

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 08-10-2018

Pronounced on 29-10-2018

CRIMINAL APPEAL No. 2731/1999

(Arising out of judgment of conviction and order of sentence dated 08.10.1999 passed by the Additional Sessions Judge Balod, District Durg, M.P (now in C.G.) in Sessions Trial No. 360/97)

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Pravin Singh son of Gaunarihar, aged 50 years, Asstt. Teacher in Government Primary School, resident of village Bodara, Police Station Gurur, Distt. Durg, MP (now CG)
---- Appellant

Versus

State of Madhya Pradesh (Now CG), through Police Station Gurur, Distt. Durg.
---- Respondent

For appellant	: Mr. Rahil Kochar, Advocate.
For Respondent/State	: Mr. Ashok Kumar Swarnkar, Panel Lawyer.

Hon'ble Mr. Sharad Kumar Gupta, Judge
C.A.V. JUDGMENT

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 8-10-1999 passed by the Additional Sessions Judge Balod, District Durg, M.P (now in C.G.) in Sessions Trial No. 360/97 whereby and whereunder he convicted and sentenced the appellant as under:-

Sr. No.	Offence u/S.	Sentence
1.	450, Indian Penal Code (for short 'IPC')	RI for 7 years
2.	376(1), IPC	RI for 7 years

All the substantive jail sentences have been directed to run concurrently.

2. In brief, the prosecution story is that prosecutrix was aged about

42 years at the time of alleged incident. She was resident of village Bodra. On 31/07/1997 at about 12 P.M. after taking bath she was going inside the house to change clothes. The door was not bolted. Appellant reached in her house, caught hold her hand, overwhelmed her, took her inside the house. He was saying that he wants to do sex with her. He had already removed his pant, shirt, shoes, put down his umbrella. At that time her eldest son Lokesh sahu reached there and caught him. On the shouting of appellant his son and son-in-law reached there and took him. On very day she had given an application to P.S. Guroor. After enquiry an FIR was lodged in P.S. Guroor on 01/08/1997. She also filed a complaint case against him. After completion of the investigation a charge-sheet was filed against him under Section 354 and 451, I.P.C. Complaint case was registered u/s 376, 450 I.P.C. The complaint case was merged in aforesaid criminal case. The trial Court framed charges against him under Section 450, 376 I.P.C. He abjured the charges and faced trial. To bring home the charges the prosecution examined as many as 4 witnesses. He did not examine any witness in his defence. After conclusion of the trial, trial court convicted and sentenced him as aforesaid. Being aggrieved he preferred this criminal appeal.

3. Mr. Raheel Kochar, counsel for the appellant strenuously argued that the trial court has not appreciated the evidence in proper perspective. The charge-sheet was filed u/s 354,451, I.P.C. Prosecutrix had put the exaggerated false case. Lokesh was convicted to outrage modesty of appellant's daughter, thus her family falsely implicated him because he was not ready to compromise that case. There is no medical report of either him or her. Thus aforesaid conviction and sentences are bad in eye of

law and deserve to be set aside. Hence he may be acquitted of aforesaid charges.

4. Mr. Ashok Kumar Swarnkar, Panel Lawyer for the State submitted that aforesaid conviction and sentences are based on clinching evidence led by the prosecution. He supported the aforesaid conviction and sentences and submitted that no interference is called for by this court.
5. First and foremost question for consideration before this court is that, whether appellant had committed rape with prosecutrix.
6. P.W.2 prosecutrix says in para 1 of her statement given on oath that when she was going to change clothes after taking bath, appellant reached and committed rape with her.
7. P.W.4 Ram Ratan who is the husband of the prosecutrix says in para 1 and 6 of his statement given on oath that on the way she met him and told that appellant had committed rape with her.
8. Mr. Raheel kochar, counsel for the appellant placed reliance on decisions of learned Single Judge of this Court in **Om prakash alias Om soni Vs. State of C.G** [2012(3) C.G.L.J. 438], **Mahaveer alias Budga Vs. State of CG** [2013(2)C.G.L.J.239], **Gudda alias Nabiullah Vs. State of M.P** [2015(4) C.G.L.J. 296], and also the decision of learned Single Judge of Rajasthan High Court in **Ramdhan Vs. State of Rajasthan** [2010 CRI.L.J. 2652] wherein the judicial precedent has been laid down that if the statement of the prosecutrix is not natural, not trustworthy then conviction could not be made.
9. Mr. Raheel kochar, counsel for the appellant further placed reliance on decision of Hon'ble Supreme Court in **Radhu Vs. State of M.P.** (2008)2, S.C.C. 207, , wherein following judicial

precedent has been laid down :-

“A finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix and her testimony should not be rejected on the basis of minor discrepancies and contradictions. Absence of injuries on the private parts of the victim will not by itself falsified the case of rape, nor can be construed as evidence of consent nor the opinion of a doctor that there was no evidence of any sexual intercourse or rape, sufficient to disbelieve the victim. However courts should , at the same time , bear in mind that false charges of rape are not uncommon, and there are some rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.”

10. Looking to the aforesaid judicial precedent laid down by Hon'ble Apex Court this Court finds that, in the absence of medical report either of prosecutrix or of appellant, appellant does not get any help.
11. This is not the prosecution case that appellant had allegedly committed rape with prosecutrix. In application Ex. P-2 it has not been mentioned that allegedly appellant had committed rape with her. This is also not prosecution case that she had allegedly shouted or made noise. P.W. 2 prosecutrix does not say in her statement given in the court that she had allegedly raised alarm for help, tried to claw or scratch or resist to the appellant.
12. In Ex. P-2 and police statement of prosecutrix Ex. D-1, there is omission regarding the rape. There is also contradiction in her statement and Ex. P-2 and Ex. D-1 that appellant had allegedly taken away her after holding her hand and after overpowering her.

