

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.3020 of 1999

Judgment Reserved on : 3.4.2018

Judgment Delivered on : 29.6.2018

Chandulal, son of Muritram Suryawanshi, aged about 35 years, resident of Village Khamtarai, Police Station Sarkanda, District Bilaspur, M.P. (now Chhattisgarh)

---- Appellant

versus

State of M.P. (now Chhattisgarh), through Police Station Sarkanda, District Bilaspur

--- Respondent

For Appellant : Ms. Smriti Shrivastava , Advocate
For Respondent/State : Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 2.12.1998 passed by the Sessions Judge, Bilaspur in Sessions Trial No.161 of 1997 convicting and sentencing the Appellant as under:

Conviction	Sentence
Under Section 450 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.2,000/- with default stipulation
Under Section 376(1) of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.5,000/- with default stipulation

2. Facts of the case, in brief, are that on 6.2.1997, the prosecutrix (PW1), a married lady was sleeping in her room. Her husband was not present in the house and had gone out to Nagpur. Her mother-in-law Urmilabai (PW3) and father-in-law Negiram (PW2) were also

not present in the house. Her brother-in-law Durga Prasad (not examined by the prosecution) and two sisters-in-law Rukmani (PW4) and Satyabhama (not examined by the prosecution) were sleeping in the courtyard of the house. At about 2:30 a.m., the Appellant entered the room of the prosecutrix, switched off the light and caught her hand. She thought that he is her husband. She tried to remove the cloth covered on his mouth, but he did not let her do so. Thereafter, she knew that he is not her husband and is some other person. She shouted for help and called names of her brother-in-law and sisters-in-law. On this, the Appellant committed forcible sexual intercourse with her. On being opposed, he gagged her mouth. When he was going out of her room, she switched on the light of her room and identified him. When her in-laws returned home, she told them about the incident. Her husband was not present at home. After his return, she lodged First Information Report (Ex.P1) on 9.2.1997. Her petticoat was seized vide Ex.P2. She was medically examined by Dr. Nimila Ghatge (PW6). Her report is Ex.P3 in which she did not find any injury over the private part of the prosecutrix. No definite opinion regarding rape with the prosecutrix could be given by the doctor as the prosecutrix was a married lady and was habitual to sexual intercourse. The Appellant was medically examined by Dr. P.K. Tiwari (PW7). His report is Ex.P6 in which he found the Appellant to be capable of performing 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 450 and 376 of the Indian Penal Code. Charges were framed against him under Sections 450 and 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. 2 witnesses have 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 statement of the prosecutrix is not reliable. As per the prosecution story, the Appellant was a neighbour of the prosecutrix. The door of the house was closed and only the door of the kitchen of the house was open. Sisters-in-law and brother-in-law of the prosecutrix were sleeping in the house. In these circumstances, the Appellant, who was a neighbour of the prosecutrix, could not know without telling him by anybody that in which room the prosecutrix was sleeping and door of the kitchen was open. As per the statement of the prosecutrix, she had shouted "*Bachao Bachao*", but in that house itself, her brother-in-law and sisters-in-law were also sleeping, therefore, they did not hear the shouts of the prosecutrix is not natural. The incident took place on 6.2.1997 and when the prosecutrix had told about the incident to her father-in-law and mother-in-law in the night itself then why the FIR was lodged belatedly on 9.2.1997 is not explained by her. Therefore, the prosecution story is doubtful. The offence is not proved beyond reasonable doubt.
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 that on the date of incident, she was sleeping in her house. Her husband had gone out to other village. Her father-in-law had gone out to attend a social meeting. Her mother-in-law had gone out to the house of her Jethani. In the house, her brother-in-law and sisters-in-law were sleeping in the room situated adjacent to the kitchen of the house. She has further stated that the door of the kitchen was open and remaining doors of the house were closed. Light was reflecting to her room from the room of the sisters-in-law. At that time, someone switched off the light and caught her hand. She thought that her husband had come. Then she called the name of her sister-in-law. That person gagged her mouth with a piece of cloth. Thereafter, he committed sexual intercourse with her. After committing sexual intercourse with her, when he was about to go out, she switched on the light of her room and saw that it was the Appellant. She has further stated that she made her sister-in-law wake up and called her mother-in-law. At that time, her father-in-law also reached there. She told them about the incident. She has further stated that next day, the Appellant asked not to report the matter and said that he will sort out the same in a panchayat meeting. A panchayat meeting took place in which the prosecutrix narrated about the incident before all the persons present in the meeting. The Appellant offered that he will give some money and requested not to raise the matter any further. On the third day, when her husband returned home, she lodged the FIR (Ex.P1). In paragraph 6, during cross-examination, she has stated that when the Appellant

was committing sexual intercourse with her, she came to know that he was not her husband. But, since he had gagged her mouth with a piece of cloth, she could not shout. She has further stated that after discharge, the Appellant had got up. Then she wiped out her private part and thereafter switched on the light of her room and saw that it was the Appellant. The Appellant went out covering his body with a blanket.

