

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.548 of 2001

Judgment Reserved on : 29.8.2017

Judgment Delivered on : 22.9.2017

Sarju Kurmi, S/o Kejram Kurmi, age 26 years, R/o Godi, P.S. Bilha, District Bilaspur (Chhattisgarh)

---- Appellant

versus

The State of Chhattisgarh through Station House Officer, Police Station Bilha, District Bilaspur (Chhattisgarh)

--- Respondent

For Appellant	:	Shri V.C. Ottalwar, Advocate
For Respondent/State	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment of conviction and order of sentence dated 20.6.2001 passed in Sessions Trial No.479 of 2000 by the 7th Additional Sessions Judge, Bilaspur convicting the accused/Appellant under Section 376(1) of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 7 years and to pay fine of Rs.2,000/- with default stipulation.
2. Case of the prosecution, in brief, is that on 15.9.2000 at about 9:00 a.m., the prosecutrix (PW4), a married lady, aged about 32 years had gone to her agricultural farm for cultivation. Her elder brother-in-law (*Jeth*) Shyamlal and his son Shivkumar were also working in the farm at that time. At about 2:00 p.m., Shyamlal and his son

Shivkumar went back to home, but the prosecutrix (PW4) stayed alone at the farm. At about 2:30 p.m., the accused came there and asked her to allow him to commit sexual intercourse with her. When she opposed and said that she will tell this to his brother (her husband), the accused told her that even if she tells this to anyone, he will not leave her and thereafter he clenched her arm, made her lie down and then he committed forcible sexual intercourse with her. She returned home and narrated the incident to her eldest sister-in-law (*Jethani*) Thanwarinbai (not examined by the prosecution) and elder sister-in-law Dhanmatbai (PW5). Thereafter, they went to Sarpanch Laxminarayan (not examined by the prosecution) and informed him about the incident. Thereafter, she lodged First Information Report (Ex.P6). After investigation, a charge-sheet was filed against the accused/Appellant under Section 376 of the Indian Penal Code. Charge under Section 376 of the Indian Penal Code was framed against the accused. He pleaded that he committed sexual intercourse with the prosecutrix with her consent. (*emphasis supplied by me*)

3. So as to hold the accused guilty, the prosecution examined as many as 10 witnesses in support of its case. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied the charge levelled against him, pleaded his innocence and false implication in the case. In his defence, the accused has examined Kejulal as DW1.
4. After trial, the Trial Court convicted and sentenced the accused/Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submitted that the Trial Court has not seriously considered the age and physique of the accused/Appellant and that of the prosecutrix. He further submitted that the prosecutrix is of the nature to implicate innocent persons in a case of rape and for this, earlier, she had been fined by the village panchayat. This establishes that the prosecutrix was a consenting party to the intercourse. Therefore, the impugned judgment of conviction and sentence is bad and contrary to the law applicable to the case.
6. On the other hand, Learned Counsel appearing for the State submitted that the accused/Appellant himself has pleaded that he committed sexual intercourse with the prosecutrix with her consent, therefore, it was for the accused/Appellant to prove the plea taken by him, but he failed to do so. He further submitted that the impugned judgment is in accordance with law and there is no infirmity in the same.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.
8. The prosecutrix (PW4) deposed that at the time of incident at about 2:30 p.m., she was alone in her agricultural field. At that time, the accused/Appellant came to her and asked her to allow him to commit sexual intercourse with her once. In reply, when she told him that he was talking wrong and she will tell this to his brother (her husband), the accused told her that he will not leave her even if he loses his life therefor. She began to flee from there, but the accused caused her to fall down in the field and thereafter

committed forcible sexual intercourse with her. After 3-4 minutes, he left her there and returned for his home. Thereafter, she went to the house of her sister-in-law (*Jethani*) Dhanmatbai (PW5), where Thanwarinbai (not examined) was also sitting. She informed them about the incident. Thereafter, they went to the house of Village Sarpanch Laxminarayan (not examined) and informed him also about the incident. Thereafter, she went to Police Station Bilha and lodged First Information Report (Ex.P6).

9. The above statement of the prosecutrix (PW4) is duly corroborated by Dhanmatbai (PW5). She has categorically stated that at about 2:30 p.m., the prosecutrix (PW4) came to her house and told her that the accused/Appellant had raped her in the agricultural field. She further stated that immediately thereafter they went to Sarpanch Laxminarayan and informed him about the incident and thereafter they went for lodging of the FIR (Ex.P6).
10. Head Constable Laxmi Prasad Rathor (PW10) stated that on 15.9.2000 itself, as per the oral information given by the prosecutrix (PW4), he registered the FIR (Ex.P6). Thereafter, on the next day, i.e., 16.9.2000, the prosecutrix (PW4) was medically examined by Dr. Madhulika Singh (PW3). Dr. Madhulika Singh (PW3) has stated that on examination of the prosecutrix, she did not find any injury on any part of her body. Since she was a married lady and was habitual to sexual intercourse, she was unable to give any definite opinion about any recent sexual intercourse with her.
11. In her Court statement, in paragraph 36, the prosecutrix (PW4) deposed that at the time of occurrence, when her one of the hands

had pressed under her body, two bangles of that hand had broken. This statement of the prosecutrix (PW4) finds support from the statement of Assistant Sub-Inspector A. Kujur (PW8). He deposed that vide seizure memo (Ex.P14), he had seized pieces of broken bangles from the place of occurrence. Seizure witness Gangadas (PW9) also deposed that the seizure of pieces of broken bangles was made from the place of occurrence in his presence and he has admitted his signatures on the seizure memo (Ex.P14).