These omission and contradiction are material and adversely affect the credibility of aforesaid statement of P.W. 2 prosecutrix and P.W.4 Ram Ratan.

13. As per Ex. P-2 the appellant had already removed his pant shirt.

As per the para of the statement of prosecutrix, he had already removed his clothes. But P.W.1 Shyam Lal says in para during his cross-examination that he had seen that pant, shirt of appellant were stained with mud with mud, which is not the prosecution case. Moreover this witness had not been declared hostile by the prosecution.

14. P.W. 4 Ram Ratan says in para 8 during his cross examination that his house is amidst the colony. There are so many houses nearby his house. P.W.3 head constable Murarilal I.O. says in para 5 during his cross examination that house of the prosecutrix is amidst the colony. Houses of Kisan and Kriparam are adjacent to his house. When he had gone to the place of occurrence, no neighbour told him about alleged incident.

15. P.W.2 Prosecutrix says in para 4 that, this is true that Lokesh was convicted to outrage modesty of daughter of appellant. P.W.4 Ram Ratan says in para 3 that Lokesh was prosecuted for molestation of daughter of appellant. If aforesaid circumstances may be considered then in the light of aforesaid Judicial precedent laid down by supreme court in **Radhu** (Supra) this possibility cannot be ruled out that to take revenge of aforesaid criminal case, P.W.2 prosecutrix had stated aforesaid statement of para 2 and P.W. 4 Ram Ratan had stated para 1 of aforesaid statement.

16. Looking to above mentioned facts and circumstances of the case

this court finds that aforesaid statements of para 2 of prosecutrix, para 1 of P.W.4 Ram Ratan are not simple, not natural and not normal. Thus aforesaid Judicial precedent laid down in **Om Prakash alias Om soni** (Supra), **Mahaveer alias Budga** (Supra), **Gudda alias Nabiullah** (Supra) and **Ramdhan** (Supra) are applicable in favour of appellant's case regarding that reference.

17. After the appreciation of the evidence this court disbelieves aforesaid statements of para 2 of P.W. 2 prosecutrix, para 1 of P.W.4 Ram Ratan in this reference that appellant had allegedly committed rape or used criminal force to outrage modesty of the prosecutrix.

18. After the appreciation of the evidence discussed herebefore this court finds that prosecution has failed to prove beyond reasonable doubt the charge either punishable under section 376(1) or **under section 354 I.P.C.** Thus trial court committed gross illegality in convicting and sentencing him under section 376(1) I.P.C. hence the aforesaid conviction and sentence under section 376(1) I.P.C. is set aside.

19. Now the second question for consideration before this Court is whether the appellant had committed house trespass for committing rape with prosecutrix which is punishable for imprisonment for life.

20. P.W.2 prosecutrix says in para 1 that appellant had entered in her house.

21. P.W.1 Shyamlal says in para 1 that he had seen the appellant in the courtyard of the prosecutrix.

22. There is no such evidence on record on strength of which it can

be said that P.W.1 Shyamlal had made aforesaid statement because he was interested with prosecutrix or prejudiced to appellant for such reason. Moreover this had been suggested to P.W. 2 prosecutrix during her cross examination in para 9 on behalf of the appellant that the wife, daughter, son-in-law of appellant had reached there and took away him to there residence. In these circumstances this court believes on aforesaid statements of para 1 of P.W.2 prosecutrix, para no.1 of Shyamlal.

23. This has been earlier decided that prosecution failed to prove the charge either punishable under section 376 (1) I.P.C. or under section 354 I.P.C.

24. Looking to above mentioned facts and circumstances of the case this court finds that prosecution failed to prove beyond reasonable doubt that the appellant had committed house trespass to commit the rape which is punishable for imprisonment for life. But prosecution succeeded to prove beyond reasonable doubt that he had committed house trespass. Hence, this Court finds that prosecution failed to prove beyond reasonable doubt charge punishable under section 450, I.P.C. but succeeded to prove beyond reasonable doubt the lesser charge punishable under section 448 I.P.C. Thus aforesaid conviction and sentence punishable under section 450 I.P.C is set aside and he is convicted for the offence punishable under section 448 I.P.C.

25. At the time of the incident, no minimum imprisonment was provided for the offence punishable under Section 448, IPC. The appellant has remained in jail from 8-10-1999 to 1-12-1999 total about 55 days. About 19 years have passed after the incident. At the time of incident, appellant was aged about 50 years, now he is

about 69 years old. Now he is in mainstream of society. Sending him to jail would disturb him as well as his family members' life. Hence, no useful purpose would be served if he is sent to jail after 19 years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231] this Court is of the opinion that cause of justice would be sub-served, if he is sentenced to the period already undergone by him and suitable fine amount may be imposed.

26. The appeal is partly allowed. The appellant is sentenced for the offence punishable under Section 448 of IPC for the period already undergone by him and to pay a fine of Rs. 1,000/-, in default of payment of fine, to further undergo SI for 1 month.

27. The appellant is granted 1 month's time from the date of this order for depositing the fine amount.

28. The appellant is reported to be on bail. His bail bond stands canceled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge