

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 716 of 2007**Judgment Reserved on : 04/11/2017Judgment Delivered on : 13/11/2017

- Nandeo son of Khirdhoo, aged 60 years Labourer, resident of Village-Navapara, P.S. Ramanujganj, Distt. Surguja (C.G.)

---- Appellant**Versus**

State of Chhattisgarh Through: Police Station Ramanujganj District- Surguja (C.G.)

---- Respondent

For Appellant	:	Mr. Suryakant Mishra, Advocate
For Respondent	:	Mr. 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 25/05/2007 passed in ST No. 348/2006 by the Second Additional Sessions Judge (FTC), Ramanujganj, District- Surguja convicting the accused/Appellant under Sections 376 and 506 Part-II IPC and sentencing him to undergo rigorous imprisonment for seven years and to pay fine of Rs. 1,000/- and rigorous imprisonment for 6 months and to pay fine of Rs. 500, respectively with default stipulations.

2. Case of the prosecution, in brief, is that on 02/05/2006, First Information Report (Ex.P-4) was lodged by the prosecutrix (PW1), a married lady aged about 27 years, alleging that on 29/04/2006 at about 4:00 p.m., she had gone to her sister's house at Village- Nawagarh, where the accused/Appellant (In-laws uncle) invited her at his home. She went there and after having dinner, she along with wife of the accused/Appellant slept in Verandah. The accused/Appellant also slept in the same Verandah. Late night, at about 1:00 a.m., the accused/Appellant asked her to sleep with him and when she objected he threatened her, forcibly took her inside the room of the house and committed sexual intercourse with her. At about 3:00 a.m., he left her at her sister's house and threatened not to disclose the incident to anybody. Later, she disclosed the incident to her brother-in-law, Vinod and her sister- Zamuni. After recording of FIR (Ex.P-4), the prosecutrix (PW1) was examined by Dr. Prathibha Rajul Jain (PW8) who gave her report (Ex.P-6). The accused/Appellant was also examined. After completion of investigation, a charge-sheet was filed against the accused/Appellant for the offence punishable under Sections 376 and 506 Part-II of IPC followed by framing of charges under Sections 376 & 506 Part-II of IPC.
3. So as to hold the accused/Appellant guilty, the prosecution examined as many as 11 witnesses in support of its case. Statement of the accused/Appellant under Section 313 Cr.P.C. was also recorded in which he denied the charges levelled against him, pleaded his innocence and false implication in the case.

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 for the accused/Appellant has argued that according to the prosecution case, the prosecutrix (PW1), after taking meals along with others, had slept with the wife of the accused and if any forcible attempt by catching her hand and taking inside the house was made by the accused, the prosecutrix could have awakened the wife of the accused to save herself, but the prosecutrix did not try to awake the wife of the accused which was quite unnatural of human conduct. It was further argued that even if it is admitted for the sake of argument that the sexual intercourse was committed, the evidence adduced by the prosecution itself reveals that the prosecutrix was a consenting party.
6. Per contra, Learned Counsel appearing for the State 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.
8. The case of the prosecution is mainly based on the statement of prosecutrix (PW1) and Suryadev (PW3), husband of the prosecutrix. Prosecutrix (PW1), in her court statement, has deposed that on the date of incident, she had gone to her sister's house at village-Nawagarh. At about 5:00 p.m., on an invitation of the

accused/Appellant, she went to his house. She further deposed that after taking meals, she along with the wife of the accused/Appellant slept on the floor of the Verandah of the house. The accused/Appellant also slept in the same Verandah. This statement of the prosecutrix is corroborated by Simari Bai (PW10), wife of the accused/Appellant. Therefore, it is clear that on the date of incident, the prosecutrix (PW1) had gone to the house of the accused/Appellant and after taking meals, she slept there along with wife of the accused/Appellant.

9. Prosecutrix (PW1) further deposed that late night at about 1:00 a.m., the accused/Appellant caught her hand and asked her to sleep with him. When she opposed, he forcibly took her inside the room and committed sexual intercourse with her. At about 3:00 a.m, he left her at her sister's house. There, she narrated the whole incident to her brother-in-law, Vinod and her sister- Zamuni. She further deposed that the accused/Appellant had threatened her not to disclose the incident to any body otherwise, he will kill her by an axe.
10. Suryadev (PW3), husband of the prosecutrix (PW1) supported the above statement of prosecutrix and deposed that her wife had told him about the incident and then they had gone to the police station to lodge the FIR.
11. As per the statement of the prosecutrix (PW1), she, first,, informed about the incident to her sister- Zamuni Bai and her sister's husband- Vinod, but both (Vinod and Zamuni Bai) have not been examined by the prosecution in this case.

12. Prosecutrix (PW1), in para 10 of her cross-examination, admitted that they, including herself and wife of the accused/Appellant, had consumed liquor in the house of the accused/Appellant. She further admitted that she did not make any noise and did not wake up the wife of the accused/Appellant at the time of incident and after the incident also. She further admitted that in the morning also, she did not inform the incident to his wife or any of the neighbour of the accused/Appellant. In para 13 of her cross-examination, she categorically admitted that she did not make any noise because the wife of the accused/Appellant could wake up. She admitted that there was previous enmity between the accused/Appellant and her sister's husband- Vinod, and she lodged the FIR on being asked by Vinod and his father- Rampyari. Suryadev (PW3), husband of the prosecutrix also admitted in his cross-examination that because of Vinod and his father- Rampyari, they lodged the FIR.
13. Prosecutrix (PW1) also admitted that on the date on which her court statement was recorded, Rampyari, father of Vinod had accompanied her and asked her to make such statement.
14. As per prosecution story, the occurrence took place on 30/04/2006 at about 1:00 a.m. and FIR (Ex.P-4) was lodged on 02/05/2006 at about 02:30 p.m. Admittedly, the incident was narrated to Vinod and Zamuni by the prosecutrix, then why did she lodge the report after delay of two days, is not properly explained.
15. It appears from the above that though the prosecutrix (PW1) has deposed against the accused/Appellant yet from the perusal of the

evidence adduced by the prosecution, it is apparent that on the fateful night, the prosecutrix (PW1) had consumed liquor with the accused/Appellant and his wife and slept in the verandah of their house, and when the accused/Appellant forcibly took her inside the room and committed sexual intercourse, she did not make any noise nor did she make any effort to wake up the wife of the accused/Appellant or anyone at that time. However, she admitted that she did not raise any noise because the wife of the accused/Appellant could wake up. Therefore, it is clear that the conduct of the prosecutrix is not natural. Moreover, when she informed the incident to Vinod and Zamuni why the FIR was lodged after a delay of two days, which is not explained and, therefore, the same is fatal to the case of the prosecution.

16. In the instant case, it appears that the alleged incident did not take place or had it been happened, the evidence available on record shows that the prosecutrix was a consenting party. In view of the foregoing, the accused/Appellant deserves to be given benefit of doubt.
17. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set-aside. The Appellant is acquitted of the charges framed against him.
18. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months from today in terms of Section 437 A of the Code of Criminal Procedure.

19. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

Judge
Arvind Singh Chandel

Rahul