



55

1

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.428 of 2000

Munna Lal S/o Mooritram Chouhan aged about 24 years, R/o Beltikri,
Sarangarh, Distt-Raigarh

---- Appellant

Versus

State Of M.P. (now Chhattisgarh)

---- Respondent

For the Applicant : Ms. Savita Tiwari, Advocate and Smt. Nirupma Bajpai
through legal Aid.

For the Respondent : Shri Neeraj Sharma, Dy.G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

24/10/2016

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by the Additional Sessions Judge, Sakti, District Bastar in Sessions trial No.447/98 whereby the appellant has been convicted under Section 376 of IPC and ordered to undergo R.I. for a period of 7 years along with fine of Rs.5000/-, in default of payment of fine 1 year further R.I. has also been awarded.
2. The case of prosecution, in brief, is this prosecutrix (PW-1) aged about 17 years had gone to School on 08.11.1995 at about 2:00 p.m. at Village- Beltikri. When she was returning from school appellant/accused caught hold of her hands and on the point of knife he forced her to board the bus along with him. He took the

prosecutrix to his village—Beltikri, thereafter, he took her to Village-Saria at the residence of his sister, staying there he committed rape with the prosecutrix. Father of prosecutrix, Ghasiram (PW-2) searched for her when she did not return from the school as usual and after two days on gathering information about the incident he lodged FIR Ex.P/3 against the appellant in P.S.-Dabra. The case was registered under Section 363 and 366 of IPC. After a month of search, prosecutrix was recovered from the custody of the appellant and handed over to her father Ghasiram (PW-2). After recording the statement of prosecutrix and having her medical examination done, the investigation was concluded and the appellant and two others was charge sheeted under Section 363, 366 and 376 read with Section 34 of IPC. The two other accused remained absconding. The appellant was charged under Section 363, 366 and 376 of IPC. On his denial of the charges, the trial was conducted. After affording opportunity to the prosecution and defence, the impugned judgment has been passed in which appellant has been acquitted of charges under Sections 363 and 366 of IPC whereas he has been convicted under Section 376 of IPC and sentenced as mentioned above.

3. The jail appeal was preferred by the appellant. The grounds in this appeal have been raised during the argument which are these that the age of prosecutrix on the date of incident was 17 years 8 months and 7 days. At the relevant point of time, the age of consent for sexual intercourse was 16 years. On the basis of evidence adduced by the prosecutrix herself and looking to this fact that she was in company of the appellant/accused for almost a month, this is clearly a case of consent. It is prayed that the appellant be acquitted of the charges.
4. Learned counsel for the State has submitted that this is very clearly not a case of consent. As per the prosecution evidence, the offence of rape was committed

by the appellant/accused by giving threat on the point of knife, hence, the impugned judgment does not suffer from any infirmity.

5. Considering the arguments submitted from both the sides, the question in this appeal is whether the conviction against the appellant under Section 376 of IPC is sustainable in this appeal. Evidence of prosecution before the trial Court is perused and finding is arrived at in this appeal.
6. Prosecutrix (PW-1) has stated that on the date of incident, she had been to school and at the time of her return when she was near the bus stand, appellant caught hold of her hand and forced her to board a bus. Appellant showed her a knife and said that on raising any alarm, he would kill her. Appellant took her to village-Beltikri, at the residence of his father and mother, thereafter he took her to his sister's village and where she stayed for about a month. Without mentioning the dates she has stated that in that village appellant/accused had sexual intercourse with her even after her objection. At the time of this incident, appellant/accused was holding knife and he threatened her that if she speaks to somebody, he would kill her. After a month, she came with appellant and appellant's mother, father to P.S. Sariya, from where her father was informed. Thereafter, her father came and took her with him. In cross-examination, she has stated that appellant/accused committed forceful sexual intercourse with her. She did not raise any alarm to which she has explained that accused kept threatening her that on raising alarm, he would stab with knife. She did not tell anybody in the bus that appellant /accused has taken her forcefully. When she reached village-Beltikri, she did not inform anybody that she has been brought forcefully. She has stated herself that she did accordingly whatever was told by the appellant/accused. From Village-Beltikri, she went to the village of sister of appellant /accused in a jeep, even then she did not try to inform anybody that

she was being taken forcefully. In the house of sister's of appellant/accused, she stayed about a month and during the whole period, appellant/accused was regularly having intercourse with her. She has denied that she solemnized marriage with appellant/accused. She has admitted that she used to go to answer the call of nature out of village and she also used to go for taking bath. She gave Rs.400/- to the appellant/accused which she had brought from the pocket of her father. She also stated that she was carrying with her 4 saris, 2 nighties, 2 petticoats, 2 dhoties and one wrist watch, apart from the school dress, which she was wearing. She gave all these things to the appellant/accused. She has denied that she had any love affair with the appellant/accused but admitted that for the whole month, appellant kept her comfortably and she was conscious to it. Again she has stated that she was afraid of the accused.

