

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2605 of 1999

Order reserved on : 29.06.2018

Order passed on : 25.09. 2018

Satruhan S/o. Shri Parash Ram, Aged about 28 years, R/o. Village Ghota, Police Station Dhamdha, Tahsil Dhamdha, District Durg (C.G.)

----- Appellant

Versus

State of Madhya Pradesh, Through Incharge Police Station Dhamdha, District Durg (M.P.) (Now Chhattisgarh)

----- Respondent

For the Appellant : None for the appellant.
For the Respondent : Mr. Rajendra Tripathi, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Judgment

1. This appeal has been preferred under Section 374 of the Code of Criminal Procedure against the judgment and order dated 31.03.1999 passed in ST No. 265/1998 by the Additional Sessions Judge, Durg District Durg, convicting the accused/appellant under Sections 376 and 506 B of the Indian Penal Code and sentenced to undergo RI for seven years with fine of Rs. 500/- and RI for 6 months with fine of Rs. 200/-, respectively with default stipulations.

2. Case of the prosecution, in brief, is that the prosecutrix (PW-4) was residing in her maternal uncle's home at Ghoti. On the date of incident, i.e. on 02.05.1998 at about 2.30 pm, the prosecutrix (PW-4) went to nature call in the field adjoining the rest house of village Ghoti. At that time, the appellant came there and caught hold the hands of the prosecutrix (PW-4) and pushed her on the ground and shuffled his *sando baniyan* in her mouth and committed forceful sexual intercourse with her, thereafter the appellant threatened the prosecutrix (PW-4) that if she disclosed the incident to anyone then he will kill her and fled away from there. On the way, the prosecutrix (PW-4) disclosed the incident to Shanti Bai (PW-6) and Chameli Bai (PW-1), thereafter she reached the house and narrated the incident to her relative. The prosecutrix (PW-4) lodged the First information Report (Ex. P-4) in Police Station Dhamdha. After recording of FIR (Ex.P-4), the prosecutrix (PW-4) was examined by Dr. Madhu Shrivastava (PW-3) and submitted her report vide Ex.P-3. The accused/Appellant was also examined.

3. After completion of the investigation, charge-sheet was filed before the trial Court wherein the trial Court framed charges as mentioned above to which the appellant did not plead guilty. The trial Court conducted the trial and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C. were recorded and after completion of trial, the trial Judge considering the

material available on record by the impugned judgement convicted and sentenced the appellant as mentioned above.

4. To hold the appellant guilty, the prosecution examined Chameli (PW-1), Sudanlal (PW-2) maternal uncle of the prosecutrix, Dr. Madhu Shrivastava (PW-3), Prosecutrix (PW-4) Munna Lal (PW-5), Shanti Bai (PW-6), Dr. D. K. Gupta (PW-7) and Assistant Sub Inspector K.L. Sinha (PW-8). The appellant did not examine any witnesses in his support.

5. Perused the record and the documents available on record.

6. Prosecutrix (PW-4) and Sudanlal (PW-2) could not tell regarding the date of birth of the prosecutrix (PW-4). Radiological examination of the prosecutrix (PW-4) for confirmation of her age was not done and Kotwari register was also not produced before the Court below. The prosecution has failed to prove that the prosecutrix (PW-4) was less than 16 years of the age at the time of occurrence.

7. Prosecutrix (PW-4) is the sole witness in this case. The touchstone for recording a conviction in a rape case is that the testimony of the prosecutrix must be reliable and inspires confidence and should be worthy of credit. It should not render it unworthy of credence. Prosecutrix (PW-4) stated that she has informed the incident to Shanti Bai (PW-6) but Shanti Bai

(PW-6) has not supported the case of the prosecution and turned hostile.

8. Prosecutrix (PW-4) stated that the appellant raped her for half an hour to one hour and she sustained injuries on her back. Shanti Bai (PW-6) and Chameli (PW-1) have not supported the case of the prosecution. Dr. Madhju Shrivastava (PW-3) who has examined the prosecutrix (PW-4) deposed that she has not found any internal or external injury in the body of the prosecutrix (PW-4). The medical evidence and Investigating officer (PW-8) have also not supported the case of the prosecution.

9. After minute and careful examination of the evidence of the prosecutrix (PW-4), Shanti Bai (PW-6) and Chameli Bai (PW-1) it reveals that the prosecutrix (PW-4) was a consenting party to the commission of sexual intercourse and the medical evidence has also not supported the case of the prosecution. Therefore, the conviction of the appellant cannot be based on the evidence of the prosecutrix (PW-4).

10. On the basis of the aforesaid discussion, I am of the considered view that the learned trial Court has committed an error in convicting the appellant for the offence punishable under Sections 376 and 506(B) of the IPC. Hence, the impugned judgment of conviction and sentence is not sustainable.

11. In the result, the appeal is allowed. The impugned judgment convicting and sentencing the appellant for the offence under section 376 and 506 (B) of the IPC is set aside. The appellant is acquitted of the charge framed against him.

12. It is reported that the appellant is on bail. His bail bonds are not discharged at this stage and the same shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Santosh