

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.134 of 2013**

Bhuvan Yadav, S/o. Narayan Yadav, aged about 25 years, Occupation agriculture, R/o. Village Sirri, Chowki Birejhar, PS Kurud, District Dhमतari (CG)

---- Appellant

Versus

State of Chhattisgarh, through Police Station, Kurud Chouki Birejhar, District Dhamtari (CG)

---- Respondent

For Appellant	: Shri Goutam Khetrapal, counsel for the appellant.
For respondent	: Shri Satish Gupta, Govt. Advocate.

Judgment On Board**17.11.2016**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 12.12.2011 passed by the Sessions Judge, Dhamtari in Sessions Trial No.41/2011 whereby and whereunder the learned Sessions Judge after holding the appellant guilty for committing criminal trespass in the house of the prosecutrix (PW-1) (name not mentioned) for committing forcible sexual intercourse with her, convicted him under Sections 450 and 376 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 05 years and 08 years and also to pay fine of Rs.1000/-, Rs.2000/-; in default of payment of fine, to further undergo RI for 3 months and 6 months respectively with a direction to run the sentences concurrently.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and

sentenced the appellant as aforementioned, thereby committed illegality.

3. As per the case of the prosecution, on 26.6.2011 at about 4.30 pm, family members of the prosecutrix were in their respective rooms. The prosecutrix (PW-1) was waiting outside her house for fetching tap water and when she entered into her house for taking bucket, the accused/appellant also entered in the house, closed the door and thereafter despite resistance from her, committed forcible sexual intercourse with her. When the family members of the prosecutrix raised some noise, the accused/appellant fled from the spot and the prosecutrix narrated the entire facts to her family members. On the same date, at Out Post Birjher, Police Station Kurud, the prosecutrix lodged un-numbered First Information Report. The police registered the case against the accused/appellant under Sections 450 and 376 of the IPC. The prosecutrix was sent for medical examination. Dr. Madhuri Wankhede (PW-3) examined the prosecutrix and noticed abrasion below the left elbow, hymen old torn, no any injury on the private parts. The doctor also not opined regarding recent intercourse and gave her report (Ex-P/6). The Police during investigation, prepared spot map (Ex-P/3) seized the clothes of the prosecutrix, arrested the accused/appellant and also send the accused/appellant for medical examination. Dr. SR Baghel (PW-8) examined the accused/appellant and opined that the accused/appellant is capable to commit intercourse. He gave

his report(Ex-P/10). Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973, (for short 'the Code'). After completion of investigation, charge sheet was filed before Judicial Magistrate First Class, Kurud, who registered the matter as Criminal Case No.144/11, committed the case to the Court of Sessions vide committal order dated 30.8.2011. The learned Sessions Judge framed the charges under Sections 450 and 376 of the IPC against the accused/appellant.

4. In order to prove the guilt of the appellant, the prosecution has examined as many as 08 witnesses. Statement of the accused was recorded under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question. After providing opportunity of hearing to the parties, the learned Sessions Judge convicted and sentenced the appellant as aforementioned.

5. I have heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.

6. Learned counsel for the appellant after examining the entire evidence adduced by the prosecution submits that looking to the evidence available, he is not contesting the instant appeal for the conviction awarded to the appellant. Instead, he is confining his argument on the point of quantum of sentence awarded to the accused/ appellant under Section 376 of the Indian Penal Code.

As submitted, the accused is first offender, aged about 25 years at the time of the incident, the prosecutrix was aged about 22 years, both are residing in the same locality. Prior to the incident, the accused was marginal farmer, earning his bread anyhow, he has committed a mistake and he will not repeat the same and will live in the society without committing any crime. It is further prayed that the incident is of 26.6.2011 which is before substitution of provision of Section 376(1) IPC vide Criminal (Amendment) Act, 2013 which came into force from 03.02.2013, as per provision earlier applicable in the matter in hand, the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. Looking to the entire facts and medical evidence surfaced coupled with the fact that the accused/appellant served the sentence for 5 years 4 months and 20 days till date, the matter may be considered sympathetically and the sentence may be reduced to the period already undergone by him. It is further submitted that the accused/appellant was not in a position to file the instant criminal appeal within its limitation on account of financial crisis and has filed the instant appeal after 357 days of its limitation and thereafter also at times he was not represented. Hence, upon consideration of the entire facts, he may be sentenced for the period already undergone by him.

7. On the other hand, learned counsel for the State opposed the prayer and submitted that the accused/appellant is a grown up

adult, purposely committed the criminal trespass, entered into house of the prosecutrix and committed forcible sexual intercourse without her consent, which goes to show his mental make up and act and the trial Court duly sentenced the appellant, hence, present appeal may be dismissed on all counts.

8. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

9. Upon perusal of the entire evidence, specially the evidence of prosecutrix (PW-1), Nandkumar Pandey (PW-2), father of the prosecutrix, and medical evidence, it appears that the trial Court had not committed any error by convicting the accused/appellant under Sections 450 and 376 of IPC. Also learned counsel for the appellant is not assailing the present appeal on conviction part. Hence, conviction awarded to the accused/appellant requires no interference. So far as fine sentence awarded to the appellant is concerned, the same cannot be held as on higher side. Hence, fine sentence awarded also requires no interference. So far as quantum of substantive jail sentences are concerned, the trial Court directed that both the substantive jail sentences shall run concurrently and the accused appellant served his entire jail sentence awarded to him under Sections 450 of IPC. So far as substantive jail sentence under Section 376 IPC is concerned, the accused appellant served his sentence for 5 years 4 months and 20 days till date. He was aged about 25 years at the time of

incident, he was the first offender with no any criminal antecedent. He was also not economically so empowered to file his criminal appeal within time. Upon consideration of the entire evidence, ends of justice would be served if the appellant is sentenced to the period already undergone by him regarding substantive jail sentence under Section 376 IPC.

10. Consequently, appeal is allowed in part. Conviction awarded to the appellant and also to fine sentence awarded to the appellant including serving of the sentence in default of payment of fine, by the trial Court is hereby affirmed. Substantive jail sentence awarded to the appellant for the offence under Section 450 of the IPC is also affirmed. The substantive jail sentence awarded to the appellant under Section 376 IPC is reduced and instead of RI for eight years, he is sentenced for the period already undergone by him. The accused/appellant is reported to be in jail. He be released forthwith after depositing the fine sentence awarded. If the fine sentence is not deposited, the concerned authorities are directed to serve with the default sentence to the appellant and release only thereafter.

11. Appeal allowed in part.

**Sd/-
(Chandra Bhushan Bajpai)
JUDGE**