

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2890 of 1999

Judgment Reserved on : 5.12.2017

Judgment Delivered on : 13.2.2018

- 1. Shahabuddin alias Sahab, S/o Shamshuddin (Musalman), aged about 22 years, R/o Shriram Market, Contractor Colony, Thana Supela, Bhilai
- 2. Vikram Singh, S/o Narbada Singh Gond, aged about 23 years, R/o Contractor Colony, Near Bajrang Mandir, Thana Supela, District Durg

---- Appellants

versus

The State of M.P. (now Chhattisgarh)

--- Respondent

For Appellants	:	Shri Rakesh Jain, Advocate
For Respondent/State	:	Ms. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

- 1. This appeal is directed against the judgment dated 11.10.1999 passed in Sessions Trial No.310 of 1998 by the 5th Additional Sessions Judge, Durg convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.1,000/- with default stipulation
Under Section 450 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.1,000/- with default stipulation

- 2. Facts, in brief, are that on 26.7.1998 at about 7:15 p.m., the

prosecutrix (PW1), a married lady, aged about 20 years, lodged First Information Report (Ex.P1) in Police Station Supela, District Durg alleging that on the same day, i.e., 26.7.1998 at about 5 p.m., she was alone at her home. The Appellants came there, asked about her husband and when she told them that her husband was not at home, they asked her for water. She entered inside her home and behind her the Appellants also entered the house. Thereafter, Appellant Shahabuddin showed her a knife and threatened her that on her being shouting he will kill her and thereafter he forcibly committed sexual intercourse with her. Thereafter, Appellant Vikram Singh also forcibly committed sexual intercourse with her. After the incident, the Appellants began to come out of her house. She, shouting, chased them till the shop of Natthu, where she told about the incident to Raju, Natthu, Nandkumar. They chased the Appellants. Thereafter, when her husband returned home, she told him about the incident. The police registered the FIR (Ex.P1) and sent the prosecutrix for medical examination. She was medically examined by Dr. (Smt.) Padmini Singh (PW8). Her report is Ex.P9A in which she found that there was no internal or external injury on the body of the prosecutrix, she was habitual to sexual intercourse and there was no sign of recent intercourse with her. She also found that the prosecutrix was carrying a pregnancy of about 34 months. On completion of the investigation, a charge-sheet was filed against the Appellants for offence punishable under Sections 450, 506B, 376(2)(g) of the Indian Penal Code. Charges were framed against them under Sections 450 and 376 of the Indian Penal Code.

3. To rope in the Appellants, the prosecution examined as many as 8

witnesses. Statements of the Appellants/accused were also recorded under Section 313 Cr.P.C. in which they denied the circumstances appearing against them, pleaded innocence and false implication. No witness has been examined in their defence.

4. After Trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel for the Appellants argued that the statement of the prosecutrix (PW1) is not reliable. There are material contradictions and omissions in her statements. As per her Court statement, she did not know the name of the Appellants prior to the incident and their names were disclosed to her by some other persons. But, in the FIR (Ex.P1) and her case diary statement (Ex.D1), she has named the Appellants. It was further argued that since she did not know the Appellants prior to the incident, therefore, test identification parade was required, but no test identification parade was conducted in this case. It was further argued that as per the Court statement, the prosecutrix sustained injuries, but in her medical examination, no injury was found on her body. Thus, the statement of the prosecutrix is not reliable and the case of the prosecution against the Appellants is not proved beyond doubt.
6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.

8. The prosecutrix (PW1) has stated before the Court that at about 5:00 p.m., she was alone at her house, the Appellants came there and asked her for drinking water. She went inside her house to fetch water, the Appellants also entered her house behind her, threatened her of life and committed forcible sexual intercourse with her one by one. At the time of incident, Appellant Shahabuddin showed her a knife and on being shouted he threatened her of life. She has further stated that when the Appellants came out of her house, she, shouting, chased them till the shop of Natthu and there she told about the incident to Raju and Natthu. They chased the Appellants and she returned home. She has further stated that she sent a boy and called back her husband. Thereafter, she lodged the FIR (Ex.P1). In her cross-examination, she has stated that before the incident, she did not know any of the Appellants. She has further stated that she saw first time the Appellants on the date of incident itself. In paragraph 6 of her cross-examination, she has stated that she did not know the Appellants prior to the incident and she came to know about their names through other people. In paragraph 14 of her cross-examination, she has further stated that the boys, who had chased the Appellants had told her about the names of the Appellants and according to the names of the Appellants told by them, she had mentioned the names of the Appellants in the FIR. She has further stated that at the time of incident, she had suffered injury on the neck because a knife was put on her neck. The Appellants had caused her to fall down on the earth and they had committed sexual intercourse with her after forcibly causing her to fall down on the earth.

