

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1143 of 2007**

(Arising out of judgment dated 30.08.2007 in ST No. 72/2007 of the learned 4th Additional Session Judge, Durg)

- Nemdas Manikpuri, S/o Bhagwati Das Manikpur, aged about 36 years, R/o Village Surpa P.S. Ranitarai, Distt. Durg (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh, through SHO, Police Station Ranitarai, Distt. Durg (CG)

-----Respondent

 For Appellant : None
 For Respondent/State : Shri Vijay Bahadur Singh, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Judgment on Board

15/09/2018

1. In this Criminal Appeal, the challenge is levied to the judgment of conviction and order of sentence dated 30.08.2007 passed by the 4th Additional Sessions Judge, Durg, Chhattisgarh in Sessions Trial No. 72 of 2007 whereby and whereunder the appellant has been convicted and sentenced as under :-

Section	Sentence
Under Section 450 of IPC	RI for seven years fine of Rs.2,000/-, in default of payment of fine RI for six months,
Under Section 376 of IPC	RI for ten years fine of Rs.20,000/-, in default of payment of fine RI for one year,
Under Section 506(B) of IPC	RI for one year, no fine and no default

All the jail sentences are directed to run concurrently.

2. In brief, the prosecution story is that on 09/02/2007 prosecutrix was aged about 21 years. She was alone in the house at Village Murya. At about 12 p.m. appellant forcibly entered in the house of the prosecutrix tied her leg by rope, gagged cloth in her mouth committed forcibly sexual intercourse with her, he had also given threatening to kill life. The father of the prosecutrix was not present in the village when he returned back then on 12/02/2007 prosecutrix lodged report in Police Station Ranitarai. After completion of the investigation a charge-sheet was filed against the appellant. Trial Court framed charge against the appellant under Sections 450, 376 and 506(Part-II) of IPC. After completion of the investigation trial Court convicted and sentenced appellant as aforesaid.

3. Being aggrieved, the appellant preferred this Criminal Appeal.

4. Appellant's case in brief is that trial Court has not appreciated the evidence in proper perspective. The judgment of conviction and order of sentence of the appellant are bad in eyes of law. Thus, the appellant may be acquitted from the aforesaid charges.

5. On the other hand Shri Vijay Bahadur Singh, the learned Panel Lawyer for the State supported the conviction and sentence of the appellant saying that these are based on clinching evidence adduced by the prosecution. Thus, no interference is called for by this Court.

6. As per the MLC report Ex.P/11-A, PW-9 Dr (Smt.) Shail Khare had examined the prosecutrix she had found that the hymen of the prosecutrix was torn at 1 and 6 O'clock position, vagina was admitting one finger. She opined that duration of injury was between 48 to 72 hours.

7. PW-9 Dr. (Smt.) Shail Khare says in para 7 that prosecutrix was not habitual for sexual intercourse.

8. There is no such evidence on record on strength of it can be said that Ex.P/11-A, aforesaid statement of PW-9 Dr. (Smt.) Shail Khare are not believable, thus this Court believes on Ex.P/11-A aforesaid statement of PW-9 Dr.(Smt.) Shail Khare.

9. As per the MLC report Ex.P/13-A, PW-10 Dr. Hitendra Raut had examined the appellant. He opined that appellant was able to perform sexual intercourse, sign, suggests of involving in intercourse.

10. There is no such evidence on record on the strength of which it can be said that Ex.P/13-A is not believable, thus this Court believes on Ex.P/13-A.

11. PW-1 prosecutrix says in para 1 of her given statement on oath that appellant had entered in her house forcibly. He had tied her leg and gagged cloth in her mouth he had committed forcibly intercourse with her and gave threatening to kill her.

12. PW-5 Devbati Yadav, who is mother of the prosecutrix says in para 1 of her statement given on oath that when she returned back in her house after picking cow-dung then saw that appellant was fleeing away from her house her daughter told that appellant had committed sexual intercourse and gave threatening to kill her.

13. In FIR Ex.P/2 the alleged incident has been described with the role of the appellant.

14. In Ex.P/2 reason for delay has been mentioned that father of the prosecutrix was not present. There is no such evidence on record on the strength of which it can be said that the aforesaid reason is not natural not simple.

15. There is no such evidence on record on the strength of which it can be said that aforesaid statement of PW-1 prosecutrix, PW-5 Devbati Yadav are not natural, not simple not normal.

16. Looking to the above mentioned facts and circumstances of the case, this Court finds that the trial Court has not committed any illegality in convicting and sentencing the appellant as aforesaid. Thus the impugned judgment of the conviction and order of sentence are hereby affirmed, as a result, appeal is dismissed being devoid of merits.

17. As per the letter dated 09/03/2016 written by Jail Superintendent, Central Jail, Durg appellant has been already deposited the entire fine amount and released on 13/09/2014 after completing the awarded jail sentences extending him to benefit of remission. Thus, there is no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge