

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 7 of 2000

- Prakash Ghashiya @ Butkar, aged about 18 years, R/o Village Tamzira, PS Baikunthpur, District Korea, MP

---- Appellant

Versus

- The State of Madhya Pradesh, through PS-Baikunthpur, District Korea, MP

---- Respondent

For Appellant	:	Shri A.K. Prasad, Advocate
For State	:	Shri Neeraj Jain, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board

03/10/2016

1. This appeal is directed against the judgment of conviction and sentence dated 28/09/2000 passed by Additional Sessions Judge, Baikunthpur, District Korea (M.P.) now Chhattisgarh in Sessions Trial No. 353/99 in which the appellant has been convicted for the offence punishable under Section 376(1) of Indian Penal Code and sentenced him to undergo rigorous imprisonment of 5 years and fine of Rs. 200/- with default stipulation.
2. Prosecution case is that on 29/08/1999 at about 04:00 p.m. in Village Tamjira, in the field of Kusumbadi prosecutrix Rambai, aged about 18 years was present, at that time appellant arrived there and holding the hands of

prosecutrix forcefully took her by the side of embankment and without her consent he forcibly committed sexual intercourse. First Information Report was lodged on 15/09/1999 at about 20:30 p.m. in Police Station Baikunthpur, District Korea. After investigation charge-sheet was filed before the Court and accused was charged under Section 376(1) and 506(1) of IPC and on his denial of charges trial has been conducted. Accused has simply denied his case and has not set up any defense.

3. The trial Court passed impugned judgment in which accused was acquitted from the charge under Section 506(1) of IPC and on the basis of evidence on record has convicted the appellant under Section 376(1) of IPC and sentenced as above mentioned.

4. The grounds of appeal are that FIR is delayed to which no reasonable explanation has been given by the prosecution. The medical report of the prosecutrix does not support the prosecution case and there is question of reliability of the witness presented by the prosecution, hence the charge against the appellant was not proved beyond all reasonable doubts setting aside the conviction and sentence has been prayed for.

5. After going through the record of the case and hearing the arguments of appellant and for State the only question for consideration in this appeal is that whether the charge against the appellant was proved by the prosecution with evidence of the quality of beyond reasonable doubt, for which the evidence on record is perused.

6. It is very clear that the date of incident was 29/08/1999 and written FIR was presented in Police Station, Baikunthpur on 15/09/1999. In the FIR (Ex.P/2) the reason for delay mentioned that after incident prosecutrix went

to her relatives house which is not a plausible reason. In her statement Rambai (PW-1) has stated in examination-in-chief that after incident due to threatening given by the accused she went to her aunt's house in village Sorka. From village Sorka she came back after 2-3 days, when her brother-in-law Sukhdev and her brother Lakhan went there to fetch her. This statements accounts of 3-4 days of time after the incident even after that there was a delay of almost 11 days after which the FIR was lodged. This principle has been laid-down in catena of judgments of superior Courts and is followed, that if there is unreasonable delay for lodging of FIR then there must be plausible explanation of delay before admitting the FIR as reliable evidence. In this case, virtually there is no explanation for the delay in lodging FIR.

7. On the second ground the medical evidence has been produced by Dr. Kalawati Patel (PW-7) in which the MLC report (Ex.P/12) has been proved, this report says, that no external injury were found on the body of the prosecutrix, after examining vulva and vagina of the prosecutrix the opinion was given that there were no sign of forceful sexual intercourse. Such kind of report can be expected because the examination of prosecutrix was held on 16/09/1999 that was almost more than 15 days after the incident took place.

8. The age of the prosecutrix is not an issue in this case. Counsel for the appellant has argued that appellant has been falsely implicated in this case. Rambai (PW-1) has stated that at the time of incident when she was in the field appellant arrived there and forcefully took her and led her to the embankment on the field, then committed sexual intercourse without her

consent. At the time of incident she shouted and on her calling Heeralal and brother-in-law Sukhdev arrived at spot due to which accused ran away from the place of incident. Sukhdev (PW-2) has stated that he was going towards house of Heeralal at about 4:00 p.m. on the evening, then Ghurpati wife of Heeralal told that accused has forcibly taken prosecutrix Rambai, hearing that he rushed to the place of incident along with Heeralal. On reaching the spot he saw appellant and prosecutrix in the field. On his scolding accused fled from the spot and prosecutrix told about the incident that accused to him forcibly and humiliated (Beijjati) her. He brought back Rambai to her parents house. Appellant and his parents came and threatened, that in case any FIR is lodged then they will kill them. Rambai went away to village Sorga, from where witness along with his brother-in-law Lakhan brought back prosecutrix Rambai. This statement of Sukhdev (PW-2) has a variation because his arrival at the place of incident was not due to shouting of the prosecutrix, but due to information given by Ghurpati Bai wife of Heeralal. Rest of the witnesses are hearsay on the basis of information given by Rambai (PW-1). Heeralal (PW-4) has also been examined and he has turned hostile. Prosecution has also examined witness present near the spot Rajniya Bai (PW-3) and Ghurpati Bai (PW-9) both have turned hostile and have not supported the case of prosecution. Ghurpati Bai (PW-9) is also a hostile witness who happened to be informer of Sukhdev (PW-2) who stated that it was on her information that he went to the spot.

9. Inspector Joseph Ekka (PW-10) was examined. In his statement he has stated that no explanation has come regarding the delay in lodging FIR.

10. In these circumstances due to the reason that there has been unreasonable delay in lodging FIR and this delay has not been explained,

the medical report of prosecutrix does not disclose happening of any forceful sexual intercourse with her and witnesses on the spot are not supporting the prosecution in any manner makes the prosecution story doubtful. Hence, in such case the benefit of doubt always extended to the accused/appellant. It was a case where the prosecution failed to prove the charge against the appellant beyond reasonable doubt, hence the appellant deserves to be acquitted.

11. In the result, the appeal is allowed. The impugned judgment of the trial Court is hereby set-aside and the accused/appellant is acquitted of the charges leveled against him. He is reported to be on bail, his bail bonds stand discharged and he need not surrender.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE