

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3077 of 1999

1. Yashwant Kumar son of Devilal, aged about 21 years, resident of village Ranitari PS Deori District Durg, MP

---- Appellant

Versus

1. State of Madhya Pradesh (Now Chhattisgarh) through Police Station Deori, District Durg.

---- Respondent

For Appellant	-	Shri Gautam Khetrapal and Shri Avinash Sahu, Advocates.
For Respondent	-	Shri Rahul Tamaskar, PL

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

24/11/2017

This appeal is directed against the judgment and order dated 29.10.1999 passed by Additional Sessions Judge Balod, District Durg in Sessions Trial No. 124/1998 convicting the accused/appellant under Section 376 (1) IPC and sentencing him to undergo rigorous imprisonment for seven years.

2. Case of the prosecution in brief is that on 11.2.1997 a written report Ex. P-5 was made by the prosecutrix aged about 23 years at the relevant time to the effect that about 7 months prior thereto she was subjected to forcible sexual intercourse by the accused/appellant. Based on the said written report FIR Ex. P-6 was registered against the accused/appellant for the offence under Section 376 IPC. Prosecutrix was medically examined on 11.2.1997

itself by Dr. (Smt.) Shashi Cladiyus (PW-1) who gave her report Ex. P-1. Accused/appellant was also medically examined by Dr. S.K. Meshram (PW-2) who gave his report Ex. P-3. After completion of investigation, charge sheet was filed by the police for the offence punishable under Section 376 (1) IPC followed by framing of charge accordingly.

3. So as to hold the accused/appellant guilty, prosecution has examined 08 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 charges levelled against him and pleaded his innocence and false implication in the case.

4. It is relevant to note here that the prosecutrix could not be examined in the Court as she died on 21.09.1998 when the trial was in progress.

5. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

6. Counsel for the accused/appellant submits as under:

(i) That present is a case of no evidence but even then the accused/appellant has been convicted under Section 376 (1) IPC on the basis of written report Ex. P-5, which is erroneous and illegal.

(ii) That in the absence of examination of the prosecutrix, the accused/appellant could not have been convicted.

7. 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/appellants under Section 376 (1) IPC are strictly in accordance with law and there is no infirmity in the same.

8. Heard counsel for the parties and perused the evidence on record.

9. Dr. (Smt.) Shashi Cladiyus (PW-1) is the witness who medically examined the prosecutrix and gave report Ex. P-01 stating that there was no injury on her body; her breasts were fully developed and she was carrying pregnancy of 28 weeks. Vagina of the prosecutrix, according to this witness, was admitting two fingers easily and that she was habitual to sexual intercourse. Age of the prosecutrix as per the evidence of this witness was in between 20 and 25 years at the relevant time. Dr. S.K. Meshram (PW-2) is the witness who medically examined the accused/appellant and gave report Ex. P-3 stating that he was capable of performing sexual intercourse. N.R. Nishad (PW-3) is the head constable who recorded FIR on the basis of written report. Dukharam Sahu (PW-4) - the brother-in-law of the prosecutrix is a hearsay witness. Nirmal Das (PW-5) and Jankilal Sahu (PW-7) are the witnesses to Panchayat who have stated that the prosecutrix had disclosed before them that she was pregnant through the accused/appellant. Parnia Bai (PW-6) - the mother of the prosecutrix is a hearsay witness according to whom the prosecutrix had informed her about being pregnant through the accused/appellant. Bachau Pandey (PW-8) is the head constable who did the investigation.

10. This Court has gone through the entire material collected by the prosecution including the evidence of the witnesses examined by it. As already noted, the prosecutrix could not be examined in the Court because of her unfortunate death during trial itself. Conviction under Section 376 (1) IPC has been slapped on the accused/appellant just on the basis of written report Ex. P-5 which was made about seven months after the prosecutrix had sexual intercourse. While recording such finding the trial Court appears to have been oblivious of the fact that merely the written report is not sufficient for convicting or acquitting the accused and it can have only the corroborative value in the eye of law while doing so. Even otherwise, the prosecutrix at the relevant time, was in her twenties and thus was a woman of prudence to take a decision as to what was to be done after being victimized sexually against her will and without her consent but here instead of promptly and firmly holding the arm of law she kept quiet for a considerable period of about seven months when her pregnancy reached at the peak. Apparently, all that has happened to her was consensual. Had there been anything to the contrary, it could have been explained by her in case she had faced the examination before the Court. However, she left the worldly existence without doing all that. Even the medical evidence does not indicate any injury, internal or external, on the body of the prosecutrix which is further corroborative of the fact that the sexual intercourse was consensual. Speaking otherwise, it is, in fact, a case of no evidence against the accused.

11. Findings recorded by the Court below holding the accused/appellant guilty under Section 376 (1) IPC being not based on the correct appreciation of the evidence are not sustainable in the eye of law. Accordingly, the appeal is allowed. Judgment impugned is hereby set aside. Accused gets acquittal. Being already on bail, he needs no order to be set free etc.

Sd/-

(Pritinker Diwaker)

Judge

