

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.807 of 2002

Judgment Reserved on : 14.5.2018

Judgment Delivered on : 13.8.2018

Vinod Kumar, S/o Hira Singh alias Tirath, aged 20 years, R/o Village Sahmalgi, P.S. Kunda, District Kawardha, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through District Magistrate, Bilaspur

--- Respondent

For Appellant : Shri V.C. Ottalwar, Advocate
For Respondent : Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 30.7.2002 passed by the Additional Sessions Judge, Mungeli in Sessions Trial No.114 of 2001 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.1,000/- with default stipulation
Under Section 506 Part II of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
	The sentences are directed to run concurrently

2. Facts of the case, in brief, are that the prosecutrix (PW4), a married woman, aged about 20 years, was visiting the house of the Appellant for filling water. On 6.2.2001 also, i.e., the date of

incident, at about 10:00 a.m., she had gone to the house of the Appellant for filling water in his house. It is alleged that at that time, the Appellant was alone at his house. Taking advantage of loneliness, he caught the prosecutrix, dragged her towards the *kotha* (grainery) of his house and committed forcible sexual intercourse with her there. It is also alleged that after committing the forcible sexual intercourse, he also threatened her of life. Thereafter, she returned her home and told about the incident to her husband and other family members. Due to fear, the incident was not reported by her immediately. On 10.2.2001, she lodged First Information Report (Ex.P3). She was medically examined by Dr. Arpana Bakharu (PW3). Her report is Ex.P2 in which she found no external injury on the body of the prosecutrix nor around her private part. She also found that the prosecutrix was habitual to sexual intercourse. She could not give definite opinion regarding recent sexual intercourse with the prosecutrix. The Appellant was medically examined by Dr. P.L. Kurre (PW7). His report is Ex.P5 in which he found that the Appellant was capable to perform sexual intercourse. During investigation, clothes and vaginal slide of the prosecutrix were seized vide Ex.P11 and underwear of the Appellant was seized vide Ex.P13. The seized clothes and vaginal slide were sent to the Forensic Science Laboratory vide Ex.P18 for chemical examination. FSL report is Ex.P19 in which it is stated that sperms were found on the petticoat of the prosecutrix and the underwear of the Appellant. 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 376 and 506 Part II of the Indian Penal Code. Charges were framed

against him under Sections 376 and 506 Part II of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 10 witnesses. Statement of the Appellant/accused was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt and pleaded false implication due to a previous enmity. No witness has 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 submitted that the Appellant is innocent. There is no legal evidence against the Appellant. He further submitted that there was a previous enmity between the family members of the prosecutrix and the Appellant and, therefore, the Appellant has been falsely implicated in the case. He further submitted that the alleged incident took place on 6.2.2001, but the report was lodged on 10.2.2001, i.e., after 4 days of the alleged incident. The delay in lodging the report has not been properly explained. Therefore, the whole prosecution story is doubtful. He further submitted that even if the entire evidence adduced by the prosecution is taken as it is, the prosecutrix appears to be a consenting party. Hence, no offence is made out against the Appellant.
6. Per contra, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence and submitted that the prosecutrix has categorically stated that she was forcibly raped by the Appellant. Her statement is duly corroborated by other

witnesses including the Village Kotwar Sunder Das (PW10). There is nothing on record to show that there was any previous enmity between the Appellant and the family members of the prosecutrix. Therefore, there is no substance in the argument that the Appellant has been falsely implicated due to a previous enmity.

7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. The prosecutrix (PW4) has stated in her Court statement that on the date of incident she had gone to the house of the Appellant for filling water in his house. At that time, the Appellant was alone at his house. When she reached there, the Appellant caught her, took her towards the *kotha* (grainery) of his house, caused her to fall down there, removed her clothes and committed sexual intercourse with her. At that time, the Appellant threatened her that if she shouts he will kill her. Therefore, she kept mum. She has further stated that thereafter she returned home, she did not disclose about the incident to anyone on the way and she told about the incident to her husband at home. She has further stated that after 2-3 days of the incident, she had gone to the police station to lodge a report along with her husband. Since the Appellant and his family members had surrounded their house and threatened them that if a report is made by her they will kill her, she lodged the report after 2-3 days of the incident. In paragraph 11 of her cross-examination, she has admitted that when the Appellant had committed sexual intercourse with her, she had not sustained any injury.
9. Nand Kumar (PW5) husband of the prosecutrix, Bhagwatiyabai

(PW6) *jethani* (sister-in-law) of the prosecutrix, Jhagluram (PW1) father-in-law of the prosecutrix and Nonabai (PW2), mother-in-law of the prosecutrix have supported the above statement of the prosecutrix and stated that the prosecutrix had gone to the house of the Appellant for filling water in his house. On return from there, she had told them that the Appellant had caught her hand, took her towards the *kotha* (grainery) of his house and committed rape with her there. All of them have further stated that when they tried to make a report, the Appellant and his family members threatened them that if a report is lodged against the Appellant, they will kill them and, therefore, the prosecutrix lodged the report belatedly.

10. Village Kotwar Sunder Das (PW10) has stated that Jhagluram (PW1), father-in-law of the prosecutrix had come to his house and told him that the Appellant had committed rape with the prosecutrix. Since he (Sunder Das) was ill, he could not go along with Jhagluram to make a report. In his cross-examination, he has stated that after 7-8 days of the incident, Jhagluram had told him about the incident.
11. Dr. Arpana Bakharu (PW3) has stated that she examined the prosecutrix on 12.2.2001 and gave her report (Ex.P2) in which she found no external injury on the body of the prosecutrix nor around her private part. She also found that the prosecutrix was habitual to sexual intercourse. She could not give definite opinion regarding recent sexual intercourse with the prosecutrix.
12. Dr. P.L. Kurre (PW7) has stated that he examined the Appellant on 16.2.2001 and gave his report (Ex.P5) in which he found that the Appellant was capable to perform sexual intercourse.

13. Head Constable Ramlakhan (PW8) has stated that he recorded First Information Report (Ex.P3) as narrated by the prosecutrix on 10.2.2001.
14. Assistant Sub-Inspector A.R. Sahu (PW9) has stated that he investigated the offence in question. He also recorded statements of witnesses under Section 161 of the Code of Criminal Procedure. He seized underwear of the Appellant vide Ex.P13. His statement reveals that he also carried out other formalities during the investigation.
15. A minute examination of the above evidence makes it clear that there was no dispute regarding the fact that the prosecutrix (PW4) used to go to the house of the Appellant for filling water in his house. The prosecutrix has categorically stated that on the date of incident, at the time when she reached the house of the Appellant, he was alone at his house. He caught her hand, took her inside the *kotha* (grainery) of his house and committed sexual intercourse with her there. When she tried to shout, he threatened her of life, therefore, she could not shout. She has remained firm during her cross-examination. Immediately, on returning her home, she narrated the whole incident to her husband Nand Kumar (PW5), her *jethani* (sister-in-law) Bhagwatiyabai (PW6), her father-in-law Jhagluram (PW1) and her mother-in-law Nonabai (PW2). These 4 witnesses have supported her statement. From the statement of Village Kotwar Sunder Das (PW10), it is also clear that he was also told about the incident by Jhagluram (PW1). Though the FIR (Ex.P3) was lodged after 4 days of the incident, belated lodging of the FIR has been properly explained by the prosecutrix. There is nothing on record to show that there was any previous enmity

between the Appellant and the family members of the prosecutrix. Therefore, the argument that the Appellant has been falsely implicated in the case due to a previous enmity is not acceptable. The evidence on record does not suggest that the prosecutrix lodged the FIR (Ex.P3) because she was seen with the Appellant in compromised position. Therefore, the argument that the prosecutrix was a consenting party is also not acceptable. Therefore, from the evidence available on record, it appears that the Trial Court has rightly convicted the Appellant under Sections 376 and 506 Part II of the Indian Penal Code. Hence, the conviction imposed upon the Appellant is affirmed. The sentence awarded to the Appellant is the minimum prescribed sentence. No reason has been assigned on behalf of the Appellant to award sentence less than the minimum prescribed sentence awarded to the Appellant. Therefore, the sentence part is also affirmed.

16. Consequently, the appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.
17. It is reported that the Appellant is on bail. His bail bonds are cancelled. He is directed to surrender before the Trial Court immediately or he shall be taken into custody for undergoing the remaining part of his sentence, if any.
18. 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