9. Dr. (Smt.) Padmini Singh (PW8) medically examined the prosecutrix on 27.7.1998. Her report is Ex.P9A in which she found that there was no internal or external injury on the body of the prosecutrix, she was habitual to sexual intercourse and there was no sign of recent intercourse with her. She also found that the prosecutrix was carrying a pregnancy of about 34 months. Patwari Satya Narayan Kaushik (PW2) is the witness who prepared spot-map (Ex.P2).
10. Patiram (PW3), husband of the prosecutrix has stated that on 26.7.1998, one boy Satish came to him and informed that Shahabuddin and Vikram had raped her wife. He returned home where the prosecutrix told him that the Appellants, showing her a knife, committed rape with her inside the house. This witness has also admitted that her wife did not know the names of the Appellants. He has further stated that boy Satish had told the names of the Appellants, but Satish has not been examined by the prosecution.
11. Rajendra (PW4), who is the witness of seizure of petticoat of the prosecutrix made vide Ex.P4, slide Ex.P5, clothes of the Appellants (Ex.P6 and P7), has stated that on 26.7.1998, when he reached Natthu Kirana Store, he found there a crowd. He came to know that the Appellants had committed rape with the prosecutrix. He has further stated that the Appellants were caught by the people there, but this fact is not mentioned in his case diary statement (Ex.D3).
12. Raju Singh (PW5) has stated that at about 5:00 p.m., he reached Natthu Kirana Store. At that time, the prosecutrix, weeping, was

telling Natthu that the Appellants had committed rape with her. He has further stated that he had seen the Appellants running away.

13. Assistant Sub-Inspector R.M. Yadav (PW6) is the Investigating Officer. He has supported the case of the prosecution
14. Sub-Inspector L.B. Singh (PW7) is the witness who registered the FIR (Ex.P1). Dr. I.K. Wadhwani (PW8) examined the Appellants. His reports are Ex.P12A and P11A in which he found the Appellants capable of performing sexual intercourse.
15. On a minute examination of the evidence on record, it is clear that the prosecutrix had not seen the Appellants nor did she know their names prior to the incident. As per her Court statement, she had come to know about the names of the Appellants from the nearby people of the neighbourhood. But, this fact is not mentioned in her FIR (Ex.P1) or in her case diary statement (Ex.D1). She did not know the names of the Appellants nor did she identify them prior to the date of incident, therefore, it was essential for the prosecution to conduct a test identification parade of the Appellants, but in this case there is nothing on record about conducting of any test identification parade of the Appellants. As per statement of the prosecutrix, she had sustained injury on her neck and at the time of incident she was caused to fall down on the floor and thereafter raped by the Appellants, but as per the medical examination report, no injury was found on her neck or back. The prosecutrix has not stated that from whom she came to know the names of the Appellants. As per the statement of her husband Patiram (PW3), when Satish came to him at that time Satish told him the names of the Appellants. But, Satish has not been examined by the

prosecution. As per the statement of Patiram (PW3) and Rajendra (PW4), local residents had caught the Appellants. But, this fact is not mentioned in their case diary statements (Ex.D2 and D3). Thus, it is clear that they have exaggerated their statements in the Court. Though Raju (PW5) has stated that when he reached Natthu Kirana Store, he saw that the prosecutrix, weeping, was telling about the incident to Natthu and he had also seen the Appellants running away from there. But, Natthu has also not been examined by the prosecution. The evidence adduced by the prosecution only reveals that some witnesses had seen the Appellants running away. Except this, there is nothing on record to connect the Appellants with the crime in question. From the evidence adduced by the prosecution, the offence alleged against the Appellants is not proved beyond reasonable doubt. The Appellants are, therefore, entitled to get benefit of doubt.

16. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them.
17. 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