

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 698 of 1999

- Ammimudin S/o. Abdul Majid, resident of Sector-6, Qr. No. 312, Balco, P.S. Balco, Tahsil and district Korba.

---- Appellant

Versus

- State of Madhya Pradesh (now Chhattisgarh)

---- Respondent

And

CRA No. 784 Of 2005

- State Of Chhattisgarh through Station House officer, P.S.Balco Nagar, Tahsil and District Korba

---- Petitioner

Vs

- Aminuddin, S/o. Abdul Mazib, Aged about 18 years, Sector-6, Qtr. No. 312, P.S.Balco Nagar, Tahsil and District Korba

---- Respondent

For Appellant : Shri K.A.Ansari, Sr.counsel assisted by Shri Devesh Kela, counsel for the Appellant in Cr.A. No. 698/1999 and Shri Avinash Mishra, counsel for the appellant/State in Cr.A. No. 784/2005.

For Respondent : Shri Avinash Mishra, P.L. for the State in Cr.A. No. 698/1999 and Shri K.A.Ansari, Sr.counsel assisted by Shri Devesh Kela, counsel for the respondent in Cr.A.No. 784/2005.

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice R.C.S.Samant

Judgement on Board by Pritinker Diwaker

02/05/2017

As both these appeals arise out of the same judgment dated 19.02.1999 passed by the Additional Sessions Judge Korba in S.T. No.

258/90, they are being disposed of by this common order.

2. Brief facts of the case are that on 06.11.1988, FIR Ex.P-1 was lodged by the prosecutrix PW-1 a girl aged about 9 years, alleging that she works as maid in the house of Chaplain (*Padre*) and on that day when she had gone to the house of said Chaplain, she found the house locked and thought of waiting near the tree. While she was waiting outside, accused/appellant who is the neighbour of said Chaplain came to her and asked to sit in his house and when she entered inside the house the appellant closed the door and after changing his clothes, caught hold the prosecutrix and took out her underwear, threatened her with death if she narrated the incident to any body and put his male organ on the private part of the victim. She has stated that after the incident, she went to the house of Chaplain and narrated the entire incident to his wife who in turn asked her to inform about the same to her mother and then lodge the report, that is why she has come to the police station along with her mother to lodge the report. Based on this FIR, offence under Sections 376,511,342 and 506 Part II IPC was registered against the accused. On 06.11.88 itself prosecutrix was medically examined by Dr. Rashmi Singh (PW-6) vide Ex.P-2C however there was no sign of injury on the prosecutrix and the hymen was found intact.. Accused/appellant was also medically examined on 06.11.1988 vide Ex.P-5 and was found capable of performing sexual intercourse. After investigation, charge sheet was filed against the appellant. Accordingly charges were framed against him.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 11 witnesses and one defence witness has also been examined by the accused/appellant. Statement of the

accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned has convicted and sentenced the accused/appellant in Cr.A. No. 698/1999 under Sections 342, 506 Part-II and 376/511 IPC whereas he has been acquitted of the offence under Section 376 IPC and against which Cr. Appeal No. 784/2005 has been filed by the State government.

5. Counsel for the appellant in Cr.A. No. 698/1999 submits that :

- i) the accused/appellant has been falsely implicated on account of his dispute with the investigating officer.
- ii) in his 313 Cr.P.C. statement a specific defence has been taken by the appellant that on account of dispute between him and son of Investigating Officer (PW-10) he has been falsely implicated.
- iii) the medical report of the prosecutrix clearly falsifies the prosecution case.
- iv) prosecutrix appears to have been subjected to rape by other person namely Ashok but it is the appellant who has been falsely implicated.
- v) if at all this Court comes to the conclusion that the appellant has made an attempt to commit rape, considering the fact that the incident occurred about 20 years back, sentence of the appellant be reduced to the period already undergone by him.

6. On the other hand, State counsel has argued that the trial Court ought to have convicted the appellant under Section 376 IPC. He

submits that the prosecutrix has categorically stated as to how the accused/appellant committed rape on her and therefore he is liable to be convicted under Section 376 IPC. He further submits that a very prompt report has been lodged by the prosecutrix and this apart immediately after the incident she narrated the entire incident to the Chaplain and his wife PW-3 & PW-4 and there is no reason for her to falsely implicate the appellant. State counsel further submits that the defence of the accused that he has been falsely implicated at the instance of the Investigating Officer is nothing but an afterthought to save himself from the clutches of law.

7. Reply to this argument, in the appeal preferred by the State government, counsel for the respondent has argued that the medical report does not support the prosecution case, hymen was found intact, there was no sign of injury on the prosecutrix, question of convicting the appellant under Section 376 does not arise.

8. Heard counsel for the parties and perused the material available on record.

9. Prosecutrix (PW-1) has stated that on the date of incident, she was aged about 9 years and had gone to the house of Chaplain (Padre PW-4) where she used to look after his child. She has stated that as the Chaplain had gone to Church there was no one in the house, she was standing near the tree, at that time, accused/appellant came there and asked her as to why she was standing in the sun, go inside his house. As soon as she entered the house, asked her to sit on the sofa and closed the door from inside and after changing his clothes, sat

near her, threatened her with death, thereafter removed her underwear and had done bad work. She has stated that after the incident she came out and went to the house of Chaplain and narrated the entire incident to him and he asked her to go and inform her mother. She has stated that she narrated the incident to her mother and then lodged the report. In cross-examination the prosecutrix remained firm and had categorically denied the fact that she has falsely implicated the appellant. She has also denied the fact that she was subject to rape by one Ashok and at the instance of the Investigating Officer she is falsely implicating the accused/appellant. Smt. Kamla Bai (PW-2) is the mother of the prosecutrix. She has stated that the prosecutrix came to her weeping and narrated about the incident and the manner in which she was subjected to bad work. She has denied the fact that the prosecutrix informed her that she was subjected to bad work by one Ashok. She has further denied the fact that the age of the prosecutrix is more than what was narrated by her. Mrs. Marry Josehp (PW-3) wife of the Chaplain where the prosecutrix had gone to work, has stated that on the date of incident she had gone to church along with her husband and when they returned, prosecutrix narrated the fact that she was subjected to rape by the accused/appellant and then she advised her to go and inform her mother. K.K.Joseph (PW-4) has also supported the prosecution case. Dr. Rashmi Singh (PW-6) is the doctor who had medically examined the prosecutrix vide Ex.P-2C. She has stated that the prosecutrix was a minor, her breast were not fully developed and hymen was found intact and that there was no sign of injury on her private part. D.C.Tiwari (retired) (PW-7) Head Constable helped in the investigation. Dr. Mahesh Kumar Singhal (PW-9) had medically examined the accused/appellant vide Ex. P-5 and had not noticed any

injury. According to him, the accused/appellant was capable of performing sexual intercourse. S.C. Raikwar (PW-10) is the Investigating Officer. He has denied the fact that he has falsely implicated the appellant as there was some quarrel between his son and the accused. Dr. C.S. Sharma (PW-11) did the radiological examination of the Prosecutrix and according to him she was between 10-12 years of age. Michael Lal (DW-1) has stated that there was some quarrel between the appellant and the Investigating Officer and that he had threatened the appellant for implicating in a false case.

10. Close scrutiny of the evidence makes it clear that on 06.11.1988, taking the advantage of loneliness of the prosecutrix, appellant took her inside his house and made an attempt to commit forcible sexual intercourse with her. This is a case where an offence has been committed on a minor girl and it is evident from the statement of the prosecutrix. Statement of the prosecutrix if found to be worthy of credence and reliable, requires no corroboration and the Court may convict the accused on the sole testimony of the prosecutrix. Moreover, the prosecutrix is very firm in the court while deposing and we have no reason to disbelieve her statement. Though the defence has been taken by the appellant that on account of his dispute with the son of the Investigating Officer, he has been falsely implicated. So far as the offence under Sections 342, 506 Part-II and 376/511 IPC is concerned, the same is sufficiently established by cogent and reliable evidence and in the ultimate analysis the prosecution has been able to bring the guilt.

11. Considering all the pros and cons of the prosecution case, we find that the prosecution has proved the charge under Sections 342,

506 Part-II and 376/511 IPC against the appellant and accordingly the conviction imposed on the appellant is hereby maintained. He is reported to be on bail. Bail granted to him is hereby cancelled and he is directed to be sent to jail forthwith to undergo the remaining part of the sentence.

12. In the result the appeal is dismissed.

13. So far as the appeal preferred by the State government is concerned, from the statement of the prosecutrix and the nature of the medical evidence, it is clear that no rape has been committed by the appellant and only an attempt has been made by him. Thus after considering the material available on record as well as the elaborate judgment impugned passed by the Court below, and being very much conscious of the existing legal position that in an appeal against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of acquittal by the appellate Court taking the other possible view into consideration, is not permissible in law and further considering the scope of appeal against acquittal, we are of the considered opinion that the judgment impugned acquitting the respondent/accused of the offence under 376 IPC is just and proper and does not call for any interference. Appeal is accordingly dismissed.

Sd/-

Pritinker Diwaker
Judge

Sd/-

R.C.S.Samant
Judge