

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 307 of 1999

- Mahant Lal, son of Mamsuram Gond, aged about 24 years, resident of Codekhurshi, P.S. Durg Kendal, District Kanker.

---- Appellant (In Jail)

Versus

- The State Of Madhya Pradesh (now CG) through P.S. Durgkendal, District Kanker.

---- Respondent

For Appellant:
For Respondent:

Shri Shivendu Pandya, Advocate
Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

05/04/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 21.1.1999 passed by the Additional Sessions Judge, Kanker (CG) in S.T. No.460/96 convicting the accused/appellant under Sections 376 (1) & 342 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for 07 years and fine of Rs.2,000/-, in default to undergo additional R.I. for 04 months and RI for 01 month respectively.
2. The prosecution case, in brief, is that on 2.5.1996 the prosecutrix along with Kumari Aadi (PW-2) had gone to work at Aanganbadi Centre. At about 12.30 p.m. accused/appellant along with co-accused came there, caught hold of the prosecutrix, took her inside the room, locked the door, kept her in wrongful confinement for about two hours and during this period committed forcible sexual intercourse with her. On protest being

made, the accused/appellant asked her to keep silence else she would be killed. Further case of the prosecution is that when the offence was being committed, acquitted accused was standing on guard duty outside the door. After some time the father of prosecutrix reached the spot and got released her. The prosecutrix narrated the entire incident to her father and thereafter they went to the police station and lodged the report based on which FIR (Ex.P-2) under Sections 376 & 342 IPC was registered against the accused persons. The prosecutrix was medically examined by Dr. (Smt.) R. Yadu (PW-4) vide Ex.P-5 on 3.5.1996 who opined that no positive finding suggesting of intercourse could be given. Accused/appellant was also medically examined by Dr. S.S. Shalya (PW-5) who gave his report of Ex.P-7 opining him to be fully capable of having sexual intercourse.

3. On completion of investigation, charge sheet was filed against the accused persons for the offence punishable under Sections 376, 342 & 506 read with Section 34 of the IPC, however, the trial Court has framed the charges under Section 376 & 342 IPC against the accused persons.
4. The prosecution in order to bring home the charges levelled against the accused persons examined 10 witnesses. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded false implication.
5. After hearing counsel for the parties and considering the material available on record, the trial Court while acquitting co-accused from all the charges, convicted & sentenced the accused/appellant vide impugned judgment in the manner as described above.
6. Learned counsel for the accused/appellant submits that there is no legally admissible evidence in respect of age of the prosecutrix showing her to be minor on the date of commission of offence. He further submits

that it is clear case of consent where the prosecutrix of her own entered the room and remained there with accused/appellant for about two hours without offering any protest or resistance. He further submits that the doctor (PW-3) who examined the prosecutrix was not in a position to give definite opinion regarding commission of sexual intercourse with the prosecutrix and therefore it cannot be said that she was subjected to rape.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that report of FSL (Ex.P-14) confirms presence of semen on the underwear & slides of prosecutrix & accused which shows that the prosecutrix was subjected to sexual intercourse by accused/appellant.
8. I have heard learned counsel for the parties and perused the material available on record.
9. Ramrath (PW-1), father of prosecutrix, has stated that on the date of incident the prosecutrix had gone to work at Aanganbadi. On the same day at about 3.00 p.m. he went to the said place where Kumari (PW-2) told him that the prosecutrix is inside the room. He got opened the door and thereafter the prosecutrix narrated the entire incident to her. He has further stated that at the time of incident the prosecutrix was 14 years of age. In the cross-examination this witness has admitted that at that time some persons were also working on the spot.
10. Kumari (PW-2), friend of the prosecutrix, has stated that on the date of incident she along with the prosecutrix had gone to work at Aanganbadi. At about 1.00 a.m. accused/appellant came there, dragged the prosecutrix inside the room and locked the door. After some time when

the father of the prosecutrix reached there, she informed him that prosecutrix is inside the room and thereafter he got opened the door of the room. In the cross-examination this witness has stated that accused and prosecutrix remained inside the room for about two hours. She has further stated that she had raised the cries but no one has come to save her and the prosecutrix.

