

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1340 of 2000**

- Mahesh @ Munna s/o. Samaru aged 32 years, by caste Lohar, resident of Kesda, Police Station Simga, District Raipur, (CG).

---- Appellant**Versus**

- The State of Madhya Pradesh (Now State of Chhattisgarh)

---- Respondent

For Appellant : Mr. Vishnu Kosta, Advocate.

For Respondent/
State : Mr.. Anil S. Pandey, Govt. Advocate.

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

27-10-2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 1-5-2000 passed by the 2nd Additional Sessions Judge, Baloda Bazar, Sessions Division Raipur (CG), in Sessions Trial No. 433 of 1999 whereby the trial court after holding the appellant guilty for commission of rape convicted him under Section 450, 376 (1) and 506 Part II of the IPC and sentenced him to undergo RI for seven years and fine of Rs.500/-, RI for seven years and fine Rs.500/- and RI for three years with default stipulations.
2. As per prosecution case, the prosecutrix is a resident of village Kesda and she was in her house on 24-9-1999 at about 10.00 pm and her husband had gone to Simga to preach Ramayan and at

the same time the appellant entered into the house of prosecutrix with a knife and threatened her to kill and thereafter committed forcible intercourse with her. When her husband returned she informed him about the incident and thereafter one meeting was organized in the village and after meeting she went to Police Station Simga and lodged the report.

3. After registration of first information report, Police swung into action. Medical examination of the prosecutrix and the accused/appellant was conducted and certain articles were seized from the appellant. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 and after completion of the investigation charge-sheet was filed against the appellant. The trial Court framed charges as mentioned above against the appellant, to which he did not plead guilty, therefore, trial was conducted and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C., was recorded. After completion of trial, the trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above.

4. Learned counsel appearing for the appellant submits as under:

- i) that the incident took place on 24-9-1999 whereas first information report was lodged on 27-9-1999 and there was delay of two days in lodging the report and the prosecution has not offered any explanation as to why delay was occurred in lodging the report;

ii) that the prosecutrix is aged about 25 years and as per her statement she was a consenting party;

iii) that the medical evidence is not supporting the version of the prosecutrix.

5. As against the aforesaid submission, State counsel submits that the judgment of conviction and order of sentence is strictly in accordance with law and same is not liable to be interfered with invoking jurisdiction of the appeal.
6. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial court.
7. Prosecutrix (PW/1) deposed that she was alone in her house at about 10- 11 pm on the date of incident and her husband had gone to outside for preaching Ramayan, at the same time accused/appellant entered into her house with a knife and pointing his knife at her, he committed sexual intercourse with her without her consent and against her will. When her husband returned to the house, she informed him about the incident and thereafter the matter was reported to Police Station Simga vide Ex.P/1. Version of this witness is supported by Surdas Govindram (PW/2) who is husband of the prosecutrix and Ramkisun (PW/3). Version of these witnesses is unshaken during cross examination and nothing could be elicited after searching cross examination. Version of these witnesses is again supported by the first information report (Ex.P/1) and seizure of knife (Ex.P/7).
8. On examination of the appellant, (PW/11) Dr. Salil Roy Choudhari found that the accused/appellant is capable to perform intercourse.

There is no force in the argument of learned counsel for the appellant that it is a case of consent. The incident took place at about 10 – 11 pm in the night in the house of the prosecutrix when she was alone and her husband was outside to preach Ramayan. From the version of the prosecutrix it is established that rape is committed after threatening her by pointing knife at her and at the time of incident appellant was in possession of knife. It is not a case where prosecutrix was a consenting party to participate in sexual act and prosecutrix was not in a position to physically resist the appellant who had entered into her house with a knife. There is no force in the contention of learned counsel for the appellant that first information report is delayed. On the date of incident her husband was not present in the house and he was informed about the incident when he came back from the programme and thereafter report was lodged. When prosecutrix was alone in the house at night, it was not possible for her to move Police Station without assistance of her husband on the date of incident. Delay of two days in lodging the report is properly explained and the appellant cannot be benefited for that.

9. Section 114-A of the Indian Evidence Act, 1872 which was inserted by way of amendment in the year 1988, there is a clear and specific provision that where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.
10. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act

nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as it attached to an injured in case of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more.

11. In case of rape no self respecting woman could come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. Consideration which has not material effect should be ignored. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the court should not overlook. Seeking corroboration of victim of rape as a rule in such cases amounts to adding insult to injury. It must not be overlooked that a woman or a girl subjected to sexual assault is not accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice.
12. Looking to the factual matrix and above legal aspect of the matter, this court is of the considered opinion that the appellant has committed sexual intercourse with prosecutrix without her consent and against her will by committing house trespass and the act is offence under Sections 450 and 376(i) of the IPC.
13. So far as offence under Section 506-B of the IPC is concerned, prosecutrix has nowhere stated that the appellant threatened her to kill with intention to intimidate her, therefore, the evidence on that part

is lacking and from the record it appears that offence under Section 506-B of IPC is not established against the appellant, therefore he is acquitted of the charge of Section 506-B of the IPC.

14. From the foregoing discussion, the judgment of conviction under Section 450 and 376(i) of IPC is hereby affirmed. So far as quantum of sentence is concerned, the trial Court has awarded minimum sentence of seven years prescribed for offence under Section 376(i) of the IPC and less than minimum cannot be awarded. Sentence awarded under Section 450 and 376(i) of IPC by the trial Court is not liable to be interfered with and the same is affirmed.
15. It is reported that the appellant is on bail. His bail bonds stand cancelled. The trial Court will issue non-bailable warrant against the appellant for his arrest to send him back to jail for serving out the remaining part of sentence.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju_

