

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.2885 of 1998**

Ramawtar Pandeo, S/o. Birjhan, aged 35 years, R/o. Khutara para,
Basantpur, District Surguja (CG)

---- Appellant

Versus

The State of M.P. (Now State of Chhattisgarh)

---Respondent

For Appellant	: Shri Manoj Mishra, Advocate
For respondent/State	: Shri Anil Pandey, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board**08.11.2017**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 28.11.98 passed by Additional Sessions Judge, Surguja at Ambikapur (CG) in Session Trial No.68/98 wherein the trial Court convicted the appellant under Section 450 and 376 (1) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years for each offence.

2. As per the prosecution case, prosecutrix is the resident of village Khutara para. On 25.12.1997 her husband and son had gone to some other village to discharge their social liability. When the prosecutrix was alone in her house, at about 10.00 pm the accused/appellant entered into the veranda of the house of the prosecutrix where she was sleeping and overpowered her and thereafter committed sexual intercourse with her against her will

and without her consent. When her husband returned, the prosecutrix informed him about the incident. On the following day it was raining heavily so they did not lodge the report and after two days of the incident, the matter was reported to Police Station Basantpur. After registration of the First Information Report, certain articles were seized from the prosecutrix and from the accused appellant. The prosecutrix and the appellant were sent for medical examination. Seized articles were sent for chemical examination. Statements of the witnesses under Section 161 of the Cr.P.C. were recorded during investigation and after investigation, charge sheet was filed and trial court framed charges as mentioned above to which the accused appellant did not plead guilty. After completion of the trial, the appellant was convicted as mentioned above.

3. Learned counsel for the appellant submits as under :-

- 1) that there is delay of three days in lodging the report and it was lodged deliberately and the story is cooked up and delay in peculiar circumstances of the case is fatal to the prosecution.
- 2) that the prosecutrix is a married lady therefore the report of the laboratory is of no help to the prosecution and it is a case of false implication.
- 3) that the prosecutrix was a consenting party and the matter was reported only because the husband of the prosecutrix received information of the incident.

4. On the other hand, learned counsel for the State submits that the judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered with invoking the jurisdiction of the appeal.

5. Heard learned counsel for the parties and perused the material on record.

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

7. Prosecutrix (PW-1) has deposed that on the date of incident, her husband and son went to the house of one Budhu Pandit for some social obligation, she was alone in her house and she was sleeping in the varenda of the house at night. She further deposed that at night the accused/appellant entered there overpowered her and thereafter committed sexual intercourse with her without her consent. She further deposed that when her husband returned, she narrated the story to him. On the next day it was raining heavily so they were unable to go to the Police Station and after two days they lodged the report at Police Station Basantpur. She further deposed that the police seized her petticoat and sent her to hospital Wadrafnagar for medical examination. Version of this witness is subjected to searching cross examination, but nothing could be elicited in favour of the appellant. Version of the prosecutrix is supported by version of Manohar Pandeo (PW-2).

8. Manohar Padeo (PW-2) deposed that they went to the house of one Budhu and his wife was alone in the house and he returned to the house late night at about 11 pm. When he returned to the house, his wife informed him that the accused/appellant entered into the house, overpowered her and committed sexual intercourse with her. He further deposed that on the next date it was raining so they were unable to report the matter and on the third day they reported the matter at Police Station. Version of this witness is supported by KMS Khan (PW-5) who is the investigating officer. He supported the version of the prosecutrix and her husband that report was lodged by them and he also deposed that he sent the prosecutrix for medical examination and her petticoat was seized.

9. In the present case, there is a delay of two days in lodging the report and for that the witnesses have explained that due to rain they could not report the matter on the date of the incident or the next day of the incident. The explanation is natural one as the prosecutrix who is a married lady belonging to rural area. There is nothing on record that she falsely implicated the accused/appellant with whom she or her husband had no enmity. When the explanation is one of the plausible explanation delay in lodging the report is not sufficient to throw overboard the prosecution case.

10. True it is that the prosecutrix is a married lady, but this is of no help to the defence because there is tendency that the report is

made only after consultation with responsible member of the family. In the present case, the prosecutrix narrated the incident immediately to her husband and then they decided to report the matter. From the examination of the both the witnesses there is nothing on record that they had made any concoction and when there is no grudge against the accused/appellant statement of the prosecutrix inspires confidence and the same has to be acted upon without any corroboration on medical side or otherwise. Disbelieving the version of the prosecutrix is adding to the insult to the injury because the statement of the prosecutrix will be kept on higher footing than the victim of assault.

11. From the evidence of the prosecutrix, her husband and statement of the IO, it is established that it was the accused/appellant who committed the sexual intercourse against the will of the prosecutrix and without her consent after entering into her house for commission of offence. The criminal act committed by the accused/appellant is punishable under Section 376(1) of the IPC and under Section 450 of the IPC for which the trial Court convicted him and the same is not liable to be interfered with looking to the material placed before the Court. Conviction of the appellant for both the sections is hereby affirmed.

12. Heard the sentence part.

Minimum sentence which can be awarded for offence under Section 376(1) of the IPC is imprisonment for seven years and the trial Court awarded the minimum sentence. Less than the

minimum sentence cannot be awarded. Sentence part is also not liable to be interfered with.

13. Consequently, the appeal is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)

JUDGE