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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.640 of 1999

Sadhuram, aged about 49 years, son of Shri Bhaiyaram Gond, R/o Village Itar, Police Station Gatapar, District Rajnandgaon

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellant	:	Shri Rakesh Pandey, Advocate
For Respondent	:	Shri Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

20.6.2018

1. This appeal is directed against the judgment dated 12.2.1999 passed by the Additional Sessions Judge, Khairagarh, District Rajnandgaon in Sessions Trial No.110 of 1998 convicting and sentence the Appellant as under:

Conviction	Sentence
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.1,000/- with default stipulation
Under Section 506B of the Indian Penal Code	Rigorous Imprisonment for 7 years

2. Prosecution case, in brief, is that the Appellant is *sadhu* (brother-in-law) of the father of the prosecutrix (PW1). The prosecutrix, who, on the fateful day, was aged about 19 years, was residing in the house of the Appellant. Residing there, she had been continuing her studies since Class 5 onwards. On the relevant date, she was studying in Class X. On 16.7.1998, she lodged First Information

Report (Ex.P1) alleging that 8 months prior to the lodging of the FIR, in the night hours, the Appellant committed forcible sexual intercourse with her. He also threatened her that on being disclosed the incident to anyone he will kill her. Therefore, she did not disclose the incident to anyone. 1 month thereafter, when she came to know that she was pregnant, the Appellant again threatened her that he will kill her and her parents if she discloses about the incident to anyone. Therefore, she did not tell about the incident to anyone. She told about the incident to her parents and other persons, namely, Paltan and Brijmohan 1 week before the lodging of the FIR and thereafter she lodged the FIR. She was medically examined by Dr. Leela Ramteke (PW4). Her report is Ex.P3 in which she found that the prosecutrix was carrying pregnancy of about 7½ – 8 months. The Appellant was medically examined by Dr. D.R. Jindani (PW6). His report is Ex.P4 in which he found that the Appellant was capable to perform sexual intercourse. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 376 and 506 of the Indian Penal Code. Charges were framed against him under Sections 376 and 506B of the Indian Penal Code.

3. To bring home the offence, the prosecution examined as many as 7 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. No witness was examined in his defence.

4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that the prosecution has failed to establish its case beyond reasonable doubt. Even if it is proved that the prosecutrix was residing in the house of the Appellant, it cannot be presumed that it was the Appellant only who committed sexual intercourse with the prosecutrix. There is no explanation given by the prosecutrix as to why did she not report the matter for the last 8-10 months. From the statement of the prosecutrix, it is clear that either the Appellant has been falsely implicated in the case or even if any such incident had taken place the prosecutrix was a consenting party to the same. Therefore, no offence is made out against the Appellant and he deserves acquittal.
6. On the contrary, Learned Counsel appearing for the State/Respondent opposed the arguments advanced on behalf of the Appellant and supported the impugned judgment of conviction and sentence. He further submitted that the Trial Court has rightly convicted and sentenced the Appellant on the basis of the statement of the prosecutrix.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. It is not in dispute that the Appellant is *sadhu* (brother-in-law) of the father of the prosecutrix. It is also not in dispute that the

prosecutrix was living in the house of the Appellant and residing there, she had been continuing her studies since Class 5 onwards. It is also not in dispute that on the relevant date, the prosecutrix was a major girl aged about 19 years.

9. The prosecutrix (PW1) has stated that in the year 1997, after Deepawali festival, on the fateful day, in the night hours, when she was sleeping in her room, the Appellant entered the room and began to remove her underwear. She woke up and tried to shout, but he gagged her mouth and committed forcible sexual intercourse with her. Thereafter, he left her and threatened her that if she tells the incident to anyone, he will kill her by giving her poison. Thereafter, she returned to the house of her parents. She has further stated that 1 month thereafter, when her menstruation stopped, she again went to the house of the Appellant and told him about the same. The Appellant abused her and made her keep mum. She returned to the house of her parents. When her pregnancy completed about 8 months, her parents asked her about the same. Then she narrated the whole incident to her parents. Thereafter, she lodged the FIR (Ex.P1). In paragraph 10 of her cross-examination, she has admitted that wife, son and daughter-in-law of the Appellant were also residing with the Appellant in his house. She has further admitted that some people were also residing nearby the house of the Appellant and her parents were residing after a distance of about 8-10 houses. In paragraph 18 of her cross-examination, she has stated that after the incident, the Appellant had returned to his room and she kept on sleeping in her room of the house of the Appellant. Next morning, she left the house of the Appellant and went to the house

of her parents. In paragraph 22, she has further stated that when her mother scolded her that with whom she had done the wrong, then she told her about the incident. In paragraph 27, she has stated that before reporting the matter, she was taken to a doctor for abortion of her pregnancy, but the doctor refused to abort her pregnancy. She has admitted that if abortion could have been done, they would not have reported the matter. Since the abortion could not be done, they reported the matter due to fear of the society.

10. Gotilal (PW2) is father of the prosecutrix. He has supported the statement of the prosecutrix and has stated that the prosecutrix had told about the pregnancy to be from the Appellant. A village meeting was called in which also she had stated the same. Thereafter, the matter was reported. He has also admitted the fact that in the house of the Appellant, wife, son and daughter-in-law of the Appellant were also residing.
11. Paltan (PW3) is a witness of the village meeting. He has stated that father of the prosecutrix had called the villagers in the meeting and informed them that the prosecutrix was pregnant from the Appellant. He has further stated that the prosecutrix had also stated the same in the village meeting.
12. Dr. Leela Ramteke (PW4) is the witness who examined the prosecutrix. She has stated that her report is Ex.P3 in which she found that the prosecutrix was carrying pregnancy of about 7½ – 8 months.

13. Patwari Ramesh Kumar (PW5) has stated that he prepared spot-map (Ex.P2).
14. Dr. D.R. Jindani (PW6) examined the Appellant. He has stated that his report is Ex.P4 in which he found that the Appellant was capable to perform sexual intercourse.
15. Station House Officer Nicolus Khalkho (PW7) was the Investigating Officer of the offence in question. He has stated that he investigated into the offence.
16. On minute examination of the above evidence adduced by the prosecution, it is clear that on the fateful day, the prosecutrix was aged about 19 years and she was residing in the house of the Appellant. It is also clear that in the same village where the Appellant was residing with his family, parents of the prosecutrix were also residing at a distance of about 8-10 houses from the house of the Appellant. As per the statement of the prosecutrix, after the incident, she kept on sleeping in her room of the house of the Appellant and next day, she went to the house of her parents. At that time and thereafter also, she did not tell about the incident to her parents nor to any other person of the village. 1 month thereafter, when she came to know that she was carrying pregnancy then only she went to the Appellant to tell about the same, but she did not disclose about the same to her parents or any other person of the village. Thereafter also, she kept mum till her pregnancy completed the period of about 8 months. Even thereafter, when her parents scolded her and asked about the pregnancy, then only she disclosed about the incident for the first

time.

17. From the above discussion, it is clear that no such incident had taken place or if any such incident had taken place the prosecutrix was a consenting party to the same. On the fateful day, she was a major girl. Therefore, no offence is made out against the Appellant. He is entitled to get benefit of doubt.
18. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
19. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
20. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge