

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1190 of 2001

Reserved on : 11/07/2018

Delivered on : 17/07/2018

- Mohit Ram S/o Shri Ramkumar, aged about 20 years, R/o Kuthrail, P.S. Ranchirai, District Durg (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station Ranchirai, District Durg (C.G.)

---- Respondent

For Appellant	: Shri Parag Kotecha, Advocate
For Respondent/State	: Shri Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

C.A.V. Judgment

1. This appeal arises out of the judgment of conviction and order of sentences dated 04.12.2001 passed by learned Sessions Judge, Durg (C.G.) in Sessions Trial No. 101/2001, the appellant stands convicted and sentenced as under:-

<u>Conviction:</u>		<u>Sentences:</u>
Under Section 376 of the Indian Penal Code (hereinafter referred to as the 'IPC')		Rigorous imprisonment for seven years and pay a fine of Rs. 500/- and in default of payment to further undergo simple imprisonment for three months
Under Section 450 of IPC		rigorous imprisonment for five years and pay a fine of Rs. 500/- and in default of payment to further undergo simple imprisonment for three months.
Both the sentences to run concurrently		

2. Brief facts of the case are that the prosecutrix (PW-2) is aged about 26 years. On 21.1.2001, First Information Report (Ex.-P/2) was lodged by the prosecutrix (PW-2) alleging in it that accused/appellant committed rape upon her. As per FIR (Ex.-P/2), on the date of incident i.e. on 21.1.2001 at about 9:30 AM, her husband had gone to answer the call of nature, her mother-in-law was going to pond for washing clothes, her father-in-law had also gone to village and her small children were watching TV in another room and the prosecutrix was cleaning her room. At that time, the accused/appellant entered into her house saying that a letter has come from village Khamariya and the same was given to her. As soon as she read the letter, the accused forcibly caught her. When she cried, the accused gagged her mouth and threw on the ground of the room and committed forcible sexual intercourse with her. When she was resisting the accused, her husband came there and saw the accused was committing rape with her wife. Her husband tried to catch the accused, but he (accused) anyhow fled away from there. At the time of catching the accused, her bangles were broken and her head and wrist were injured. Thereafter, she promptly lodged the FIR (Ex.-P/2) against the accused/appellant.

3. The investigating Officer- Mahalaxmi Kuldeep (PW-6) left for the scene occurrence on 21.1.2001 and prepared *muaka-naksha* (Ex.-P/7). Spot map (Ex.-P/20) was prepared by Patwari – Kriparam Sahu (PW-7). The prosecutrix was sent for her medical examination to Community Health Center, Gunderdehi. She was examined by Dr.(Smt.) Bhanu Deshlahra (PW-8). Doctor found that on external injury, there was bleeding and pain present on the left frontal region, size 1 cm x 1.5 cm; abrasion present of the left forearm. There is no internal injury was present. Hymen was ruptured (old) and sign of habitual intercourse. Vaginal slide and smear of the prosecutrix were prepared and handed over to the concerned police officer and advised for their chemical examination to Forensic Science Laboratory. Her report dated 22.1.2001 marked as Ex.-P/21. On the same day, Doctor also

examined the *peticoat* (Ex.-P/22) of the prosecutrix. She found that white stains and bleeding were present on the many spaces of anterior and post portion of the *peticoat* and advised for chemical examination.

4. After investigation, the charge-sheet was filed against the accused/appellant under Sections 376, 450 and 506-B IPC and while framing the charges, the trial Judge framed the charge against the accused/appellant under Sections 376, 450 and 506-B IPC.

5. The prosecution, in all, has examined as many as 11 witnesses. There was no witness examined on behalf of the defence. Statement of the accused was also recorded under Section 313 of the Criminal Code of Procedure, in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

6. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned above and has acquitted the accused from charge under Section 506-B of IPC mentioned in paragraph 29 of the judgment, hence this appeal.

7. Learned counsel for the appellant submitted that there is material contradiction in the evidence of the prosecutrix (PW-2) and her husband, Kalyan Singh (PW-3). He also submitted that Lekhram (PW-4) is a relative witness who is uncle of Kalyan Singh (PW-3). His testimony cannot be relied upon. There is no independent witness in this case. He further submitted that the Doctor (PW-8) has stated, in her cross-examination that no pubic hair or injury was present on the private part of the prosecutrix (PW-2). Therefore, the appellant is an innocent person and he has not committed rape against the prosecutrix and has been falsely implicated in this case.

8. On the other hand, counsel for the respondent/State supports the judgment impugned. It has been argued by the State Counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

9. We have heard the counsel for the respective parties and perused the evidence on record.

10. Prosecutrix (PW-2) knew the accused/appellant. She deposed that at about 9:30 AM, when she was cleaning her house, accused/appellant entered into her house and informed that one letter has come from Khamariya village and suddenly when she was near the door of room, accused forcibly taken to her in the room and fall down on floor and forcibly committed sexual intercourse with her, and when she cries, the accused gaged her mouth. Prosecutrix further deposed that she tried to free from accused, on this, her head and wrist were injured and her bangles were broken. She also deposed that at that time her husband was returned and saw that the accused was committing sexual intercourse against prosecutrix (PW-2). Her husband caught the accused, but accused anyhow fled away from that place. The incident was informed to the one Lekhram and many persons were assembled there. Thereafter, she went along with her husband to lodge the FIR (Ex.-P/2).

11. PW-3, Kalyan Singh, is husband of the prosecutrix (PW-2). He also supported the prosecutrix version and deposed, in his deposition, that after the incident, accused requested for forgiveness. He deposed that on cries of his wife, he went to the room, switch on the light of room and saw the accused was committing sexual intercourse with his (PW-3) wife and caught the accused. From where, he (accused) anyhow fled away from the room. This was informed to villager Lekhu, puranik, shyamlal and thereafter he alongwith his wife went to the police station and lodged the FIR.

12. PW-4, Lekhram, also supported the statement of prosecutrix. He also deposed, in his deposition, that he was informed by the husband of the prosecutrix regarding rape committed by the accused against the prosecutrix and going to lodge FIR.

13. PW-1, Girwar, proved the seizure of *chhaddi* of accused (Ex.-P/1). PW-5, Ganesh Ram Sahu, proved the seizure of broken bangle (Ex-P/8), wearing bangle (Ex.-P/4) and letter/post-card (Ex.-P/6). PW-6, Mahalaxmi Kuldeep, who investigated the case, proved this fact from the place of incident, he seized the broken bangles. PW-7, Kriparam Sahu – Patwari, prepared the spot map Ex.-P/20 and there is no contradiction regarding place of occurrence. PW-9, Shyamlal, is a seizure witness of *peticoat* of prosecutrix (Ex.-P/3). PW-11, Rambagas Sidar – Head Constable is a formal witness of seizure.

14. PW-8, Dr.(Smt.) Bhanu Deshlahra, found, in her report Ex.-P/21, external injury on the person of the prosecutrix. There was bleeding and pain present on the left frontal region and abrasion was present on the left forearm of the prosecutrix and hymen was ruptured (old) and sign of habitual intercourse. She also examined the *peticoat* of the prosecutrix and found that white stains and bleeding were present on the many spaces of anterior and post portion of the *peticoat* and advised for chemical examination.

15. PW-10, Dr. A.P.S. Dubey, who examined the accused/appellant and he opined that sex organ of the accused are well development and erects on stimulation and he can do intercourse. His report also marked as Ex.-P/22.

16. In view of the above discussion, I am of the considered opinion that it is clear that on the date of incident, the accused entered into the house of prosecutrix saying that one letter has come from Khamariya and that time accused forcefully committed sexual intercourse with the prosecutrix. There is no contradiction and

omission in the statement of prosecutrix and other witnesses. There is no reason to disbelieve and discard the statements of the prosecutrix (PW-2), Kalyan Singh (PW-3) and Lekhram (PW-4). PW-1, PW-5, PW-9 and PW-11 are the seizure witnesses and they proved the above seized articles (Ex.-P/1, P/3, P/4, P/6 and P/8) respectively and supported the prosecution case. Dr.(Smt.) Bhanu Deshlahra (PW-8), in her report Ex.-P/21, found above external injury on the person of the prosecutrix and also examined the *peticoat* of the prosecutrix in which stains and bleeding were present. Dr. A.P.S. Dubey (PW-10) who examined the accused/appellant and he opined that he was capable to sexual intercourse. Both the Doctors (PW-8 and PW-10) have also supported the prosecution case. I have gone through the entire evidence and material available on record and come to the conclusion that the learned trial Court has rightly convicted the appellant/accused under Sections 376 and 450 IPC.

17. We do not find any reason to interfere with the judgment of conviction and order of sentence passed by the trial Court. The appeal has no merits. The same deserves to be and is accordingly dismissed.

18. It is stated that the accused/appellant is on bail since 21.2.2002. His bail bond is cancelled and he is directed to surrender and to be taken into custody forthwith to serve the remaining part of the sentences awarded to him.

19. Records of the trial Court be sent back.

Sd/-

(Gautam Chourdiya)
Judge