

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1151 of 2001

Judgment Reserved on : 8.12.2017

Judgment Delivered on : 28.2.2018

Bhoju Satnami alias Bhojraj, S/o Peela Dau Sonwani, aged 19 years, resident of Village Kopara, Thana Rajim, District Raipur, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through the District Magistrate Raipur

--- Respondent

For Appellant	:	Shri Awadh Tripathi, Advocate
For Respondent/State	:	Smt. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 7.11.2001 passed by the 3rd Additional Sessions Judge, Raipur in Sessions Trial No.179 of 2001 convicting and sentencing the Appellant as under:

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

2. The prosecution case, in brief, is that the prosecutrix (PW1), a married woman, aged about 20 years, on 11.1.2001 at about 9:00 p.m., was going to her old house to watch programme on TV. It is alleged that on the way, the Appellant forcibly lifted her up, took her to the dilapidated premises of Tilak Satnami, caused her there to fall down and thereafter he committed forcible sexual intercourse

with her. He threatened her of life on being disclosed the incident to anyone and thereafter fled from there. The prosecutrix went to her house and told about the incident to her husband and other members of her family. On 12.1.2001, First Information Report (Ex.P1) was lodged by the prosecutrix. She was medically examined by Dr. D. Kudesiya (PW5). Her report is Ex.P5 in which she did not find any internal or external injury on the body of the prosecutrix. She found that the prosecutrix was habitual to sexual intercourse and no definite opinion could be given regarding recent intercourse with her. The Appellant was also examined by Dr. Gopal Kela (PW11). His report is Ex.P12A in which he has stated that the Appellant was capable of committing sexual intercourse. Vide Ex.P3, underwear of the Appellant and Vide Ex.P2 petticoat of the prosecutrix were seized. Both the clothes were sent to the Forensic Science Laboratory for chemical examination. FSL Report is Ex.P14. Ex.P14 reports positive regarding presence of human spermatozoa on the underwear and the petticoat. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 376 and 506 of the Indian Penal Code. Charges were framed against him under Sections 376(1) and 506B of the Indian Penal Code.

3. To rope in the Appellant, the prosecution examined as many as 11 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him, pleaded innocence and false implication. Two witnesses have been examined in his defence.

4. 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 there are material contradictions in the statements of the prosecution witnesses. It was further argued that as per the statement of Maltibai (PW8), Jethani of the prosecutrix, as soon as the prosecutrix had returned home, her husband had beaten her and had asked her why had she returned home late. On being asked by her husband, she had narrated him about the incident. From this, it is clear that the prosecutrix herself had not told anything about the incident to anybody. As per the statement of the prosecutrix, her bangles were broken, there were injuries on her back, head and hand, but no injury was found in her medical examination. Thus, it is clear that she was a consenting party.
6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.
8. The prosecutrix (PW1) has stated that on the date of incident at about 8:00 p.m., she was going to her old house to watch programme on TV. On the way, the Appellant met her near a dilapidated premises. He gagged her mouth and dragged her inside the premises and committed rape with her there. Therefore, she lodged the FIR (Ex.P1). In her cross-examination, she has stated that she recognised the Appellant, but did not know his

name. She has further stated in paragraph 6 of her deposition that after the incident, she told about the incident to her Jethani. She came to know about the name of the Appellant from her Jethani. She had shown the Appellant from a distant place then her Jethani had told her about the name of the Appellant. But, in the FIR (Ex.P1) and in her case diary statement (Ex.D1), this fact is not mentioned. In paragraphs 8 and 9 of cross-examination, she has stated that the Appellant had caused her to fall down, her bangles were broken and, therefore, injuries had occurred on her hands. Due to causing her to fall down, she had also sustained injury on her back and head. In paragraph 13 of her cross-examination, she has further stated that after the incident, the Appellant went to his home and she also returned her home.

9. Village Kotwar Uttam (PW2) is the witness before home petticoat of the prosecutrix and underwear of the Appellant were seized vide Ex.P2 and P3, respectively. He has supported the above seizures.
10. Bhulinbai (PW3) is mother-in-law of the prosecutrix. She has stated that at about 9:00 p.m., the prosecutrix, weeping, came to her and told the name of the Appellant saying that the Appellant had committed rape with her. In paragraph 3 of her cross-examination, she has categorically stated that the prosecutrix had told her about the incident that the rape was committed with her and she specifically told the name of the Appellant. Sahodrabai (PW4), Jethani of the prosecutrix has also stated that the prosecutrix came to her and specifically telling the name of the Appellant told her that the Appellant committed rape with her.
11. Dr. D. Kudesiya (PW5) examined the prosecutrix. Her report is

Ex.P5 in which she did not find any internal or external injury on the body of the prosecutrix. She found that the prosecutrix was habitual to sexual intercourse and no definite opinion could be given regarding recent intercourse with her. Patwari Mohd. Ali (PW6) prepared the spot-map (Ex.P7). Inspector K.K. Mudliar (PW7) is the witness who assisted in the investigation of the alleged offence. Maltibai (PW8), Jethani of the prosecutrix has stated that she had come out to return her home. After 15 minutes, the prosecutrix, weeping, came to her and specifically telling the name of the Appellant told her that the Appellant had committed rape with her. In her cross-examination, she has stated that when the prosecutrix came to her, her husband (husband of the prosecutrix) asked the prosecutrix about delay in her return and beat her. At that time, the prosecutrix told her about the incident.

12. Assistant Sub-Inspector Awadhesh (PW9) registered the FIR (Ex.P1) and did the investigation. Radheshyam (PW10) is the witness of seizure (Ex.P3) of underwear of the Appellant. He has supported the said seizure. Dr. Gopal Kela (PW11) medically examined the Appellant. His report is Ex.P12A in which he has opined that the Appellant was capable of committing sexual intercourse. Puniyabai (DW1) and Foolchand (DW2), neighbours of the prosecutrix have stated that they were residing nearby the place of incident. The prosecutrix did not tell them anything about the incident nor did they hear any shout from the place of incident.
13. On minute examination of the above evidence, it is found that though the prosecutrix (PW1) has stated that he Appellant had committed forcible sexual intercourse with her yet her statement

does not inspire confidence of this Court. As per her Court statement, at the time of occurrence, she had sustained injuries on her hand, head and back. Bangles were also broken, but no piece of broken bangles was seized from the spot. No bodily injury was also found in her medical examination (Ex.P5). As per the Court statement of the prosecutrix, she did not know the name of the Appellant. After the incident, she had shown the Appellant to her Jethani from a distant place, then her Jethani had told her the name of the Appellant. At that time itself, she came to know about the name of the Appellant. But, Maltibai (PW8), Jethani of the prosecutrix and Sahodrabai (PW4) have not stated anything about this. They as well as Bhulinbai (PW3), mother-in-law of the prosecutrix have categorically stated that the prosecutrix had returned home and told about the incident specifically telling the name of the Appellant. The prosecutrix has also stated that after the incident, she had returned her home and the Appellant had also gone to his home. From the statement of Maltibai (PW8), it is also clear that after returning home, the prosecutrix herself did not tell about the incident to anybody at home. When husband of the prosecutrix asked her about delay in her return to home, then she disclosed about the incident and on this her husband had beaten her.

14. From the foregoing, the whole prosecution story appears to be doubtful. It seems that if the alleged act was done with the prosecutrix, she was a consenting party to the same. Therefore, no offence under Section 376(1) of the Indian Penal Code is proved beyond reasonable doubt.

15. 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.
16. 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