

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.389 of 2003**

Budhuva, S/o Dhadhuva Gond, aged 47 years, R/o Pandripani, P.S. Kukdur,
District Kawardha, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Station House Officer, Police Station
Kukdur

--- Respondent

For Appellant	:	Shri Chandra Bhushan Kesharwani, Advocate
For Respondent	:	Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

3.8.2018

1. This appeal is directed against the judgment dated 29.7.2002 passed by the Additional Sessions Judge, Mungeli, District Bilaspur in Sessions Trial No.306 of 2000 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 450 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.1,000/- with default stipulation
Under Section 376(1) of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.1,000/- with default stipulation

2. Prosecution case, in brief, is that the prosecutrix (PW1), a married woman, age about 30 years, who, at the time of incident, was residing separately from her husband along with her 3 daughters,

lodged First Information Report (Ex.P1) on 23.6.2000 alleging that in the intervening night of 22nd and 23rd of June, 2000 she was sleeping in her house along with her 3 daughters and the door of the house was closed from inside. In the midnight at about 3:00 a.m., the Appellant entered her house and committed forcible sexual intercourse with her. On her being shouted, her children also woke up. Even on their being shouted, the Appellant did not stop. Having heard the shouts, her brother Pyasaram (PW3) and neighbour Gyan Singh (PW4) came there and caught the Appellant, but the Appellant succeeded to flee. On the basis of her report, offences punishable under Sections 450 and 376 of the Indian Penal Code were registered against the Appellant. The prosecutrix (PW1) was medically examined by Dr. Anjali Chipde (PW5). Her report is Ex.P5 in which she did not find any internal or external injury over any part of the body of the prosecutrix. She found the prosecutrix to be habitual to sexual intercourse. No definite opinion could be given regarding recent sexual intercourse with the prosecutrix. During the course of investigation, saree of the prosecutrix was seized from her vide Ex.P3. The said saree was also examined by Dr. Anjali Chipde (PW5). Her report in this regard is Ex.P7. Vide Ex.P8, underwear of the Appellant was seized from him. Vide Ex.P9, vaginal slides of the prosecutrix were prepared and seized. 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 offences punishable under Sections 450 and 376 of the Indian Penal Code. Charges were framed against him under Sections 450 and 376(1) of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 9 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. 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 submits that the Appellant is innocent. He has been falsely implicated in the case due to a previous enmity with the brother of the prosecutrix, namely, Pyasaram (PW3). He further submits that there was an illicit relationship between the prosecutrix and neighbour Gyan Singh (PW4). There was a quarrel between Pyasaram, Gyan Singh and the Appellant and, therefore, the Appellant has been falsely implicated in the case. He further submits that as per the prosecution story, at the time of incident, the door of the house of the prosecutrix was closed from inside and when Pyasaram and Gyan Singh reached the house of the prosecutrix, one of the daughters of the prosecutrix opened the door from inside. In the room in which the prosecutrix was sleeping along with her 3 daughters, it was not possible for anybody to enter inside the room and there was no possibility of going out of the said room without opening it from inside because it was closed from inside and there was also no space available through which an entrance or exit could be made from the room. He further submits that as per the evidence adduced by the prosecution, at the time of incident, in the

room where the incident took place, all the 3 daughters of the prosecutrix were present and they saw the incident, but none of them has been examined by the prosecution. Thus, it is clear that due to enmity, the Appellant has been falsely implicated in the case.

6. Per contra, Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Appellant and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The prosecutrix (PW1), in her Court statement, has stated that she was sleeping in her house along with her children after closing the door of the house from inside. At that time, the Appellant by jumping the wall of the house entered inside the house and he forcibly began to commit sexual intercourse with her. She shouted “दौड़ो दौड़ो (*Daudo Daudo*)” and her children also shouted. Then Pyasaram (PW3) and Gyan Singh (PW4) running came there. Her eldest daughter opened the door from inside. At that time, the Appellant had not left her. Thereafter, Pyasaram and Gyan Singh separated the Appellant from the prosecutrix and Pyasaram slapped the Appellant, but the Appellant succeeded to flee. In her cross-examination, she has admitted that her 3 daughters were present along with her. The eldest daughter was aged about 15-16 years. Her another daughter was of 6-7 years of age and the youngest daughter was aged about 4 years. In paragraph 9 of her cross-examination, she has stated that her house is surrounded by

a wall constructed of bricks. One side of the wall is broken through which the Appellant had entered her house. The height of that broken portion of the wall was of 5 feet.

9. Harichandra (PW2), neighbour of the prosecutrix, has not supported the case of the prosecution and he has been declared hostile. He has only stated that the prosecutrix had told him that the Appellant had entered her house, but he has further stated that he had gone to the house of the prosecutrix and seen that the door of the house was closed from inside and, therefore, it was not possible to enter inside the house.
10. Pyasaram (PW3), brother of the prosecutrix has stated that in the midnight at about 3:00 a.m., the prosecutrix and her children were shouting. He did not collect courage to go there due to his being alone. Therefore, he went to Gyan Singh (PW4) and woke him up and thereafter both of them went to the spot. On their being asked, the eldest daughter of the prosecutrix opened the door of the house. At that time, they saw that the Appellant had mounted over the body of the prosecutrix. He slapped the Appellant twice. The Appellant jumped the wall of the room which was not erected till the roof and fled from there. Gyan Singh (PW4) has supported the above statement of Pyasaram (PW3). Pyasaram (PW3) has stated in his cross-examination in paragraph 9 that in the room in which the prosecutrix was present, the Appellant had entered therein by entering through the space which was left between the front door and the roof and the height of the open space was about 5 hands.
11. Dr. Anjali Chipde (PW5) examined the prosecutrix. She has stated that her report is Ex.P5 in which she did not find any internal or

external injury over any part of the body of the prosecutrix. She found the prosecutrix to be habitual to sexual intercourse. No definite opinion could be given regarding recent sexual intercourse with the prosecutrix.

12. Dr. V.P. Jaiswal (PW7) examined the Appellant on 29.6.2000. He has stated that his report is Ex.P11 in which he found the Appellant to be capable to perform sexual intercourse. He has further stated that during examination of the Appellant, he found that there were injuries present over the back and right leg of the Appellant.
13. Assistant Sub-Inspector B.D. Bandhe (PW8) was the Investigating Officer of the offence in question. Patwari Laxman Prasad (PW9) prepared the spot-map (Ex.P20) on 30.7.2000. In his cross-examination, he has admitted that as mentioned in the spot-map, room No.2 was the place of occurrence and if the said room is bolted and closed from inside, there cannot be any possibility of making entrance therein. He has further stated that at the time of preparing the spot-map, the prosecutrix had also not told that any wall of the said room was broken and the Appellant had entered the room by jumping the said wall. He has further stated that he had not found any breaking or repairing in the room in which the alleged occurrence had taken place. He has stated that had it been so, he would have mentioned it in the spot-map (Ex.P20).
14. A minute examination of the above evidence makes it clear that though the prosecutrix (PW1) has stated that the Appellant had entered her room by jumping the wall of the room at about 3:00 a.m. and he was committing forcible sexual intercourse with her, at that time, her 3 daughters were also present in the said room and

they had also witnessed the alleged incident and Pyasaram (PW3) and Gyan Singh (PW4) had also witnessed the alleged incident and on their arrival, the door of the room was opened by the eldest daughter of the prosecutrix from inside. Thereafter, the Appellant had fled from there by jumping the wall. The above statement of the prosecutrix has been corroborated by Pyasaram (PW3) and Gyan Singh (PW4). From the above, it is clear that the door was closed from inside. When Pyasaram (PW3) and Gyan Singh (PW4) arrived there, the eldest daughter of the prosecutrix opened the door from inside and then the Appellant fled from the spot. But, from the statement of Patwari Laxman Prasad (PW9) and the spot-map (Ex.P20) prepared by him, it is clear that there was no possibility for making entry inside or exit outside the room where the alleged incident took place. Other than the door of the room, there was no space or entrance/exit available through which anybody could enter inside the room or go out of the room. Even if for the sake of argument, it is considered that any such space was available to enter or exit the room where the alleged incident had taken place, according to the statements of Pyasaram (PW3) and Gyan Singh (PW4), height of the upper space available was about 5 hands. Therefore, looking to the said height, it was not possible for anybody to jump through the space for making entry inside the room or for making exit from the room. As allegedly, the incident was witnessed by the 3 daughters of the prosecutrix, but they have not been examined by the prosecution.

15. It was the argument of the State Counsel that in the medical examination of the Appellant, the doctor had found injuries over the back and right leg of the Appellant. Therefore, it can be presumed

that the Appellant had jumped the wall for his entry and exit the room. The alleged incident took place in the intervening night of 22nd and 23rd of June, 2000 and the Appellant was medically examined on 28th June, 2000, i.e., 6 days after the alleged incident, but, the duration of the injuries present over the body of the Appellant has not been stated by the doctor. Therefore, it cannot be accepted that the injuries were 6 days old. Hence, there is no substance in this argument of the State Counsel.

16. From the above discussion, I find that no such incident had taken place or even if it had taken place the prosecutrix was a consenting party and when her daughters woke up, she shouted and she reported the matter when her brother and neighbour arrived at the spot. The Appellant deserves to get benefit of doubt.
17. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
18. 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.
19. 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