

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 581 of 2008

- Satan Ram S/o Larangu @ Vishvanath Ghasi, R/o Village-Sukhri (Linepara), P.S. Chando, Distt.-Surguja, C.G.

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Chando, District Surguja (CG)

---- Respondent

For Appellant	:	Mr. Vimlesh Bajpai, Advocate
For Respondent	:	Ms. M. Asha, Panel Lawyer.

Judgement on Board by Hon'ble Shri Justice P. Diwaker

08/09/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 31.3.2008 passed by the 2nd Additional Sessions Judge (FTC), Ramanujganj in S.T. No.50/07 convicting the accused/appellant under Sections 376 (1) & 325 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for 7 years & fine of Rs.500/- and RI for 6 months & fine of Rs.200/-, plus default stipulations, respectively.
2. Case of the prosecution in brief is that on 23.12.2005 FIR (Ex.P-9) was lodged by the prosecutrix (PW-1), aged about 45 years, alleging in it that on 12.12.2005 when she along with her son Lakhan and other villagers was returning home after seeing Fair at Chando Market, the accused/appellant, who was already hiding there behind the bushes, stopped her while hurling abuses and started assaulting her by club as a result of which she sustained injuries on her head and back. Thereafter, he forcibly

took her to the house of his daughter situated at Ram Nagar and there he committed sexual intercourse with her in the night. Next day he dragged her towards Chandarpur forest and during night again committed sexual intercourse with her in the house of his sister. It is further alleged that the accused/appellant thereafter took her to various places and committed forcible sexual intercourse with her. Based on the aforesaid allegations, offence under Sections 341, 294, 323 & 376 of IPC was registered against the accused/appellant. The prosecutrix was sent for medical examination which was done by Dr .K.K. Saharey (PW-11) who noticed following injuries;-

- Healed scar of 3x2cm size on the scalp of head.
 - Healed scar of 2x1cm on the scalp of head.
 - swelling and blackening of left wrist joint with tenderness along with fracture of wrist bone.
 - Blackening and swelling with tenderness over left ankle joint.
3. The doctor has opined that all the injuries were caused by hard and blunt object. The prosecutrix was also medically examined by Dr. Prabha Barman vide Ex.P-12 and she did not notice any fresh injury on the private part of the prosecutrix, her hymen was old ruptured and vaginal orifice was admitting two fingers easily. She did not notice any sign of recent intercourse. She has opined that the prosecutrix was habitual to sexual intercourse. Accused was also medically examined by Dr. R.S. Markam (PW-5) who gave his report of Ex.P-4 opining him to be fully capable of having sexual intercourse.
4. After completion of investigation, challan was filed against the accused/appellant and accordingly the charges were framed against him

by the trial Court. The prosecution in order to bring home the charges levelled against accused/appellants examined 11 witnesses in all. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured the guilt and pleaded innocence & false implication.

5. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, convicted & sentenced the accused/appellant as described above.
6. Counsel for the appellant submits that the prosecutrix had accompanied the appellant to various places and stayed with her for a considerable period of 11 days without offering any resistance. The prosecutrix had ample opportunities to escape from the clutches of appellant or seek help from the people she was coming across while moving from one place to another. No explanation is given as to why the prosecutrix did not try to seek help of anyone or to escape from the custody of accused. The doctor examining the prosecutrix also did not notice any mark of struggle or injury on her body. The doctor also did not notice any sign of recent sexual intercourse. All these facts go to show that the prosecutrix was a consenting party right from the very beginning. He further submits that the essential ingredients for proving the offence under Section 325 of IPC is voluntarily causing hurt to any person and secondly such hurt is grievous in nature. The doctor examining the prosecutrix has not opined that the injuries noticed on the person of prosecutrix were grievous in nature. Thus, the essential ingredient for proving the charge under Section 325 of IPC is not established against the appellant. In these circumstances, he prayed for acquittal of the appellant of all the charges.

7. On the other hand, counsel for the State supports the impugned judgment and submits that the impugned judgment is in accordance with law and there is no infirmity in the same.
8. I have heard learned counsel for the parties and perused the material available on record.
9. The prosecutrix (PW-1), aged about 45 years, has stated that on the date of incident at about 4 in the evening when she along with other villagers was returning home after seeing Fair, the accused/appellant, who was hiding himself in the bushes, came out and started assaulting her by club. He forcibly took her to the house of his daughter situated at Ram Nagar and thereafter he assaulted her badly. On that night he committed forcible sexual intercourse with her. Next morning he took her to his sister's house situated at Chandrapur and stayed there in the night. On that night also, he again committed sexual intercourse with her. She has further deposed that thereafter accused/appellant brought her Jhapra Bududih and stayed in the forest in night. She has further deposed that when the accused was cooking food, she managed to flee towards jungle and took shelter in the house of one Ahir. She has deposed that thereafter she stayed in the house of one Khairwar for three days and from there she came to the house of her brother who dropped her to her house. She disclosed the incident to his sister-in-law and brother and thereafter the incident was reported to the police. The cross-examination of the prosecutrix reflects that she had ample opportunities to make the complaint to public persons and resist her abduction and rape, but no such attempt has been made by her.
10. Fulkunwar (PW-2) & Sumitri (PW-3) have not supported the prosecution

case and turned hostile. Nakul Singh Thakur (PW-4) is the Patwari who prepared the spot vide Ex.P-2. Dr. R.S. Markam (PW-5) is the doctor who medically examined the accused/appellant and found him capable of performing sex. Iliyaas Ekka (PW-6), Rattu Singh (PW-7), Herman Kindo (PW-8) & Marshal Tirkey (PW-9) are the police personnel who assisted in the investigation. R. Paikra (PW-10) is the investigating officer who has duly supported the prosecution case. Dr. K.K. Sahare (PW-11) is the doctor who examined the injuries of prosecutrix vide Ex.P-13.

11. Close scrutiny of the evidence on record, in particular evidence of the prosecutrix, makes it clear that the entire story put forth by the prosecutrix regarding commission of rape on her by accused/appellant appears to be quite unnatural and the same does not inspire confidence of this Court. No independent witness including the doctor, who had medically examined her, has corroborated her version regarding rape on her. According to the prosecutrix, the accused/appellant took her to various places and committed sexual forcible intercourse with her. Thus, there was ample opportunity for the prosecutrix to seek help or to make an attempt to be away from the accused/appellant, but she did not make any such attempt. Evidence of prosecutrix also shows that accused/appellant was not having any sort of weapon to scare her and in this situation, if accused had forcibly attempted to commit rape, then, she would have resisted or struggled. Had she struggled or resisted, there would have been some scratches on the face, hands and arms of the appellant as well as on her body, but no such injury on the person of accused and prosecutrix was noticed by the doctors examining them. This apart, according to the prosecutrix, after making herself free from the clutches of accused/appellant, she took shelter in the house of one Ahir & Khairawar,

but for the reasons best known to the prosecution, the aforesaid persons have not been examined to substantiate the version of the prosecutrix. In these circumstances, this Court is of the considered opinion that the prosecution has failed to prove the charge under Section 376 of IPC against the accused/appellant by leading clinching & cogent evidence and being so, the benefit of doubt has to go to the accused/appellant.

12. As regards the conviction under Section 325 of IPC, looking to the injuries of the prosecutrix (PW-2), as appearing in the report Ex.P-13, that she sustained fracture of wrist bones, and considering the evidence of Sumitri (PW-3), who has supported the version of prosecutrix (PW-2) regarding club assaults caused by him on her her head & hand, it appears that there is sufficient evidence against the appellant that he had caused injuries to the prosecutrix (PW-2). Hence, this Court is of the opinion that the trial Court has rightly convicted & sentenced the appellant for commission of offence punishable under Section 325 of IPC.

13. In the result, the appeal is partly allowed. Conviction and sentence of accused/appellant under Section 376 of IPC are hereby set aside and he is acquitted of that charge by extending him benefit of doubt. However, his conviction and sentence under Section 325 of IPC are hereby maintained. Since the appellant has already served out the sentence of six months awarded to him by the trial Court, no direction regarding his surrender etc. is needed.

Sd/-

(Pritinker Diwaker)
Judge

roshan