along with her three children but she never disclosed the incident to him. Dr. A.K. Singh (PW-4) is the witness who medically examined the accused and gave his report Ex. P-9 stating that he was capable of performing sexual intercourse. Dr. Pratibha Rajul Jain (PW-5) is the witness who medically examined the prosecutrix and gave her report Ex. P-10 stating that she did not notice any internal or external injury on her person and that she was habitual to sexual intercourse. Arvind Sanyal (PW-6) is the investigating officer who has duly supported the case of the prosecution.

9. If seen as a whole, conduct of the prosecutrix since beginning appears to be extremely unnatural and full of complexities. Though the incident is of 12.5.1996, instead of lodging the report in preference, she sat idle for five days without any compelling and convincing reasons for the same. This inordinate delay in lodging the report does not carry in its fold a satisfactory explanation except that her husband was not at home.

Relevant to note here that her husband had not gone miles away but was in a marriage function in the same village. Secondly, the prosecutrix has attributed so many things to the accused/appellant like gagging mouth, pressing neck, dragging, throwing on the floor, committing forcible sexual intercourse etc. but the medical evidence does not suggest even a single injury on her body, external or internal; even the bangles in her hands remained intact all along this episode. All this demonstrates that she did not offer any protest at all to the act of the accused/appellant and submitted herself to him readily. At all the places the prosecutrix has stated that prior to the incident she was not acquainted to the accused but on the contrary her husband (PW-2) has stated that whenever he (accused) visited the village, he used to visit his house too. Here also the prosecutrix spoke incorrectly. Going further, she is said to have disclosed the incident to Krishna Panika (PW-3) who came to her house just after the incident but according to said witness, prosecutrix did not inform him anything all the way. At one place she has come to state that after the accused pressed her neck, she herself lay on the ground and for that she did not suffer any injury, and did not raise cry when the accused was leaving the spot. This utterance of the prosecutrix also falsifies the story brought forth by her regarding her subjection to forcible sexual intercourse by the accused. Further, the incident had taken place in the month of May i.e. peak summer season but prosecutrix says that it was in winter season. Everywhere she has been shaky and inconsistent in stating the things. That apart, at the time of incident her three children and elderly maternal grand-father were in the house but nobody

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could hear her cries. All this sounds highly unnatural that in presence of so many people such an incident could take place. Thus prosecution has thus utterly failed to proved its case beyond reasonable doubts and so also the Court below has gone wrong in basing its finding on an entirely unreliable and shaky evidence collected by the prosecution. Material in this case is not as such which could make sure the conviction of the appellant under Sections 376 and 506-B IPC and for that the benefit has to go to the accused.

10. Appeal is thus allowed. Judgment impugned is hereby set aside. Accused gets acquittal. Being already on bail, he needs no order to be set free etc.

Sd/-
Pritinker Diwaker
Judge