

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.3344 of 1999

Judgment Reserved on : 26.7.2018

Judgment Delivered on : 24.10.2018

Bhagwat Das, S/o Budhri Das, aged 46 years, R/o Lakshanpur, P.S. Mungeli,
District Bilaspur

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh) through P.S. Mungeli,
District Bilaspur

--- Respondent

For Appellant : Shri D.N. Prajapati, Advocate
For Respondent/State : Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 2.12.1999 passed by the Additional Sessions Judge, Mungeli in Sessions Trial No.61 of 1998 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.2,000/- with default stipulation

2. Facts of the case, in brief, are that on 27.11.1997 at about 2:00 p.m., the prosecutrix (PW1), a married woman, aged about 40 years, was going towards her agricultural field. Allegedly, the Appellant came near the field of Ghasiram and by catching her waist caused her to fall down on the boundary of the agricultural

field and on being shouted by her, he gagged her mouth with a cloth and thereafter he committed rape with her. Having heard her shout, Asharam (PW6) and Premlal (not examined) came there and saw the Appellant running away. On return to her house, she told about the incident to her both *Jethani* Amrikabai (PW5) and Rukmani (PW13). At that time, her husband was not present at home. When he returned home, on 3.12.1997, First Information Report (Ex.P1) was lodged by her. She was medically examined by Dr. Ila Chandel (PW7). Her report is Ex.P6 in which she found no injury on the body of the prosecutrix. She found that hymen of the prosecutrix was old ruptured. She was habitual to sexual intercourse. No definite opinion regarding recent sexual intercourse with the prosecutrix could be given by doctor. During the course of investigation, vide Ex.P3, clothes of the prosecutrix and vide Ex.P4 underwear of the Appellant were seized. The Appellant was medically examined by Dr. R. Bhattacharya (PW9). His report is Ex.P7 in which he found the Appellant to be capable to perform 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 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 13 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. After trial, 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. The First Information Report was lodged belatedly. The alleged incident took place on 27.11.1997, but the FIR was lodged on 3.12.1997. Delay in lodging the FIR has not been properly explained. Allegedly, the incident was witnessed by Asharam (PW6) and Premlal, but Premlal has not been examined. He further submits that even if the entire evidence is taken as it is, the prosecutrix appears to be a consenting party. The FIR was lodged by her because Asharam had seen her in a compromising position with the Appellant. He further submits that though as stated by Amrikabai (PW5) and Rukmani (PW13) that after the incident, the prosecutrix had told them about the incident, in spite of that they have not disclosed this fact to their husbands, who were the brothers of the husband of the prosecutrix. Thus, the entire story of the prosecution is doubtful and no offence under Section 376 of the IPC is 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. Case of the prosecution is mainly based on the statements of the prosecutrix (PW1), Asharam (PW6), Amrikabai (PW5), *jethani* of the prosecutrix and Rukmani (PW13), other *jethani* of the prosecutrix.

9. The prosecutrix (PW1) has stated that on the date of incident at about 2:00 p.m., she was going to her agricultural field. The Appellant came there behind her and asked her about her husband. When she told him that her husband had gone to the house of his sister, he caused her to fall down and committed rape with her. When she tried to shout, he gagged her mouth and at that time itself, having heard her shout, Asharam (PW6) reached there and saw the Appellant running away from there. Thereafter, Premlal also reached there. She also told him about the incident. She returned home and told about the incident to her both *jethani* Amrikabai (PW5) and Rukmani (PW13). Since her husband was not present at home, after his return, she lodged the FIR (Ex.P1). In her cross-examination, she has admitted that she had not sustained any injury on her body. She had sustained only one abrasion on her hand. She has also stated that the boundary of the agricultural field on which the incident had taken place was dry. In paragraph 8, she has also stated that at the time of incident, she had a *Hansiya* (an agricultural tool with which crop and grass is cut) with her. She assaulted the Appellant with that *Hansiya*, but no injury was caused to the Appellant. Then she assaulted him with a rope which inflicted injury on his head. She denied the fact that the Appellant, while committing rape with her, had gagged her mouth with a cloth.
10. Asharam (PW6) has stated that on the date of incident, it was heavy rainfall and much water was filled in the agricultural fields. At about 2:00 p.m., he was returning from the agricultural field. On the way, he heard the voice of a girl. On his search, he did not find any girl nearby, but he saw the Appellant running away. When he

moved ahead, he saw that the prosecutrix was sitting and weeping also. In paragraph 4, he has admitted the fact that having seen him, the Appellant had run away after getting up and when he reached near the girl, he recognised her to be the prosecutrix.