9. Negiram (PW2), father-in-law of the prosecutrix has stated that in the night, he had gone out to attend a village meeting. At about 3:00 a.m, he returned home. In the morning, his wife told him that their daughter-in-law (the prosecutrix) had been raped by the Appellant. He has further stated that a village meeting took place in this regard in which the Appellant admitted his guilt. The Appellant also admitted that whatever fine would be imposed upon him by the panchayat, he will pay the same.
10. Urmilabai (PW3), mother-in-law of the prosecutrix has stated that she was sleeping in the house of her elder son Ramsharan. In the night, at about 3:00 a.m., her daughter Rukmani (PW4) came to her and made her wake up. Then her daughter-in-law (the prosecutrix) told her that the Appellant had committed rape with her. Next day, she told about the incident to her husband Negiram (PW2).
11. Rukmani (PW4), sister-in-law of the prosecutrix has stated that at about 2:30 – 3:00 a.m., the Appellant had come and gone after committing rape. Then she called her mother Urmilabai (PW3).
12. Ratiram (PW5) has stated that in the village meeting, on being asked, the Appellant had admitted his guilt. In paragraph 3 of his

cross-examination, he has stated that the Appellant had admitted in the panchayat meeting that he was responsible for the act done by him with the prosecutrix, but the panchayat did not decide the matter.

13. Dr. Nirmila Ghatge (PW6) is the witness who examined the prosecutrix. She has stated that her report is Ex.P3. She has further stated that she did not find any injury over the private part of the prosecutrix. She has further stated that no definite opinion regarding rape with the prosecutrix could be given by her as the prosecutrix was a married lady and was habitual to sexual intercourse.
14. Dr. P.K. Tiwari (PW7) examined the Appellant. He has stated that he gave his report (Ex.P6) in which he found the Appellant to be capable of performing sexual intercourse.
15. Inspector Hemant Khare (PW9) was the Investigating Officer of the case. He has stated that he recorded the First Information Report (Ex.P1). He seized the petticoat of the prosecutrix vide Ex.P2. He sent the seized articles for chemical examination vide Ex.P10. He also recorded statements of witnesses under Section 161 of the Cr.P.C.
16. On minute examination of the above witnesses of the prosecution, it is clear that on the date of incident, the prosecutrix (PW1) and her two sisters-in-law and one brother-in-law were present in the house. As per the statement of the prosecutrix, at about 2:30 a.m., the Appellant entered her room and after gagging her mouth with a piece of cloth, committed forcible sexual intercourse with her. As per her statement, after the incident, when the Appellant was about

to go out, she switched on the light of her room and identified him that it was the Appellant. As per the prosecution story, other doors of the house were closed and the Appellant had entered the room of the prosecutrix through the door of the kitchen which was open. Three more persons, i.e., two sisters-in-law and one brother-in-law were present in the house. In this situation, knowing this fact, the Appellant would have entered the room of the prosecutrix does not appear to be natural. As per the statement of the prosecutrix, when the Appellant was committing sexual intercourse with the prosecutrix, she had come to know that he was not her husband. But, even after coming to know this fact, she did not raise any alarm nor did she shout for any help at that point of time. She has also stated that prior to this, while her sleeping, when her hand was caught by someone, at that time, she, thinking that the said person would be her husband, had called her sister-in-law. But, her sister-in-law Rukmani (PW4) has not stated anything in this regard. As per the statement of the prosecutrix, after switching on the light of her room, she had identified the said person to be the Appellant. From her statement, it is clear that after commission of the sexual intercourse with her, she first wiped out her private part with her petticoat and thereafter she switched on the light of her room. When she came to know while commission of sexual intercourse with her that the person committing sexual intercourse was not her husband and forcible sexual intercourse was being committed with her by the said stranger then she would have first switched on the light of her room and shouted for help, but she did not do so.

17. Though Negiram (PW2) and Ratiram (PW5) have stated that in the

village meeting, the Appellant had admitted his guilt, but as per paragraph 3 of the statement of Ratiram (PW5), the Appellant had admitted that whatever wrong act was done by him, he was responsible for the same. From the above, it is also clear that any rape was committed by the Appellant with the prosecutrix has not been admitted by him.

18. In the light of above discussion, it is clear that though the prosecutrix has made statement against the Appellant, but her statement and her conduct at the relevant point of time of the alleged incident and the time of the alleged incident are not natural. In these circumstances, it appears that no rape was committed by the Appellant with the prosecutrix and if any incident of commission of sexual intercourse with the prosecutrix had taken place, she was a consenting party to the same.
19. In the result, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him. He is reported to be in jail. He be set at liberty forthwith.
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