11. The prosecutrix (PW-3) has stated on the date of incident when she was working at Aanganbadi, at about 1.00 p.m. accused/appellant came there, forcibly took her in the room, bolted it from inside, made her lie on the ground and thereafter committed sexual intercourse with her. After being subjected to sexual intercourse when she tried to come out, accused/appellant dragged her by forearm as a result of which her dress got torn. She has further stated that after some time her father reached there and having been informed by Kumari Bai, her father got the door opened. After coming out from the room, she narrated the entire incident to her father and thereafter they went to the police station and lodged the report. She has denied that she was having affair with accused/appellant or that out of her own she was sitting with him. She has denied the suggestion that due to her affair with accused/appellant, her marriage is not taking place. She has also denied that she was a consenting party to the sexual intercourse. She has admitted that when the accused/appellant took her inside the room at that time about 15-20 persons were working nearby. She has further stated that accused/appellant committed sexual intercourse with her for about half-an hour after upturning her saree. She has stated that though grits were scattered there but she did not receive any injury on her back or waist. She has admitted that on the date of incident she was subjected to sexual intercourse for the first time. She has admitted that she is stating her age

on the basis of assumption as she does not know her exact date & year of birth.

12. Dr. (Smt.) R. Yadu (PW-4) is the witness who medically examined the prosecutrix and gave her report (Ex.P-5) which says that secondary sex characters were well developed, pubic hairs were scanty, no injuries over private part and hymen was intact with a small circular opening in the centre with admits finger tip only. She has further stated that no positive finding suggestive of intercourse could be given about the sexual intercourse and final opinion can be given after chemical examination.
13. Dr. S.S. Shalya (PW-5) is the doctor who medically examined the accused/appellant vide Ex.P-7 and found him fully capable of performing sexual intercourse.
14. Kumari Bisahin (PW-6) is another girl who was also working at Aanganbadi. She has stated that there was lunch break at 1.00 p.m. and that accused/appellant dragged the prosecutrix and confined her in a room.
15. Baldeoram (PW-7) is the father of Kumari Bisahin (PW-6). He has stated that he was informed by her daughter that accused had confined the prosecutrix in a room. He has stated that he had gone to the house of the prosecutrix to inform about the incident but finding no one in the house, he went to the place where the work was being carried out and there he met the prosecutrix who told him that she was subjected to forcible sexual intercourse by accused/appellant.
16. Ramchandra (PW-9) is the another person who was working with the prosecutrix at the site. He has stated that accused persons had come to the workplace, accused/appellant was inside the room with the prosecutrix and co-accused was standing outside.
17. M.L. Sharma (PW-10) is the Investigation Officer who has duly supported

the prosecution case.

18. Close scrutiny of the evidence available on record makes it clear that though the prosecutrix is alleged to have been subjected to rape by the accused/appellant but considering her conduct i.e. she remained with accused/appellant in a room for about two hours without raising any hue & cry and without offering any resistance to the alleged act of the appellant, particularly when her hands & legs were not tied nor mouth was gagged by any means, it would not be safe to base conviction on her sole testimony. Even it is not the case of the prosecution that she was subjected to sexual intercourse by putting her or any person in whom she was interested in fear of death or hurt. Medical report of the prosecutrix also rejects the theory of rape because the doctor medically examining the prosecutrix has categorically stated that her hymen was intact, vagina hardly admitted one finger and no definite opinion regarding commission of rape could be given. This apart, had the prosecutrix been subjected to sexual intercourse for the first time, as has been stated by her itself, she must have felt pain coupled with bleeding and reacted to the same by shouting etc. but even the girl who was present outside the house has not supported anything that she heard any sort of cries from inside the room where accused and deceased alone were there. This also rules out the possibility of prosecutrix having been subjected to sexual intercourse. True it is that semen spots were noticed in the underwear of the prosecutrix but in the absence of the report of Serologist, it loses its significance.

As regards the age, the prosecution had not adduced any evidence to show that on the date of incident she was minor. Rather according to the doctor medically examining clearly indicates that all the secondary sexual characters were fully developed and this shows that the

prosecutrix was not minor.

So far as the wrongful confinement of prosecutrix is concerned, the accused and the prosecutrix present in a room cannot give a connotation of confinement and it could be said just a personal private affair for which they chose the room to interact. In these circumstances, the appellant is definitely entitled to be acquitted of the charges levelled against him by extending him benefit of doubt.

19. For the above reasons, the judgment impugned is set aside and the accused/ appellant is acquitted of the charges levelled against him by extending him benefit of doubt. The appellant is already on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.P.C.

Sd/-

(Pritinker Diwaker)
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