12. After framing of the charge, the accused denied the charge taking a plea that he had committed sexual intercourse with the prosecutrix with her consent. Therefore, the burden to prove his plea lies upon him.
13. It was argued by Learned Counsel appearing for the accused/Appellant that according to the medical evidence, no injury was found on the body of the prosecutrix. It was further argued by him that the prosecutrix was fined in a village meeting for falsely implicating an innocent person. Therefore, the prosecutrix was in the habit of implicating innocent persons. It was also argued by him that as compared to the prosecutrix, the accused was a thin and physically weak person, therefore, it was not possible for him to commit a forcible sexual intercourse with her. Therefore, it is established that the prosecutrix was a consenting party to the intercourse.
14. According to the evidence of the prosecutrix (PW4), at the time of incident, the accused had caught her arms and caused her to fall down in the field. During commission of the sexual intercourse, he had pressed her neck with his one of the hands and when she

shouted the accused gagged her mouth. It is true that no injury was found on the body of the prosecutrix, but Dr. Madhulika Singh (PW3) has deposed that at the time of examination of the prosecutrix, she had complained of pain in her neck. In paragraph 32 of her cross-examination, the prosecutrix (PW4) has categorically stated that since the place of occurrence was a raw land, when the accused caused her to fall down she did not sustain any injury or suffered any pain in the back part of her body. In **State of U.P. v. Chhotey Lal, (2011) 2 SCC 550**, the Supreme Court held thus:

“**32.** It is wrong to assume that in all cases of intercourse with the women against will or without consent, there would be some injury on the external or internal parts of the victim. The prosecutrix has clearly deposed that she was not in a position to put up any struggle as she was taken away from her village by two adult males. The absence of injuries on the person of the prosecutrix is not sufficient to discredit her evidence; she was a helpless victim.”

15. The prosecutrix (PW4) has admitted that from the age point of view, the accused is younger to her and he is weak too than her. But, only on this ground, this Court cannot infer that the accused did not commit forcible sexual intercourse with the prosecutrix. Even if it is accepted for the sake of argument that the Appellant was younger than the prosecutrix from the age point of view and was weaker than her, it cannot be inferred that he would have been unable to commit forcible sexual intercourse with her.
16. The incident took place at about 2:30 p.m. and soon thereafter the prosecutrix informed about the incident to her sister-in-law

(*Jethani*) Dhanmatbai (PW5). Thereafter, on the same day, at about 5:30 p.m., the FIR (Ex.P6) was lodged by the prosecutrix. The statement of the prosecutrix (PW4) is duly corroborated by Dhanmatbai (PW5). The FIR (Ex.P6) is proved by Head Constable Laxmi Prasad Rathor (PW10). There is nothing on record on the basis of which it could be presumed that there was any previous enmity between the accused and the prosecutrix and Dhanmatbai (PW5). The FIR (Ex.P6) was also lodged immediately after the incident. Nothing is available on the record to suggest that the prosecutrix lodged the FIR because she was seen by any of her relatives or by any other person during commission of the sexual intercourse with her by the accused. The evidence of seizure of broken bangles from the place of occurrence clearly establishes that the intercourse was forcible. That apart, had the prosecutrix been a consenting party to the intercourse why would have she disclosed the incident to her sister-in-law (*Jethani*) Dhanmatbai (PW5) immediately after the incident and why would have she lodged the FIR (Ex.P6) immediately after the incident. The accused/Appellant has not offered any explanation in this regard in his statement recorded under Section 313 Cr.P.C.

17. In **Karnel Singh v. State of Madhya Pradesh, 1995 CriLJ 4173**, it was observed that a woman who was a victim of a sexual violence is not an accomplice to the crime but is a victim of another persons' lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of a culprit. Therefore, the rule of prudence that her evidence in material particulars has no application. At the most, the Court may look for some evidence which lends assurance.

- 18.** It was also argued on behalf of the accused/Appellant that earlier the prosecutrix was in the habit of accusing innocent persons in a case of rape and in this case also she has falsely implicated the accused. Dhanmatbai (PW5) has admitted in paragraph 8 of her statement that earlier a panchayat meeting was called in the village in which the prosecutrix was fined to deposit Rs.500/-. She has further admitted that a charge was levelled upon the prosecutrix for falsely implicating other person and, therefore, she was fined in that panchayat. This version of Dhanmatbai (PW5) is supported by Kejulal (DW1) also. But, in his examination-in-chief, in paragraph 4, Kejulal (DW1) has clearly stated that in this case, the prosecutrix had told that she had reported the matter in the police and, therefore, she did not want any panchayat meeting in the village in this regard. Apart from it, the prosecutrix, immediately after the occurrence, informed Dhanmatbai (PW5) about the incident. The FIR was also promptly lodged by her immediately after the incident. At the time of her medical examination, she had complained of pain in her neck. Pieces of broken bangles were also seized from the spot. The evidence on record clearly establish that the accused/Appellant has been falsely implicated in the case is not acceptable.
- 19.** In view of the foregoing, the finding of conviction arrived at by the Court below does not warrant interference. The sentence imposed upon the Appellant is also just because he has been awarded with the minimum jail sentence of 7 years prescribed for the offence committed by him under Section 376(1) of the Indian Penal Code.
- 20.** Consequently, the appeal is dismissed. The impugned judgment of

conviction and sentence is affirmed.

- 21.** It is reported that the Appellant is on bail. He shall immediately surrender before the 7th Additional Sessions Judge, Bilaspur or shall be taken into custody by the police forthwith for his undergoing the remaining sentence.
- 22.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE