

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 20-8-2018****Pronounced on 21-8-2018**

(Arising out of the judgment dated 7-5-2007 passed by the 1st Addl.
Session Judge, Surajpur, Distt. Sarguja in ST No. 364/2006)

CRIMINAL APPEAL No. 409/2007

Ram Lakhan, S/o. Heera Sai Gond aged about 28 years, occupation
Agriculture, R/o. Village Karri, P.S. Odgi, Distt. Sarguja (CG)

VERSUS

State of Chhattisgarh through P.S. Odgi, Distt. Surguja, CG

For appellant : Shri R. Mahobia, Adv. on behalf of Shri A.K. Prasad,
Adv.

For State : Shri Sangarsh Pandey, Dy. Govt. Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT**Per Sharad Kumar Gupta, Judge**

1. In this criminal appeal challenge levied is to the judgment of conviction and order of sentence dated 7-5-2007 passed by the First Additional Sessions Judge, Surajpur Distt. Sarguja in S.T. No. 364/2006 whereby and whereunder the appellant has been convicted and sentenced as under:-

Under Section 450, IPC	RI for 5 years and fine of Rs. 250/-, in default of payment of fine, further SI for 3 months
Under Section 376(1), IPC	RI for 7 years and fine of Rs. 250/-, in default of payment of fine, further SI for 3 months

2. This is admitted by the appellant that he is son of the elder brother-in-law of the prosecutrix (Jeth).

3. In brief, the prosecution story is that on 23-4-2006 at about 12 pm when the husband of the prosecutrix was not in the house, the appellant came to the house of the prosecutrix and asked her to open the door. She opened the door. The appellant demanded *Gudakhu* from her. The appellant caught hold of her hand and took her inside the room by dragging. Thereafter he committed rape with her. Hearing her shouts, her mother-in-law wake up and abused him. He fled away from there. The prosecutrix submitted written complaint to the police station Odagi on 29-4-2006 because she was busy in treatment of her ill child. After completion of the investigation, a charge sheet was filed against him under Sections 450, 376 of the IPC. The trial Court framed the charge against him punishable under Sections 450, 376 (1), IPC. He abjured the charges and faced trial. To bring home the charges, prosecution examined as many as 8 witnesses. The appellant did not examine any witness in his defence.

4. After conclusion of the trial, the trial Court convicted and sentenced the appellant as mentioned above. Being aggrieved, he preferred this appeal.

5. Counsel for the appellant argued that the trial Court has not appreciated the evidence in proper perspective, FIR is delayed. Allegedly the prosecutrix was a consenting party. Thus, the conviction and sentence of the appellant may be set aside and he may be acquitted from the aforesaid charges.

6. The Dy. Govt. Advocate appearing for the State argued that conviction and sentence of the appellant are just and proper and do not call for any interference by this Court.

7. As per the prosecution story, the husband of the prosecutrix was

not present in the house. This is not the prosecution case that allegedly the appellant had told that allegedly there was some urgency. In these circumstances, in such odd hour, opening of door by the prosecutrix is abnormal and unnatural conduct. Moreover, this is also not the prosecution case that allegedly when the appellant caught hold of the hand of the prosecutrix, she had immediately screamed or shouted or raised alarm. This is also not the case of the prosecution that the prosecutrix allegedly did not immediately shout as she was under threat. P.W. 1 Prosecutrix says in para 32 during her cross-examination that she had not disclosed the alleged incident to the neighbours. In these circumstances, there is strong possibility that the prosecutrix was allegedly a 'consenting party'.

8. Moreover, this is the prosecution case, that only after completion of alleged sexual intercourse by the appellant, the prosecutrix shouted that the appellant had committed intercourse with her, this is also not normal human conduct.

9. P.W. 2 Soniya Bai who is mother-in-law of the prosecutrix says in para 9 during her cross-examination that when the appellant entered into the house and demanded water then she saw the appellant. The prosecution failed to explain as to why the P.W. 2 Soniya Bai immediately did not object and resist the presence of the appellant.

10. In the case in hand, the written complaint Ex. P-1 had been given on sixth day of the alleged incident. The reason for delay that prosecutrix was busy in treatment of her child cannot be termed as just and sufficient ground.

11. Looking to the above mentioned facts and circumstances of the case, this court finds that the prosecution has utterly failed to prove the

charges under Sections 450 and 376(1) of the IPC against the appellant.

12. Consequently, the appeal is allowed. The impugned judgment of conviction and order of sentence are set aside. The appellant is acquitted from the charges punishable under sections 450 and 376(1) of the IPC extending him benefit of doubt.

13. As the appellant was not granted bail, it is directed that if the appellant is in jail, he be released forthwith.

**Sd/-
(Sharad Kumar Gupta)
Judge**