

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.43 of 2001

Bhukhau, S/o Mahanguram, aged about 24 years, R/o Chindgaon, P.S. Dondhi, District Durg, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Dondhi, District Durg, Chhattisgarh

--- Respondent

For Appellant	:	Shri Adil Minhaj, Advocate
For State/Respondent	:	Ms. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

21.11.2017

1. This appeal has been preferred against the judgment dated 2.1.2001 passed in Sessions Trial No.282 of 2000 by the Additional Sessions Judge, Balod convicting and sentencing the accused/Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 450 of the Indian Penal Code	Rigorous Imprisonment for 7 years
Under Section 376(1) of the Indian Penal Code	Rigorous Imprisonment for 7 years
Under Section 323 of the Indian Penal Code	Rigorous Imprisonment for 1 year
	All the sentences are directed to run concurrently

2. Brief facts of the case are that on 26.4.2000, husband of the prosecutrix Shyam Sai (PW2) along with his mother went to attend a marriage ceremony. The prosecutrix (PW1) stayed with children at home. At about 7:00 p.m., the children went out of the home to play. The Appellant came inside the house, caused the prosecutrix

to fall down and committed forcible sexual intercourse with her. At that time, her husband Shyam Sai reached there. He caught the Appellant, but the Appellant succeeded to flee after scuffling with him. First Information Report (Ex.P1) was lodged by the prosecutrix (PW1). Her petticoat was seized vide Ex.P4. Underwear of the Appellant was seized vide Ex.P5. Both the prosecutrix and her husband Shyam Sai were medically examined by Dr. (Smt.) Shashi Cladius (PW6). The seized articles were sent to the Forensic Science Laboratory. Acknowledgement thereof is Ex.P13. FSL Report is Ex.P14. In Ex.P14, it is reported that stains of semen were found both on the petticoat of the prosecutrix and the underwear of the Appellant. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 376, 450 and 323 of the Indian Penal Code. Charges were framed against him under Sections 450, 376(1) and 323 of the Indian Penal Code.

3. To hold the Appellant guilty, the prosecution examined as many as 8 witnesses. Statement of the Appellant was also recoded under Section 313 of the Code of Criminal Procedure in which he denied the guilt. No defence witness has been examined.
4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that husband of the prosecutrix Shyam Sai (PW2) was under a suspicion that there was an illicit relationship between his wife (the prosecutrix) and the Appellant. Shyam Sai (PW2) had also borrowed money

from the Appellant and to avoid repayment of the said loan, he got the false report lodged against the Appellant through the prosecutrix. It was further argued that in the Court statement, the prosecutrix (PW1) has not supported the case of the prosecution. The Trial Court has relied upon the statement of Shyam Sai (PW2), but his statement is not reliable. There are material contradictions and omissions in the statements of the prosecution witnesses.

6. On the contrary, Learned State Counsel, opposing the arguments advanced by Learned Counsel for the Appellant, supported the impugned judgment.
7. The prosecutrix (PW1), aged about 32 years, has not supported the case of the prosecution. In her Court statement, she has only stated that the Appellant had come to her house and asked her for drinking water. She served him water and thereafter she went to *Kotha* to rope in the buffalo. At that time, her husband Shyam Sai (PW2) reached there and shouted "*Chor Chor*". Therefore, the Appellant ran away from there. She has categorically stated that the Appellant had not committed any wrong act with her. The prosecutrix has been declared hostile.
8. Shyam Sai (PW2), husband of the prosecutrix has stated that at about 6:30 p.m., he reached his house. At that time, he saw that the Appellant was committing sexual intercourse with his wife (the prosecutrix) and his wife was moaning. Then he shouted and caught the Appellant. The Appellant pressed his neck and succeeded to come out of his clutches and run away from there. He chased the Appellant and again caught him. At that time, villagers also reached there. He told them about the incident. In

his cross-examination, he denied the suggestion that he did not see any wrong act being committed with his wife by the Appellant.

9. Patwari Siyaram (PW3) is the witness who prepared the spot-map (Ex.P3). Ashok Das (PW4) has stated that the police had seized one petticoat from the prosecutrix vide Ex.P4 and one underwear from the Appellant vide Ex.P5.
10. Dr. (Mrs.) Shashi Cladius (PW6), who medically examined the prosecutrix (PW1) has given her report (Ex.P8). She has deposed that she found that the prosecutrix was habitual to sexual intercourse. She also examined the petticoat of the prosecutrix and gave her report (Ex.P9). In the petticoat, she found semen like stains at two places. She has further deposed that she had also examined Shyam Sai (PW2), husband of the prosecutrix and given her report (Ex.P10) in which she found two abrasions with a difference of 1" in the right side of neck measuring 1 cm x 1 mm x 1 mm, three abrasions on the left side of neck measuring ½ cm x 1 mm x 1 mm, lacerated wound on the left middle finger measuring 2 cm x 2 mm x 2 mm, lacerated wound on the left thumb measuring ½ cm x 2 mm x 2 mm. She has opined that all the injuries were simple in nature and caused by a hard and blunt object.
11. On minute examination of the evidence available on record, it is found that the prosecutrix (PW1) has not stated anything against the Appellant. Only her husband Shyam Sai (PW2) has stated that he saw that his wife was being sexually intercoursed by the Appellant and having seen this, he shouted "*Chor Chor*". The Appellant tried to run away, but Shyam Sai caught him. The Appellant, after scuffling with Shyam Sai, succeeded to run away.

- 12.** From the statement of Dr. Shashi Cladius (PW6) and the medical examination Report (Ex.P10), it is clear that Shyam Sai (PW2) had suffered some simple injuries on his body. Shyam Sai has deposed that while the sexual intercourse being committed with his wife (the prosecutrix) by the Appellant, his wife was moaning yet the prosecutrix (PW1) has not supported the statement of his husband Shyam Sai.
- 13.** Therefore, it is clear that there is no evidence on record on the basis of which it could be inferred that the Appellant entered the house of the prosecutrix (PW1) with an intent to commit rape with her or he committed rape with her. From the evidence adduced by the prosecution, it appears that had any incident of sexual intercourse taken place with the prosecutrix committed by the Appellant, the prosecutrix was a consenting party to the same. Therefore, the offences under Sections 450 and 376(1) of the Indian Penal Code are not established against the Appellant and only the offence under Section 323 of the Indian Penal Code is established against him.
- 14.** In the premises of aforesaid, the Appellant is acquitted of the charges framed against him under Sections 450 and 376(1) of the Indian Penal Code. The conviction imposed upon him under Section 323 of the Indian Penal Code is affirmed. So far as sentence against the conviction under Section 323 of the Indian Penal Code is concerned, taking into consideration that the Appellant has already undergone about 3 months, he is facing the *lis* since 2000 and he has no criminal antecedent, I am of the opinion that it would be in the interest of justice if the Appellant is sentenced with the period already undergone by him. Ordered

accordingly.

- 15.** Consequently, the appeal is allowed in part to the extent indicated above.
- 16.** 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