

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 581 of 2001****Judgment reserved on : 20/07/2018****Judgment delivered on : 06/10/2018**

- Pannalal S/o Amarsay, aged about 25 years, Occupation- Labour, R/o Nawatola, Bansipur, P.S.- Sonhat, District- Korla, C.G.

----Appellant**Versus**

- State of Chhattisgarh through P.S. Sonhat, District- Korla, C.G.

---- Respondent

For Appellant	:	Shri Rishikant Mahobia, Advocate
For State/Respondent	:	Shri Lav Sharma, P.L.

Hon'ble Smt. Justice Rajani Dubey**CAV Judgment****06/10/2018**

1. This appeal has been preferred against the impugned judgment of conviction and order of sentence dated 07.06.2001 passed by the 1st Additional Sessions Judge, Baikunthpur, District- Korla, Chhattisgarh, in Sessions Trial No. 277/2000 convicting the appellant

under Sections 376 (1) and 450 IPC & sentencing him to undergo R.I. for seven years and R.I. for three years respectively.

2. The brief facts of the prosecution case are that on 10.07.2000 at 8:00 pm prosecutrix (PW-3) was sleeping in her house along with her younger child as she was not feeling well and her husband Mehilal (PW-4) had gone to appellant's house for dinner as there was some feast in the appellant's house. At about 8:00 pm, when prosecutrix was sleeping on cot (Khatia) in her house, accused/appellant entered the house, thrown her on the floor and committed sexual intercourse against her will. On hearing her cries, when her husband Mehilal (PW-4) and her brother-in-law Shankar Lal (PW-6) reached there, her husband PW/4 found accused/appellant and his wife in objectionable position, thereafter, accused/appellant immediately fled away from the spot. Prosecutrix narrated the incident to her husband and her brother-in-law. Next day on 11.07.2000, prosecutrix and her husband went to Police Station- Sonhat, District- Koriya and lodged FIR Ex.-P/5 against accused/appellant.
3. It is alleged by the prosecutrix that while she was being subjected to forcible sexual intercourse by the

appellant, her bangles were broken into pieces. Prosecutrix has taken the stand that on account of night, the report could not be lodged on the same day and on next day prosecutrix along with her husband went to nearby police station and lodged the report, based on which, offence under Sections 376 and 450 IPC were registered against accused/appellant. Thereafter, prosecutrix was medically examined by Dr. Kalawati Patel (PW-2) who gave her report Ex.P/3 noticing abrasion of 3" x 3" over back side of left scapular region and old hymen was ruptured. The Doctor has further opined that no internal injury was detected, her vagina permitting two fingers easily, she was habitual for sexual intercourse and found no evidence regarding forceful sexual intercourse. After filing of the charge-sheet, the trial Judge framed the charges under Sections 450 and 376(1) IPC against the accused/appellant.

4. So as to hold the accused/appellant guilty, the prosecution has examined as many as 09 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 in the prosecution case and pleaded innocence and false

implication. In his defence, one witness has also been examined to substantiate its case.

5. The trial Court after hearing counsel for the respective parties and considering the material available on records, by the impugned judgment, convicted and sentenced the appellant as mentioned in para-1 of this judgment. Hence, this appeal.
6. Learned counsel for the appellants submits that impugned judgment is contrary to the facts and circumstances of the case. The prosecution has failed to prove the guilt of the appellant beyond all reasonable doubt. It has been further submitted that Prosecutrix (PW-3) and her husband Mehilal (PW-4) are not reliable witnesses and there are material discrepancies in their statements. He has also submitted that medical report of the prosecutrix also does not support the prosecution case.
7. On the other hand, learned counsel for the State/respondent supporting impugned judgment submits that the finding recorded by the Court below convicting the accused/appellant under Sections 376 and 450 IPC is strictly in accordance with law and there is no infirmity in the same.
8. I have heard the parties and perused the evidence on

record.

9. Prosecutrix (PW-3) has stated that on the date of incident at 8:00 pm, when she was sleeping with her child on a cot, the accused/appellant entered her room, thrown her on the floor, caught hold of her hand as a result of which her bangles broken into pieces and the accused/appellant committed forcible sexual intercourse with her. She has further stated that upon hearing her cries, her husband and brother-in-law reached there and on seeing them the accused/appellant fled away from the spot. She has also stated that she narrated the entire incident to them and on the next day she went to nearby police station along with her husband and lodged the report Ex.P/5.
10. Mehilal (PW-4), husband of the prosecutrix, has stated that the appellant is his cousin (चचेरा भाई). On the date of incident at about 8:00 PM, he had gone to Amarsay's house (appellant's father) to attend feast. His wife (prosecutrix) and daughter were in the house as the prosecutrix was suffering from malaria. He has further stated that when he was returning to his house, he heard the cries of his wife. Thereafter, he immediately ran towards his house and when he reached his house, saw the appellant committing sexual intercourse with

his wife. This witness, in para 3 of cross-examination, has stated that there was no old land dispute between him and the appellant, they used to go to the house of each other and after the incident they are not in talking terms.

11. Shankar Lal (PW-6) has stated in his evidence that when he heard the cries of prosecutrix, he went to her (prosecutrix) house and on being asked, she narrated the entire incident to him.
12. In the instant case, according to FIR Ex. P/5 lodged by the prosecutrix (PW/3), when Mehilal (PW/4) and Shankar Lal (PW/6) reached the place of occurrence, they saw the accused/appellant and the prosecutrix in objectionable condition and on seeing them the accused/appellant fled away from the spot, whereas Shankar Lal (PW-6) has stated in para 3 of his cross-examination that when he reached the place of occurrence, prosecutrix was sitting all alone on the floor and after about 10-15 minutes Mehilal (PW/4), husband of the prosecutrix, came there. The statement of Mehilal (PW-4) reveals that he had seen the accused/appellant committing sexual intercourse with his wife (prosecutrix). On careful scrutiny of the evidence, there appears to be contradiction in the statements of

Prosecutrix (PW/3), her husband (PW/4) and brother-in-law (PW/6). Their statements are contrary to each other and do not inspire much confidence of this Court to bring home guilt of the accused. That apart, medical report of the prosecutrix (Ex.P/3) also established the fact that she was habitual for sexual intercourse, no internal injury was detected and found no evidence of forcible sexual intercourse. It has also come in the evidence that while she was being subjected to sexual intercourse, the accused/appellant caught hold of her hand and her bangles were broken into pieces. In this situation, the prosecutrix might have sustained injury or scratch mark on her hand but Doctor examining the prosecutrix did not notice such injury on her hand. True it is that one abrasion of 3" x 3" on back side of left scapular region was noticed but the Doctor has opined that the said injury was caused by hard and blunt object. Taking into consideration all the aforesaid facts and circumstances of the case, the possibility of appellant being falsely implicated in the crime in question cannot be ruled out.

13. The findings recorded by the Court below thus appear to be beyond proper appreciation of the evidence adduced by the prosecution which cannot have

affirmation from this Court. Since, the prosecution has failed on all fronts to prove its case beyond the shadow of reasonable doubt, the benefit, of course, has to go to the accused/appellant.

14. The appeal is thus allowed, judgment impugned is hereby set aside and the accused/appellant stand acquitted of the charges levelled against him. The accused/appellant is reported to be on bail, his bail bonds shall stand discharged.

15. Appeal is thus allowed.

Sd/-

(Rajani Dubey)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 581 of 2001

- Pannalal

----Appellant

Versus

- State of Chhattisgarh

----Respondent

Post for pronouncement of judgment on 06/10/2018

Sd/-

JUDGE

06/10/2018