

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 154 of 2002

- Kartik Ram, son of Budhram Sahu, aged about 33 years, resident of village Chendriban Nawagaon, Tahsil Daundi Lohara, District Durg (CG)

---- Appellant

Versus

- State Of Chhattisgarh.

---- Respondent

For Appellant	:	Shri B.P. Gupta, Advocate
For Respondent	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

28/06/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 14.1.2002 passed by the Additional Sessions Judge, Balod in S.T. No.96/01 convicting the accused/appellant under Section 376 (1) of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for 7 years & fine of Rs.5,000/-, in default of payment of fine to further undergo RI for 1 year.
2. As per prosecution case, on 5.2.2001 FIR (Ex.P-5) was lodged by the prosecutrix, a married lady of about 25 years and having three children, alleging therein that the accused/appellant is village doctor, she and her family members used to take treatment from accused/appellant. As her daughter had sustained injury in her leg, therefore, on 4.2.2001 her husband had asked the accused to give her tetanus injection. On the same night, the accused had come to her house and took her husband

with him to listen ramayan. After about half-an hour, somebody knocked the doors of her house. She opened the door and found the accused standing outside. Accused told her that he has brought injection to be given to her daughter, whereupon she went inside to call her daughter. In the meantime, the accused came inside, pushed her towards the wall saying "you have forgotten my favour", upturned her saree and started committing sexual intercourse with her forcibly after opening zip of his pant. When she tried to raise alarm, he gagged her mouth from his hand. After some time when her husband returned home, she narrated the entire incident to him. Based on this report, offence under Section 376 of IPC was registered against the appellant. The prosecutrix was medically examined by Dr. (Smt.) P. Baghel (PW-1) on 5.2.2001 vide Ex.P-1. The accused/appellant was also medically examined vide Ex.P-3 by Dr. S.K. Meshram (PW-2).

3. After completion of investigation, charge sheet was filed against the accused/appellant for the offence punishable under Section 376 of the IPC and accordingly the charge was framed by the trial Court against him.
4. In order to convict the accused/appellant, the prosecution examined 12 witnesses in all. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication.
5. 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.
6. Learned counsel for the appellant submits that:
 - present appears to be a case of consent where the prosecutrix and the

accused/appellant were found together by her husband, and therefore a false report has been lodged against the accused/ appellant.

- there was no external injury of any kind whatsoever either on the body of the prosecutrix or that of the accused, which is suggestive of the fact that there was no struggle or resistance on the part of the prosecutrix and the sexual intercourse was not forcible.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
 8. We have heard learned counsel for the parties and perused the material available on record.
 9. Dr. (Smt.) P. Baghel (PW-1) has medically examined the prosecutrix vide Ex.P-1 and opined that the prosecutrix is habitual to sexual intercourse. She did not notice any external or internal injury on the person of the prosecutrix. She also did not notice any sign of struggle all over the body of the prosecutrix.
 10. Dr. S.K. Meshram (PW-2) has medically examined the accused/appellant vide Ex.P-3 and opined that he is capable of performing sex.
 11. The prosecutrix (PW-3) has stated in her statement that she knew the accused/appellant, he resides in her village for the last about 6-7 years. She has further stated that the accused is doctor by profession and she used to take treatment from her. As her younger daughter received injury in her leg, therefore, her husband had gone to the accused to give tetanus injection to her daughter. Her husband informed her that accused will come next day to give injection. On the date of incident, they were present at the place where recital of ramayan was going on, at about 9.30 p.m. the accused came to her house and seeing him, she came back to her house

leaving her husband at the place of ramayan and told him that her daughter is sleeping. Meanwhile, her husband also reached there and took the accused with him to listen ramayan. After about 10 minutes, the accused came alone and knocked the door. She opened the door thinking that her husband had returned, however, it was accused/appellant. The accused came inside saying that "you have forgotten my favour", upturned her saree and had raped her in a standing position after pushing her towards the wall. She has further stated that meanwhile her husband came and on seeing him, the accused/appellant fled from the spot. She has narrated the incident to her husband and next morning report was lodged. In the cross-examination she has admitted that due to fear she did not offer any resistance when she was subjected to forcible sexual intercourse by the accused. She has further admitted that prior to arrival of her husband, she and accused were in one room and accused was committing sexual intercourse with her.

12. Jitendra Kumar (PW-4), husband of prosecutrix, has stated that on the date of incident the accused had come to his house and took him to listen ramayan. After some time accused left that place saying that he is going house to eat food. Thereafter, he also came back to his house and found the door of his house closed, therefore, he tried to get the door opened by shouting name of his daughter and when his wife had opened the door, seeing the accused inside the house he became unconscious. On gaining consciousness, his wife narrated the entire incident to him. In the cross-examination this witness has admitted that his mother, elder brother & sister-in-law are also residing under the same roof.
13. Ashok Kumar (PW-5) is a hear-say witness to whom incident was disclosed by husband of the prosecutrix. Kamlesh Kumar (PW_5) is the police person who assisted in the investigation. Bholaram (PW-7) is the

witness of seizure memo Ex.P-6 & P-8 by which petticoat of prosecutrix and underwear of accused were seized. Tulsiram (PW-8) is the hear-say witness to whom and has not stated anything incriminating against the accused/appellant. Lakhanlal (PW-9) is the witness of seizure memo Ex.P-6 & map Ex.P-7. Mansingh (PW-10) did not support the prosecution case and turned hostile. Beni Singh (PW-11) is the police person who assisted in the investigation. Mohammed Farhan Qureshi (PW-12) is the investigating officer who has duly supported the prosecution case.

14. To ascertain veracity of the version of the prosecution, recapitulation of evidence particularly that of the prosecutrix appears to be the need of hour. It is the case of the prosecution itself that when the husband of the prosecutrix had gone to listen ramayan programme organized in the village, the accused/appellant came inside her house, upturned her saree and committed forcible sexual intercourse with her in a standing position after removing zip of his pant and while she was being subjected to sexual intercourse, she is said to have raised her cries but the accused gagged her mouth. It has come in evidence that the accused/appellant did not tie hands or legs of the prosecutrix, aged about 25 years, even then while being subjected to sexual intercourse she offered no resistance by biting or scratching accused/appellant, which indicates that alleged intercourse was a peaceful affair. It has also come in the evidence that apart from the prosecutrix, her mother-in-law, brother-in-law & sister-in-law were also residing under the same roof. In such a situation, it is very difficult to believe that rape could have been committed on her in the presence of so many family members. Furthermore, it is not the case of the prosecution that she was subjected to sexual intercourse by putting her or any person in whom she was interested in fear of death or hurt.

This apart, there is evidence on record that while the sexual

intercourse was going on between the accused and the prosecutrix in a room bolted from inside, her husband (PW-4) suddenly came over there, and saw the accused inside the room along with the prosecutrix. Thus the possibility of the prosecutrix making out a false case of rape against the accused/appellant on sudden approach of her husband (PW-4) cannot be ruled out. The prosecution has not collected any other material leading to an irresistible conclusion that the accused/appellant established sexual relation with the prosecutrix against her will and without her consent. Accordingly the benefit of doubt should go to the accused. Ordered thus.

15. In the result, the appeal is allowed. Judgment impugned is set aside and the accused/appellant is acquitted of the charge levelled against him by extending him benefit of doubt. The appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
J U D G E

roshan