7. Ghasiram (PW-2) has stated that on 08.11.1995, at about 5:00 p.m. he along with Vimlabai and Birbal was searching for his daughter/prosecutrix, who had not returned from the school. Later on, he came to know from the villagers that prosecutrix was seen to be carried away by the appellant/accused. Getting this information, he lodged report Ex.P/3 in P.S. Dabhra. After a month of lodging this report, prosecutrix was recovered in Village-Dumripali (Orisa) village of appellant's sister. This witness has not given any statement about the knowledge of offence of rape, committed with prosecutrix. In cross-examination, he has remained consistent with this statement and no other information has been given by him. Kumari Bai (PW-3) is mother of the prosecutrix, she has stated similarly as Ghasiram (PW-2) and has not given any statement about the knowledge of offence of rape being committed with prosecutrix.

8. Urmila Bai (PW-4) is a child witness, she has not given any statement to support the prosecution, Bholadas (PW-5) was witness to the fact that he saw appellant

and prosecutrix boarding a bus for Village-Dabra about which he told Birbal to inform Ghasidas (PW-2), Birbal (PW-6) has stated that he was informed by Bholadas and he passed the information to Ghasiram (PW-2). Vimlabai (PW-7), Saraswatibai (PW-8) have not given any statement regarding the offence of rape alleged to be committed by appellant/accused.

9. Dukalu Chouhan (PW-11) has witnessed that appellant and prosecutrix were presented in P.S. Saria, apart from that he has not stated anything in support of prosecution. Statement of Pushpa Bai (PW-12) is not of any help to the prosecution.

10. On the point of offence of rape, the statements of prosecution witnesses has been examined and analyzed which discloses that apart from prosecutrix, no other witness has given any statement regarding the forceful sexual intercourse committed with prosecutrix against her will and without her consent. Hence, in this respect it is only the statement of prosecutrix which has to be examined and closely scrutinized.

11. Appellant has been acquitted of the charges under Section 363 and 366 of IPC, hence, the narration in the statement regarding forcefully compelling prosecutrix to board a bus and go with her, needs no consideration. The only statement in her examination-in-chief is that in the Village of appellant's sister, this witness was subjected to forceful sexual intercourse by the appellant/accused, without her will and without her consent. The statement in cross-examination this witness that she never tried to communicate to anybody staying in the village of appellant's sister that she was forcefully taken is relevant. This witness had a number of opportunities while going out to answer the call of nature and while going out to take bath and as per her admission, appellant/accused used to go away for labour work even then she did not

complain to anybody or tried to free herself. Hence, it was not the situation that this witness was kept under guard all the time. This goes to show that this witness willingly stayed and resided in that village. The statement of this witness that appellant/accused used to threaten her that in case she raises any alarm, he would kill her, does not seem to be a believable statement. The period of time, passed by this witness in company of appellant/accused is a fact and that despite the opportunities which were available to her, she did not avail them to inform anybody about her plight, is another factor which goes to show that prosecutrix was a consenting party. The finding arrived at by the trial court in this respect that prosecutrix was under threat, is not a correct finding which has to be interfered with.

12. As regards the age of prosecutrix the finding of the trial Court is not under dispute in this appeal. Before the (Amendment) Act, 2013 (13 of 2013) in the Section 375 of IPC, it was provided (sixthly) that a woman being under the 16 years of age, her consent was immaterial, which meant that a woman above the 16 years of age was capable of giving consent for sexual intercourse. That being the substantive law on the date of incident i.e. 08.11.1995 and till the date of recovering of the prosecutrix, the position of law was not changed by the Act of 2013. The age of consent has been changed from 16 to 18 years and this provision of amendment has come into force from 03.02.2013. Hence, looking to the law applicable at the relevant time, prosecutrix was capable for giving consent.

13. The medical evidence is positive as per Ex.P/14 but it is of no consequence as the fact that the appellant had sexual intercourse with prosecutrix is not in dispute. The only question was whether the relation between appellant and prosecutrix was under force or threat which has not been established in this



61

7

case. The evidence of prosecutrix on the point of her reluctance and her objection to the sexual intercourse does not inspire confidence. Looking to all the narrations made by her about the incident and looking to the time period, during which she resided in the company of appellant of accused without raising any objection, without trying to approach the police authorities or her near and dear ones the prosecution case can be regarded as doubtful. For these reasons, in this case, the conviction of appellant under Section 376 (1) of IPC is not maintainable. Hereby this appeal is allowed and the appellant is acquitted of charge.

14. The appellant is on bail. His bail bonds shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the Cr.P.C. He shall appear before the higher Court, as and when directed.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha