

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 13/07/2018

Judgment delivered on : 06.10.2018

CRA No. 554 of 2002

- Pyari Lal @ Parega S/o Sunahu Ram, aged about 25 years, Satnami, Occupation- Labourer, R/o Village Fulbandhiya, Thana Kharsiya, District- Raigarh, (C.G.).

---- Appellant

Versus

- State of Chhattisgarh, through the District Magistrate, Raigarh, (C.G.)

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate
For State	:	Shri Arvind Dubey, Penal Lawyer.

Hon'ble Smt. Justice Rajani Dubey

C A V Judgment

06/10/2018

This appeal has been preferred against the judgment and order dated 18.03.2002 passed by the Second Additional Sessions Judge, Raigarh in Sessions Trial No. 156/1999 convicting the accused/appellant for the offence punishable under Section 450 and 376 IPC and sentencing him to undergo RI for 3 years and fine of Rs. 500/- and RI for 7 years and fine of Rs. 500/- with default stipulation.

2. As per the case of the prosecution, on 21.06.1999 prosecutrix was in her home with her brother-in-law namely Lal Kumar. Her husband had gone to agriculture field and her mother-in-law had gone to the forest for collecting woods. At about 10:00 a.m.

accused/appellant came to her house and asked her about the other members of the family. After knowing the fact that prosecutrix husband is not in the house, the accused/appellant sent Lal Kumar (brother-in-law) to home of one Ravi and thereafter got hold prosecutrix and forcibly raped her against her will. After accused/appellant left the house, the prosecutrix went to the field and narrated the facts to her husband. Her husband informed the Panch, Patel of the village regarding alleged commission of offence. Upon hearing this, they gave assurance to the husband of the prosecutrix regarding taking action against the accused /appellant but they did not take any action against him. Therefore, the prosecutrix, after 13 days of the incident, filed a written report in the police station, Kharsia. Based on this report, offence under Section 450 & 376 IPC were registered against the accused/appellant. After that prosecutrix was medically examined by Dr. R. Lalita Rajwala (PW-6) who gave her report vide Ex. P/8. After completion of the investigation, charge-sheet was filed by the police for the offences under Section 450 and 376 IPC followed by framing of charge by the Court accordingly.

3. So as to hold the accused/appellant guilty, the prosecution has examined as many as 11 witnesses. In support of its case statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the charges levelled against him and pleaded is innocence and false implication in the case.

4. After hearing the parties, trial court has convicted and

sentenced the accused/appellant as mentioned above in Para 1 of the judgment.

5. Counsel for the appellant submits that from the evidence of the prosecutrix (PW-1), it appears that she was consenting party to the act of the accused/appellant. He also submits that there is possibility of lodging of false report after the prosecutrix and accused/appellant being seen in a compromising position by her relative, which cannot be ruled out.

6. Counsel for the appellant further submits that delay of 13 days was not explained by the prosecution and in cross-examination she admitted that when they went to Thana, one Advocate of Kharsia also went along with them.

7. On the other hand, counsel for the respondent/state submits that findings recorded by the court below convicting the accused/appellant under Section 450 & 376 of IPC are strictly in accordance with law and there is no infirmity in the same.

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

9. Prosecutrix (PW-1) has stated in her evidence that on the date of incident she was at home and her brother-in-law Lal Kumar was also present there. Accused/appellant came and asked her (prosecutrix) about her mother-in-law and her husband. Then he sent Lal Kumar from the house and after that accused/appellant entered into the house and forcibly remove her clothes and threw

her in bed (khat) and committed forcible sexual intercourse with her. After some time Lal Kumar came back and accused ran away. In the cross-examination, prosecutrix admitted that she did nothing except crying. Faguram (PW-2) stated that prosecutrix is his wife. While he was doing some agricultural work in the field, prosecutrix and his brother Lal Kumar came there crying and told him that Pyari Lal (accused) had forcibly committed sexual intercourse with the prosecutrix. Upon hearing this, he (Faguram) went to the village Panch Patel and told them about the incident. They assured him to settle the matter and suggested him not to go to the police station. When no action was taken by them, they went to police station after few days and filed written complaint Ex.P- 1.

10. Lal Kumar (PW-3) has stated that when he returned home, he saw the accused/appellant and his sister-in-law in naked position. Seeing this, he shouted on accused and told him to leave failing which he would beat him up with lathi. Dr. R. Lalita Rajwala (PW-6) is the witness who medically examined the prosecutrix and gave her report Ex. P/8 stating that no other injury was found on her body except linear abrasion on the back side of her neck. She was habitual of sexual intercourse. No definite opinion can be given on this. Dr. B. S. Chandel (PW-8) is the witness who medically examined the accused and gave his report Ex. P/9 stating that he was capable of performing sexual intercourse.

11. This Court has now gone through the entire material on record including the evidence of the witnesses in particular that of the

prosecutrix and the doctor who medically examined her. After examining the statement of witness Lal Kumar (PW-3) who happens to be the brother-in-law of the prosecutrix, that when he reached the house he saw accused and prosecutrix in compromising position, It appears surprising that the incident went unnoticed by neighbours Nirmal and Shyam Kumar. It is also indicative of the fact that no resistance was made by the prosecutrix at all and the sexual intercourse between two was consensual. The evidence of the witnesses are also suggestive of the fact that had brother-in-law of the prosecutrix not being into the house probably she would not have raised her cries. Delay in lodging the FIR further adds to the doubt.

12. Prosecution has thus not been able to prove the guilt of the accused beyond all reasonable doubt by adducing cogent and reliable evidence in support of its case. Evidence of the prosecutrix does not get corroboration from the other material available on record including the medical evidence .The findings recorded by the court below are thus not based on the proper appreciation of the evidence of the witnesses and being so they hereby set aside and the accused stands acquitted of the charge levelled against him. As he is already on bail, no order to set him free etc. is required to be passed.

13. Thus, appeal is allowed.

Sd/-
Rajani Dubey
(Judge)