

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3066 of 1999

- Singh Say Rajwade, son of Heeradhan, aged about 25 years, Caste Rajwar, Agriculturist, resident of Puhputtra, Police Station Lakhanpur, District Surguja (MP) (Now CG)

---- Appellant

Versus

- The State Of Madhya Pradesh (Now Chhattisgarh) through P.S. Lakhanpur, Distt. Surguja (MP)

---- Respondent

For Appellant	:	Shri Rishikant Mahobia, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, G.A.

Hon'ble Shri Pritinker Diwaker, J

Judgment On Board

27/06/2018

This appeal arises out of the judgment of conviction and order of sentence dated 27.10.1999 passed by the II Additional Sessions Judge, Ambikapur, Distt. Surguja in S.T.No.115/99 convicting the accused/appellant under Section 376(1) of IPC and sentencing him to undergo RI for 7 years and to pay a fine of Rs.200/- with default stipulation.

02. As per the prosecution case, on 12.2.1999 at 8.30 pm FIR (Ex.P/1) was lodged by the prosecutrix (PW-3) alleging in it that on the said day at about 12 noon she and her mother-in-law Lalibai (PW-2) had gone to the field and after taking both, her mother-in-law returned and she followed her. Soon thereafter, the accused/appellant reached

there, caught hold of her, threw her into a pit and after upturning her petticoat, committed forcible sexual intercourse with her. Upon hearing her cries, her mother-in-law came there, however, the appellant after committing the entire act fled from the spot. Her mother-in-law saw the appellant fleeing from the spot. Based on this report, offence under Section 376 of IPC was registered against the appellant. The prosecutrix was medically examined vide Ex.P/9 on 13.2.1999 by PW-8 Cr. Pratibha Rajul Sen who did not notice any external or internal injury on the person of the prosecutrix. According to the doctor, the prosecutrix was habitual to sexual intercourse and for definite opinion regarding rape, she advised for chemical examination of the vaginal slides. The appellant was also medically examined vide Ex.P/10 by PW-9 Dr. MH Parmar who found him capable of performing sexual intercourse. While framing charge, the trial Judge charged the appellant under Section 376 of IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

- that the prosecutrix (PW-3) in her Court statement has stated that the appellant was not known to her nor did she ever meet him, yet a named FIR has been lodged, which itself shows that the appellant has been falsely implicated.
- even there is no FSL report on record to connect the appellant with the crime in question.
- that prior to the arrest of the appellant, three persons were detained by the police in connection with this offence, meaning thereby the prosecution itself was not sure as to who committed the offence.
- when the prosecutrix was in the company of her mother-in-law, the question of commission of such an offence does not arise. Rather from the evidence it appears the prosecutrix might have been seen in objectionable condition with the appellant by her mother-in-law and therefore, a false report has been lodged against the appellant. As such, the prosecutrix, a major lady, being a consenting party to the alleged act of the appellant, his conviction under Section 376 of IPC is not tenable in the eye of law.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-3 the prosecutrix, a married lady of 18 years, has stated that on the date of incident she had gone to the field along with her mother-in-law and while she was returning after taking bath, following her mother-in-law, the appellant reached there, threw her into a pit and committed forcible sexual intercourse with her. Upon hearing her cries, her mother-in-law came to her rescue. She admits lodging of report Ex.P/1 at the police station. She states that her medical examination was done with her consent. She states that the appellant is the resident of Puhputra which is a part of her village, however, she never met him prior to the incident nor did she know him as she had been residing in the said village for only one year prior to the incident. She admits that near her field there is a coal mines and number of persons used to come there and even on the date of incident some persons were present there. She states that on the date of incident itself police reached the place of occurrence, went towards the coal mines and detained 2-3 persons in connection with this offence and also beaten them. She further admits that the appellant first enquired from her as to where she lives and in reply she told him that she resides at Chilmilpara. She further states that initially the appellant caught hold of her and when she raised cries, her mother-in-law reached there. In para-11 she states that she had raised cries twice, her mother-in-law was not much away from her and soon after hearing her cries, she came to her running. She states that it took about an hour to her in defending herself from the appellant. In para-13 she states that when the appellant caught hold of her hand, at that time only her mother-in-law reached there, however, she further denies the suggestion that on account of arrival of her mother-in-law the appellant could not do

anything.

