

(22)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 532 of 2001

1. Parasram son of Shri Dhajlaram, aged about 30 years, R/o village Getra, Police Station Lakhanpur, District Sarguja, Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through : P.S. Lakhanpur, District Sarguja (C.G.)

---- Respondent

For Appellant.	-	Shri Dashrath Prajapati, Advocate.
For Respondent.	-	Shri Ashish Shukla, PL

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

01/03/2016

This appeal is directed against the judgment and order dated 09.05.2001 passed by Additional Sessions Judge, Ambikapur, District Sarguja in Sessions Trial No. 87/2000 convicting the accused/appellant under Section 376 (1) IPC and sentencing him to undergo rigorous imprisonment for seven years with fine of Rs. 1000/-, plus default stipulation.

2. Facts of the case in brief are that on 1.4.1999 FIR Ex. P-1 was lodged by the prosecutrix (PW-1) – a married lady aged about 20 years at the relevant time that on 31.3.1999 when she was keeping watch on the paddy crop in the field sitting under a tree, the accused/appellant came there, asked the whereabouts of her father and when she told him that her father had been to some other village, he asked her to accompany him to the jungle. On this, prosecutrix told the accused not to say like this as one boy named Raghu was witnessing them but the accused/appellant saying that the small boy would not understand all that, dragged her to the jungle, threw her down in a pit and after

upturning her sari and petticoat committed forcible sexual intercourse with her in spite of resistance offered by her. FIR further says that after commission of sexual intercourse when they both were getting out of the pit, sister-in-law of the accused came over there and saw them together and thereafter the accused/appellant moved away. Thereafter, she met her sister-in-law on the way and narrated the entire incident to her and then to her mother, brother and father after reaching home. Based on this report, offence under Section 376 IPC was registered against the accused/appellant and the prosecutrix was medically examined by Dr. (Smt.) Pratibha Jain (PW-4). After completion of investigation, charge sheet was filed by the police for the offence punishable under Section 376 IPC followed by framing of charge by the Court 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 charge 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 the prosecutrix was a consenting party to the act of the accused/appellant and as she was seen in the company of accused/appellant by his sister-in-law, a false report has been lodged by her. He submits that even the medical evidence does not support the case of the prosecution as the report Ex. P-4 given by the doctor nowhere says that there was any injury on the body of the prosecutrix to suggest any resistance offered by her.

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/appellant under Section 376 IPC are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record including the evidence of the witnesses.

8. Prosecutrix (PW-1) has stated in her evidence that on the date of incident when she had gone to the field to keep watch on the paddy crop, accused/appellant came there, caught hold of her, dragged her into a pit, threw her down and after upturning her sari committed forcible sexual intercourse with her. She is stated to have raised cries also but nobody came to her rescue and that after commission of the offence the accused/appellant ran away carrying her shawl with him. Thereafter, she met her sister-in-law on the way and narrated the entire incident to her and then to her mother followed by lodgment of the report. In cross-examination this witness has admitted that there was a murmur among the villagers regarding her relations with the accused but she has denied any such relationship between the two. On being confronted with the FIR, this witness has stated that she never told the accused that one boy was witnessing them. Patiram (PW-2) – the father of the prosecutrix has stated that his daughter did not inform him anything. This witness however has been declared hostile. Dr. M.H. Parmar (PW-3) is the witness who medically examined the accused/appellant and gave his report Ex. P-3 stating that he was capable of performing sexual intercourse. Dr. (Smt.) Pratibha Jain (PW-4) is the witness who medically examined the prosecutrix and gave her report Ex. P-4 stating that her hymen was old torn, two fingers easily entered her vagina, she did not complain any pain, no sign of recent intercourse was noticed and she was habitual to sexual intercourse. Ganesh Prasad (PW-5) is the Patwari who prepared spot map Ex. P-7. Subhash Das (PW-6) is the investigating officer who has duly supported the case of the prosecution.

9. From perusal of the material available on record and the evidence of the witnesses including that of the prosecutrix it appears difficult to hold that the prosecution has proved its case beyond all reasonable doubt. As per the case of prosecution, the accused dragged the prosecutrix to a pit and committed forcible sexual intercourse with her, however, the evidence of the doctor (PW-4) does not disclose the presence of injury on her body to show that she made any resistance to the act of the accused/appellant but was overpowered by him. Moreover, the medical evidence says that no sign of recent intercourse was noticed on the prosecutrix and she was habitual to sexual intercourse. Though the prosecutrix is said to have resisted the act of the accused but the absence of injuries even after being subjected to sex in a pit, does not appear to be convincing. Further, in the FIR the prosecutrix is stated to have informed the incident to her father also but the statement of father (PW-2) says that she did not inform him anything. In the FIR it is mentioned that when the accused approached the prosecutrix and asked her to accompany him to the jungle, she had told the accused not to say like this as a small boy was witnessing their activities, but on being confronted with this part in her Court statement she has denied any such utterance and reference to a child as stated in the FIR. Being all this, the prosecutrix does not appear to have been subjected to forcible sexual intercourse by the accused/appellant, rather it appears to be an altogether consensual act but on both being seen together by sister-in-law of the accused, a false report has been lodged by her. The murmur among the villagers regarding relations between the accused and the prosecutrix as has been admitted by the prosecutrix herself also suggests the act between the two a consensual one.

10. Thus as stated above, it is held that the prosecution has not been able to prove its case beyond all reasonable doubt and therefore the benefit of the same goes to the accused/appellant. The findings of the Court below

convicting the accused under Section 376 (1) IPC are not based on proper appreciation of the evidence of the witnesses and being so they are hereby set aside and the accused stands acquitted of the charge levelled against him. Appellant is already on bail and therefore no further order regarding his release etc. is required to be passed.

11. Appeal allowed.

Sd/-

(Pritinker Diwaker)

Judge

Jyotishi