11. Both Amrikabai (PW5) and Rukmani (PW13) are *jethani* of the prosecutrix. Both have stated that when the prosecutrix returned home from the agricultural field, she told them about the incident. Both have admitted the fact that the boundary over which the incident had taken place was muddy. Rukmani has also stated that the clothes of the prosecutrix were also smeared with mud. Both Amrikabai and Rukmani have also admitted the fact that when the prosecutrix told them about the incident, they did not disclose the same to their husbands due to fear that a quarrel will take place.
12. Dr. Ila Chandel (PW7) examined the prosecutrix on 3.12.1997. She has stated that her report is Ex.P6 in which she found no injury on the body of the prosecutrix. She found that hymen of the prosecutrix was old ruptured. She was habitual to sexual intercourse. No definite opinion regarding recent sexual intercourse with the prosecutrix could be given by her.
13. Dr. R. Bhattacharya (PW9) examined the Appellant. He has stated that his report is Ex.P7 in which he found the Appellant to be capable to perform sexual intercourse. He did not find any injury over any part of his body.
14. Santram (PW2) is husband of the prosecutrix. He has stated that on the date of incident, he had gone to the house of his sister. On his return to home, he came to know about the incident. Then he

went to the police station along with his wife (the prosecutrix) for lodging of a report.

- 15.** Fudu (PW3) is the witness of seizure memo (Ex.P3). He has stated that vide Ex.P3, a petticoat and a lungi of the prosecutrix were seized. Bisundas (PW4) is the witness before whom underwear of the Appellant was seized vide Ex.P4. Chhannudas (PW8) has stated that in his presence, vide Ex.P3, petticoat of the prosecutrix and vide Ex.P4, underwear of the Appellant were seized.
- 16.** Assistant Sub-Inspector H.S. Dwivedi (PW11) is the witness who recorded the FIR (Ex.P1) lodged by the prosecutrix on 3.12.1997. Assistant Sub-Inspector V.K. Awasthi (PW10) was the Investigating Officer of the offence in question. He has stated that he investigated into the offence. During investigation, he seized petticoat of the prosecutrix vide Ex.P3 and underwear of the Appellant vide Ex.P4. He also recorded statements of witnesses under Section 161 of the Code of Criminal Procedure.
- 17.** On a minute examination of the above evidence, it is clear that the prosecutrix (PW1) has stated that the Appellant had committed forcible sexual intercourse with her, but from her statement, it is clear that at the time of the alleged incident, Asharam (PW6) had reached at the spot and having seen Asharam, the Appellant ran away from there. As stated by the prosecutrix (PW1), at the time of incident, she had suffered an abrasion on her hand, but in her medical examination by Dr. Ila Chandel (PW7), no abrasion was found on her body. The prosecutrix has also stated that she had assaulted the Appellant with a rope which had inflicted injury on his

head, but in medical examination of the Appellant, no injury was found on the body of the Appellant. The incident took place on 27.11.1997, but the FIR was lodged on 3.12.1997. Reason of delay in lodging the FIR has been stated that the husband of the Prosecutrix returned home on 3.12.1997 and then the prosecutrix lodged the FIR. From the statement of the prosecutrix, it is clear that immediately after the incident, she disclosed the incident to her both *jethani* Amrikabai (PW5) and Rukmani (PW13). But, this fact was not disclosed by any of the two *jethani* (sister-in-law) to their husbands which is not natural. When the prosecutrix could tell the incident to her both *jethani* immediately after the incident, she could also lodge a report immediately after the incident as she had already disclosed the fact to her both *jethani*, but, she did not do so. Asharam (PW6) has also admitted the fact that at the time of incident, when he, after having heard voice of a girl, reached to the spot, at that time, having seen him, the Appellant ran away. Asharam also did not disclose the incident to anyone. As per the statement of the prosecutrix (PW1), the place of incident was a boundary of the agricultural field which was dry. But, Asharam (PW6), Amrikabai (PW5) and Rukmani (PW13) have stated that the said boundary was muddy and as stated by Rukmani, the saree of the prosecutrix was also smeared with mud. But, on the petticoat of the prosecutrix, no mud was found.

18. From the above, it is clear that the FIR was lodged belatedly. Delay in lodging of the FIR has not been properly explained by the prosecution. From the evidence on record, it is clear that any such incident had taken place is doubtful. It seems that either such incident had not taken place or if such incident had taken place,

the prosecutrix was a consenting party and on Asharam (PW6) seeing the prosecutrix in a compromising position with the Appellant, the report (Ex.P1) was made. In my considered opinion, the prosecution has failed to prove the offence beyond reasonable doubt. The Appellant is, therefore, entitled to get acquittal.

19. 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.
20. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
21. 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