09. PW-2 Smt. Lalibai, mother-in-law of the prosecutrix, has stated that after taking bath she left the field and the prosecutrix was following her. Upon hearing the cries of the prosecutrix, when she reached to her, the appellant was not there and she was informed by the prosecutrix that she was being subjected to bad work by the appellant.

10. PW-8 Dr. Pratibha Rajul Sen medically examined the prosecutrix vide Ex.P/8 and did not notice any external or internal injury on the person of the prosecutrix. According to the doctor, the prosecutrix was habitual to sexual intercourse and for definite opinion regarding rape, she advised for chemical examination of the vaginal slides. However, there is no FSL report on record. PW-9 Dr. MH Parmar medically examined the appellant vide Ex.P/10 and found him capable of performing sexual intercourse. PW-10 Bechu Singh is the investigating officer.

11. Close scrutiny of the evidence makes it clear that though the prosecutrix has alleged that she was subjected to forcible sexual intercourse by the appellant but the said statement of the prosecutrix creates doubt as to its veracity for the reasons that according to her, the appellant was not known to her, she had never met him before the incident, even then a named FIR has been lodged against the appellant and there is nothing on record to suggest as to on what basis the prosecutrix came to know about the identity of the appellant. Though the mother-in-law of the prosecutrix (PW-2 Smt. Lalibai) states that the appellant is known to her, but according to her when she

reached the spot, the appellant had already run away from there.

12. Further, according to the prosecutrix she was thrown into a pit and then subjected to rape by the appellant, however, medical evidence negates the said version of the prosecutrix. The doctor (PW-8 Dr. Pratibha Rajul Sen) who medically examined the prosecutrix did not notice any external or internal injury on the person of the prosecutrix and according to her, the prosecutrix was habitual to sexual intercourse. Though for definite opinion regarding rape, the doctor advised for chemical examination of the vaginal slides of the prosecutrix, however, there is no FSL report on record.

13. Furthermore, according to the prosecutrix herself she was following her mother-in-law, who was just a little away from her and as soon as she raised alarm, her mother-in-law reached to her rescue. However, she further states that it took about an hour to her in defending herself from the appellant and that during that process, she raised alarm twice and by the time, her mother-in-law reached there, the appellant had already committed rape with her and fled from there. This apart, she admits that near the place of occurrence there is a coal mines and some persons were also present there at the relevant time. All this if taken together creates doubt as to the veracity of statement of the prosecutrix and her evidence does not inspire confidence of the Court. The story put forth by the prosecutrix does not appeal to reason. At one place she states that when the appellant caught hold of her hand, she raised alarm and her mother-in-law reached there and on the other, she states that her mother-in-law reached after the appellant had committed rape with her. It has also come in the evidence of the

prosecutrix that the police had initially detained 2-3 persons in connection with the crime in question and as such, it suggests that the police was not sure about involvement of the appellant.

14. Thus, considering the overall evidence on record, oral and documentary, in particular of the prosecutrix and her medical report, the conduct of the prosecutrix during commission of the alleged offence and subsequent thereto, this Court finds it difficult to uphold the conviction of the appellant. The prosecution has not been able to prove involvement of the appellant beyond reasonable doubt in the crime in question. Even if any such act was committed, then the possibility of the prosecutrix being a consenting party to the said act cannot be ruled out. Being so, the appellant is entitled to receive the benefit of doubt.

15. Resultantly, the appeal succeeds and is allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under Section 376(1) of IPC by extending him benefit of doubt. The appellant is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/

(Pritinker Diwaker)

Judge