

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRIMINAL APPEAL No.16/2011**

Rohit Yadav, S/o. Deoman Yadav, aged about 29 years, occupation
S.E.C.L. Employee, R/o. Village Lalmatiya, Katghora, Distt. Korba (CG).

Versus

State of Chhattisgarh through District Magistrate Korba, Distt. Korba
(CG).

For appellant	:	None.
For State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Mr. Justice Sharad Kumar Gupta, Judge

ORAL JUDGMENT**20-1-2018**

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 11-11-2010 passed by the Addl. Sessions Judge, Katghora, Distt. Korba whereby and whereunder he convicted and sentenced the appellant as under:-

Under Section	Sentence	Fine	Default clause in payment of fine
450, IPC	5 years RI	Rs. 500/-	Additional 3 months SI
323, IPC	3 months RI	Rs. 200/-	Additional 2 months SI
376, IPC	7 years RI	Rs. 500/-	Additional 3 months SI

All the substantive jail sentences are directed to run concurrently.

2. This is admitted by the appellant that the prosecutrix and he lived in a rented house of Jivanlal Tiwari. Ramlal was also residing there on rent. P.W. 5 Jivanlal Tiwari knows him as well as the prosecutrix.

3. In brief, prosecution story is that at the time of incident, prosecutrix was residing in village Lalmatiya and was 27 years old. On 20-5-2009 in the morning, husband of the prosecutrix had

gone to his duty. Prosecutrix along with her 20 days' old child was present inside the room. At about 13.15 pm, the appellant entered in the house of the prosecutrix, gave her threat, beat her and committed forcible sexual intercourse with her. After return of the husband of the prosecutrix, she narrated him about the incident. On the very day at about 19.35 pm, prosecutrix lodged the FIR vide Ex. P-5 at Police Station Korba. After completion of investigation, a charge sheet was filed against the appellant under Sections 450, 323, 376 and 506 of the Indian Penal Code (in brevity 'IPC'). The trial Court framed charges against the appellant under Sections 450, 323, 376 and 506-II of the IPC. The appellant abjured the charges levelled against him and faced trial. To bring home the charges, the prosecution examined as many as 11 witnesses. The appellant had also examined two witnesses in his defence. After completion of trial, the trial Court acquitted the appellant from the charge punishable under Section 506-II, IPC however convicted and sentenced him as mentioned above. Being aggrieved by the aforesaid conviction and sentence, the appellant has preferred this appeal.

4. As per letter received from the Superintendent, Central Jail, Bilaspur, the appellant has already been released from jail after completion of sentences.

5. As per alleged MLC report Ex. P-11, P.W. 8 Dr. Smt. R. Dahire had examined the prosecutrix and found swelling, 3 contusions and one lacerated wound caused by hard and blunt object. There is no such evidence on the strength of which it could be said that Ex. P-11 is not believable. Thus this Court

believes on Ex. P-11.

6. As per MLC report Ex. P-13 Dr. H.D. Dahire had examined the appellant and opined that he is capable to perform sexual intercourse. There is no such evidence on record on the strength of which it could be said that Ex. P-13 is not believable. Thus this Court believes on Ex. P-13.

7. P.W. 4 prosecutrix in para 2 and 3 of her statement given on oath states that the appellant entered in her house, beat her and committed sexual intercourse with her forcibly.

8. P.W. 7 Balmukund Mishra who is husband of the prosecutrix in para 2 of his statement on oath says that when he returned back to his house after duty, the prosecutrix told that the appellant came in the house, beat her and committed rape with her.

9. P.W. 5 Jivanlal Tiwari in para 4 of his statement on oath states that appellant had told that gabble has happened.

10. In the alleged FIR Ex. P-5 it has been mentioned that the appellant had entered into the house of the prosecutrix, beat her and committed sexual intercourse forcibly.

11. There is no such evidence on record on the strength of which it could be said that Ex. P-5 is not natural in the aforesaid reference.

12. There is no such evidence on record on the strength of which it could be said that aforesaid statements of P.W. 4 prosecutrix, P.W. 7 Balmukund, P.W. 5 Jivanlal Tiwari are not natural, not normal.

13. Looking to the above mentioned facts and circumstances of the case, this Court believes on the said statements of P.W. 4 prosecutrix, P.W. 7 Balmukund and P.W. 5 Jivanlal Tiwari and disbelieves the statements of D.W. 1 Suresh and D.W. 2 Rohit Yadav in this reference that allegedly at the time of incident, the appellant was present at village Govinda, allegedly the husband of the prosecutrix has falsely implicated the appellant because he was not ready to return back the loan amount of Rs. 3,000/- to the appellant.

14. Looking to the above-mentioned facts and circumstances of the case, this Court finds that the prosecution has succeeded to prove the charges under Sections 450, 323 and 376 of the IPC against the appellant. It could not be said that the sentences awarded are excessive. After appreciation of the evidence, this Court finds that the instant criminal appeal being sans substance deserves to be and is hereby dismissed. The judgment of conviction and order of sentence passed by the trial Court are affirmed.

15. Since the appellant has already been released from jail after completion of his sentences, no further order is required.

16. The appeal dismissed.

Sd/-
(Sharad Kumar Gupta)
Judge