

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2980 of 1999

Judgment Reserved on 19/07/2018

Judgment delivered on 11/10/2018

Kashiram S/o Nidhi Ram Sahu, aged about 33 years, Cultivator R/o Village- Mudhali, Police Chowki, Hardi-Bazar, Police Station- Kusmunda, District- Korba (M.P.) (Now C.G.).

--- Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh).

---- Respondent

For Appellant	:	Shri Pushpendra Kumar Patel, Advocate
For Respondent	:	Shri Satish Gupta, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

CAV Judgment

1. This appeal is directed against the judgment dated 22/10/1999 passed in S.T. No. 40/1999 by the 7th Additional Sessions Judge, Bilaspur, whereby the appellant has been convicted under Section 376 of the IPC and sentenced to undergo RI for 7 years and to pay fine of Rs. 2,000/- with default stipulation.
2. Facts of the case, in brief, are that the prosecutrix (PW1) is a married lady, aged about 30 years. Harish Chandra (PW3) is husband of the prosecutrix. The appellant is cousin of Harish Chandra (PW3). It is alleged that on 27/05/1998, when the prosecutrix was alone at her house and was preparing food, the appellant came there and asked for drinking water. The prosecutrix gave water to the appellant and he came inside the room.

The appellant then pulled the prosecutrix inside the room. The prosecutrix told him that she will tell this in his Family, but the appellant forcibly committed rape with her. Later on, when the husband of the prosecutrix came back in night, she narrated the incident to him. On the next day on 28/05/1998 at about 11 am, the prosecutrix along with her husband Harish Chandra (PW3) went to the house of the appellant. There the parents of the appellant abused them and dispelled them from there. In the evening, Laxmi Chandra (PW2), brother of Harish Chandra came to the house of the prosecutrix. He was informed about the incident. Laxmi Chandra also called the appellant, but he did not come, then Laxmi Chand returned to his home. In between this period, the appellant lodged a report against Harish Chandra, regarding rape of his wife. When this fact came within the knowledge of Harish Chandra and the Prosecutrix then on 29/05/1998 at about 10:05, the prosecutrix lodged FIR (Ex.P-1).

3. The prosecutrix was medically examined by Dr. Ku. Veeda Agrawal. Her report is Ex.P-6. On examination of the prosecutrix, she found no injury on the body and private part of the prosecutrix. She opined that the prosecutrix was habitual of sexual intercourse and no definite opinion regarding recent intercourse can be given.
4. During investigation, Petticoat and Blouse of the prosecutrix were seized vide Ex.P.3. Statement of witnesses under Section 161 of the Cr.P.C were recorded. After investigation, a charge-sheet under Section 376 of the IPC was filed before the trial Court. Charges under Section 376 of the IPC were framed.
5. To prove the guilt of the appellant, the prosecution has examined as many

as 7 witnesses. Statement of the appellant under Section 313 of the Cr.P.C was also recorded, wherein he has pleaded his innocence and denied all the charges framed against him.

6. Learned counsel appearing on behalf of the appellant has submitted that the appellant is innocent and has been falsely implicated in the present case. It has been submitted that the incident happened on 27/05/1998 at about 11 pm and the FIR was lodged on 29/05/1998 at about 10:00 pm. There is enormous delay in lodging the FIR, which even has not been properly explained. It has been further submitted that on 28/05/1998, Savitri Bai, wife of the present appellant had made a report against the husband of the prosecutrix, and thereafter on 29/05/1998, the prosecutrix had lodged the present FIR in their defence. Medical report of the prosecutrix is also absolutely negative. He prays that looking to the entire facts and circumstances of the case, the present appellant may be acquitted of the charges framed against him.
7. Learned counsel appearing on behalf of the State opposes the same and supported the judgment of conviction passed by the trial Court.
8. I have heard learned counsel for the parties and perused the record minutely.
9. Prosecutrix (PW1) deposed that on 27/05/1998 at about 11 pm when she was alone in her house and was preparing food, the appellant came there and asked for drinking water. When she went to take the water inside the room, the appellant followed her and after having water, the appellant, by falling her down, committed rape with her. She told him that she will shout, then the appellant by showing knife threatened her to kill and committed

intercourse for about 20 minutes. Thereafter, the appellant went from the house. She further stated that she did not tell anything to anyone in the afternoon and when her husband returned in the night then she narrated the incident to him at about 10:00 pm. Then, her husband told her that the appellant is a member of our family and the appellant will be inculcated. Thereafter, both of them got sleep. She further stated that in the next day at about 10-11 in the morning they went to the house of the appellant. Where the parents of the appellant had abused them, thereafter they returned to the house. She further stated that her Jaith, Laxmi Chandra came to their house in the evening, and she and Harish Chandra narrated the incident to him. Laxmi Chandra also called the appellant, but he did not come, then Laxmi Chandra returned to his house. Thereafter, she and Harish Chandra, after having meal, got sleep. On the next day i.e. 29/05/1998, they came to know that the appellant has lodged a report against her husband, thereafter she made the FIR (Ex.P-1) in the night.

