

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2265 of 1999

Judgment Reserved on : 13.7.2018

Judgment Delivered on : 9.10.2018

Chandrabas Verma, aged 38 years, son of Mahranram Verma, resident of Chherkapur, P.S. Palari, District Raipur, M.P. (now Chhattisgarh)

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellant : Shri Parag Kotecha, Advocate
For Respondent/State : Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 11.8.1999 passed by the 2nd Additional Sessions Judge, Balodabazar, District Raipur in Sessions Trial No.67 of 1999 convicting and sentencing the Appellant as under:

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

2. Facts of the case, in brief, are that on 21.12.1998 at about 9:00 a.m., the prosecutrix (PW1), a married woman aged about 32 years, was sitting in a field for attending the call of nature. Allegedly, the Appellant came there, caused her to fall down and started committing rape with her. When she pushed him away and

refused, the Appellant did not stop and continued to commit rape with her. Having heard her voice, her husband Ramnath (PW3) reached there. Having seen Ramnath there, the Appellant ran away. The prosecutrix and her husband told about the incident to other family members in their house and also to other villagers. Next day, the prosecutrix made a written report (Ex.P1). On the basis of the report, First Information Report (Ex.P2) was registered. The prosecutrix was medically examined by Dr. Rama Tiwari (PW7). Her report is Ex.P14 in which she did not find any injury on the body of the prosecutrix. She found the prosecutrix to be habitual to sexual intercourse. No definite opinion could be given regarding recent sexual intercourse with her. Underwear of the Appellant was seized vide Ex.P6. Petticoat of the prosecutrix was seized vide Ex.P4. 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 Section 376 of the Indian Penal Code. Charge was framed against him under Section 376 of the Indian Penal Code.

3. To rope in the Appellant, the prosecution examined as many as 9 witnesses. Statement of the Appellant was also recorded under Section 313 Cr.P.C. in which he denied the guilt and pleaded innocence. No witness has been examined in his defence.
4. 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

Appellant has been falsely implicated in the case due to a previous enmity. First Information Report was lodged after 1 day of the alleged incident, but the delay has not been explained properly. The FIR is an after-thought report. From the evidence on record, no offence is made out. Even if any such offence had taken place, the prosecutrix was a consenting party. The report was made because the husband of the prosecutrix had witnessed the prosecutrix in compromising position with the Appellant.

6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. The prosecutrix (PW1) has stated in her Court statement that at the time of incident, i.e., at about 8 a.m., she was beginning to sit for attending the call of nature. At that time, the Appellant came there. He removed her clothes, mounted over her and committed sexual intercourse with her against her will. On her shouting, her husband reached there. Having seen her husband there, the Appellant ran away. Thereafter, her husband took her home. He called some persons at home and informed them about the incident. Thereafter, she went to the police station and submitted a written report. In her cross-examination, in paragraph 5, she has stated that the Appellant caught her both hands and made her lie down and after removing her clothes mounted over her. She has further stated that at that time she had a *gundi* (a utensil) with her. She did not assault the Appellant with that *gundi* nor did she scratch the Appellant with her nails. She also did not pull his hair

nor did she bite him with her teeth. She has further stated that she was continuously refusing the Appellant, but he did not stop and continued to commit sexual intercourse with her. At that time, her husband reached there. In paragraphs 2 and 3 of her cross-examination, she has also admitted that she does not know what was written in the written complaint (Ex.P1). A police official had written her complaint in his handwriting to which her husband had got typed.

9. Ramnath (PW3), husband of the prosecutrix has deposed that at the time of incident, he was breaking a branch of a tree for the purpose of using the same as tooth-brush. He heard some noise from the nearby place. He saw here and there and moved ahead towards that place. Having reached that place, he saw that the Appellant had mounted over his wife (the prosecutrix). Having seen him, the Appellant ran away from there. During his cross-examination also, this witness has admitted that he saw that the Appellant had mounted over the prosecutrix, both the hands of the prosecutrix were spread down and having seen him, the Appellant fled from there. He has also admitted the fact that he did not chase the Appellant. In paragraph 4 of his cross-examination, he has admitted that Police Station Palari was 5-6 Kms. away from his village. He has further stated that when they went to the police station, the police officials had interrogated him and that interrogation was recorded in writing by one witness Moti and he (this witness) had got that written matter typed on which his wife (the prosecutrix) had only put her signature.

10. Sunder (PW4), father-in-law of the prosecutrix and Motilal (PW2) are residents of same village Chherkapur in which the prosecutrix

and her husband were residing. Both have stated that the husband of the prosecutrix had told them that rape was committed with the prosecutrix. Ramkrishna (PW5) has not supported the case of the prosecution and has been declared hostile.

11. Dr. Rama Tiwari (PW7) examined the prosecutrix on 24.12.1998. Her report is Ex.P14 in which she did not find any injury on the body of the prosecutrix. She found the prosecutrix to be habitual to sexual intercourse. No definite opinion could be given regarding recent sexual intercourse with her.
12. R.K. Lalwani (PW8) was the Investigating Officer of the offence in question. He has stated that he recorded the FIR (Ex.P2) on the basis of the written report (Ex.P1). He recorded the statements of witnesses and during investigation he seized a petticoat of the prosecutrix vide Ex.P4 and underwear of the Appellant vide Ex.P6.
13. Dr. F.R. Nirala (PW9) is the witness who examined the Appellant. His report is Ex.P13A in which he found the Appellant to be capable to perform sexual intercourse.
14. A minute examination of the above evidence led by the prosecution makes it clear that the alleged incident took place on 21.12.1998. The written report (Ex.P1) was made on 23.12.1998 while the police station was only 5-6 Kms. away from the village of the prosecutrix. In Ex.P1, the reason for delay in making the report is mentioned that main family members were not available at home. But, the evidence of the prosecution itself shows that husband of the prosecutrix was present at the time of incident and he witnessed the alleged incident and immediately thereafter he and the prosecutrix returned home and informed about the incident to

Sunder (PW4), father-in-law of the prosecutrix. Thus, the explanation that main family members were not available at home and, therefore, the report was made belatedly is not acceptable. From the statements of the prosecutrix (PW1) and her husband Ramnath (PW3), it is also clear that the alleged incident took place in a field at about 9:00 a.m. and at that time the prosecutrix had gone to the field to attend the call of nature. Normally, at about 9:00 a.m., other villagers also found in the field. In the circumstances, it appears to be suspicious that the Appellant would have attempted to commit rape with the prosecutrix in presence of villagers. From the evidence, it is also clear that the alleged incident took place in a field, but no injury was found on the body of the prosecutrix in her medical examination. It is also established that she did not assault the Appellant with the utensil (*gundi*) available with her at the time of the alleged incident. She also did not scratch the body of the Appellant with her nails nor did she pull his hair and bite him with her teeth. From the statement of her husband, it is also clear that when he reached the spot, he saw that her both hands were spread down and the Appellant was committing sexual intercourse with her and having seen him there, the Appellant ran away. From the above, it seems that the prosecutrix was a consenting party and since her husband saw her in a compromising position with the Appellant, she raised alarm. In the premises of aforesaid, no offence under Section 376 of the Indian Penal Code is proved against the Appellant beyond reasonable doubt.

15. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of

the charge framed against him under Section 376 of the Indian Penal Code. He is reported to be in jail. He be set at liberty forthwith.

- 16.** 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