10. In para 9 of cross-examination of the prosecutrix, she has admitted that at the time of incident, she was alone in her house. She further admitted that when the appellant followed her from Court yard to room, she denied him to come, but he came inside. Therefore, she offered water to him in the room. She further admitted that when she told him that she will shout then the appellant closed her mouth by hands and showed knife to her. But she does not know the reason why this fact is not mentioned in her diary statement Ex.D-1. This witness has also admitted that fact that if the appellant had not made any report against Harish Chandra, husband of the prosecutrix then she would not have made the present report.

11. Harish Chandra (PW3) has stated that on the date of incident at about 7:30

when he returned to this house, he took bath and dinner and went on to his bed, then his wife (prosecutrix) informed that at about 11 am, the appellant committed rape with her in the house. Thereafter, he told her that the appellant is our family member and he will inculcate him. Then they got sleep. On the next day when they went to the house of the appellant and told the appellant that he should not do this, then the parents of the appellant abused them and told that you are insulting the appellant. He further stated that his brother, Laxmi Chand came to his house. They narrated the incident to him. He further stated that on the next day, when he come to know that the appellant has lodged a report against him, then they lodged the present FIR. In cross-examination, this witness has admitted that he did not go with his wife to lodge the FIR. He also admitted that when he come to know that a report has been lodged against him, then her wife lodged a report against the appellant.

12. Heeralal (PW4) has not supported the case of the prosecution and has been declared hostile.
13. Laxmichand (PW2) is brother of Harish Chandra. He also stated that on 28/05/1998 in the evening, he went to the house of Harish Chandra, then Harish Chandra and his wife informed him about the incident. He called the appellant, but the appellant did not come. He then returned to his house.
14. Dr. Kumari Veeda Agrawal had examined the prosecutrix on 30/05/2018. Her report is Ex.P-6. She opined that the prosecutrix was habitual to sexual intercourse and there was no injury on the body or private part of the prosecutrix.

15. ASI, Ashok Singh (PW7) is the witness who investigated the matter. During investigation, he recorded the statement of witnesses under Section 161 of the Cr.P.C and also seized the clothes of the prosecutrix vide Ex.P-3.
16. Savitri Bai (DW-1) is the wife of the appellant. She has stated that on 28/05/1998 when she was present at her Badi, Harish Chandra, husband of the prosecutrix caught hold her hand, when she shouted, her mother-in-law came and then Harish Chandra fled away. On the same day, she lodged a report.
17. Girjanand (DW2) and Nidhi Ram (DW-3) have also stated that they never listened any talk in the village regarding rape with the prosecutrix.
18. On minute examination of the above evidence, it is clear that allegedly the incident was happened on 27/05/21998, but FIR has been lodged on 29/05/1998 at about 10:05 pm. Delay is not properly explained by the prosecutrix and her husband. Though they have stated that since the appellant was brother of Harish Chandra and the matter was of their family, therefore, they have not reported the matter. But they admitted the fact that on 28/05/1998 a report was made against Harish Chandra, husband of the prosecutrix which was lodged by the wife of the present appellant and when this fact came to their knowledge, thereafter the prosecutrix lodged the present FIR. From the Statement of Harish Chand (PW3) it is clear that when prosecutrix went for recording FIR, he did not accompany her. Both Harish Chandra and the prosecutrix had also admitted the fact that if the wife of the appellant had not lodged the report against Harish Chandra, then they also would not have lodged any complaint.
19. From the statement of the prosecutrix and Harish Chandra, it is clear that

allegedly the incident happened in the afternoon, but the prosecutrix did not disclose the same to anyone. She firstly disclosed the incident to her husband in the night and then both, after having meals, got sleep, which does not come in natural act. Therefore, the conduct of prosecutrix and Harishchand also does not appear natural.

20. From the evidence, it seems that either such incident did not happen and when a report against husband of the prosecutrix has been lodged, the present FIR has been lodged against the appellant in their defence or if any such incident was really happened then the conduct of the prosecutrix shows that she was the consenting party. Therefore, in my considered opinion, offence under Section 376 of the IPC against the appellant is not proved and the appellant is entitled to get benefit of doubt.
21. In the result, the appeal is allowed. The appellant is acquitted of the charges framed against him.
22. It is reported that the appellant is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in view of Section 437-A of the Cr.P.C.
23. Records of the court below along with the copy of this judgment be sent back forthwith for necessary compliance and action.

(Arvind Singh Chandel)
Judge