

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 615 of 2001**

- Santosh Kumar Chouhan S/o Sonaram Chouhan, R/o Arjuni (Baldakachar) P.S. Kasdol District Raipur

---- Appellant**Versus**

- State of Chhattisgarh Through P.S. Kasdol, District Raipur (C.G.)

---- Respondent

For Appellant	-	Shri K.K. Singh, Advocate.
For Respondent	-	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker**Judgment On Board****27/06/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 27.06.2001 passed by II Additional Sessions Judge, Baloda Bazar in Sessions Trial No.52/2000 convicting the accused/appellant under Section 376(1) IPC & sentencing him to undergo R.I. for 7 years with fine of Rs.500/-, plus default stipulation.

02. As per the prosecution case, on 24.10.1999 FIR (Ex.P/12) was lodged by the prosecutrix (PW/1), aged between 17-19 year, alleging in it that on 21.10.1999 she and her friend Nirmala had gone to attend the nature's call and while doing so, the accused/appellant and his friend Om Prakash reached there, the accused/appellant committed forcible sexual intercourse with her, whereas his friend Om Prakash had done the same act with Nirmala. Based on this FIR (Ex.P/12), offence under Section 376 IPC was registered against the accused/appellant,

however, as informed, no case has been registered against Om Prakash. The prosecutrix was medically examined vide Ex.P/5 on 25.10.1999 by Dr. (Mrs.) Nihar Bajpai (PW/8) and it has been opined by the Doctor that for the first time prosecutrix was subjected to sexual intercourse about three weeks prior to the incident and the last intercourse appears to have been committed about 5 - 7 days back. For determination of age of the prosecutrix, she was referred to radiologist and as per X-ray report, the age of the prosecutrix was found to be in between 17-19 year. In the incident, panty, skirt of the prosecutrix and underwear of the accused/appellant were seized, the same were subjected to chemical examination and as per FSL report (Ex.P/19), spermatozoa was found on the same. The accused/appellant was also medically examined vide Ex.P/14 on 26.10.1999 and found to be capable of performing sexual intercourse.

03. After filing of the charge sheet, the trial Court has framed the charge under Section 376 IPC against the accused/appellant.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 14 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. That apart, three defence witnesses have also been examined by the defence to substantiate its case.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits as under:

- That there is delay of about 3 days in lodging the FIR and the said delay has not been explained by the prosecutrix.
- That a very improbable story has been put forth by the prosecution where it is alleged that simultaneously two girls have been subjected to rape by two persons. It has been further argued that either it is a case of consent or of false implication.
- That the statement of the prosecutrix (PW/11) is not reliable and trustworthy.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/appellant is strictly in accordance law and there is no infirmity in the same.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Prosecutrix (PW/11) has stated that on the date of incident about 10.00 AM, she and her friend Nirmala had gone to take bath and while they were attending the nature's call, the accused/appellant and his friend Om Prakash reached there, she was subjected to rape by the accused/appellant whereas her friend Nirmala was subjected to same act by Om Prakash. She has further stated that upon hearing her cries, Ramesh and Arun, brother of her friend Nirmala, reached there and upon seeing them the accused/appellant fled away from the spot. Thereafter, she went to her house, narrated the entire incident to her mother and on 24.10.1999 she lodged the report (Ex.P/12) against the accused/appellant. She has also stated that about a month after the incident the accused/appellant again took her along with him and kept her for three days but she was not subjected to physical relation during

this period. She admits that Ex.D-1 to D-5 are the letters written by her and that she was having affair with the accused/appellant. It is relevant to note here that in Ex.D-1 she has accepted the appellant as her husband, whereas other letters are her love letters. She has further stated that after the incident she and her friend Nirmal had washed their respective clothes and then returned to their house. She has further admitted the fact that she was kept by the parents of the accused/appellant for three days but she had not lodged the report thereof.

10. Dr. (Mrs.) Nihar Bajpai (PW/8) medically examined the prosecutrix on 25.10.1999 vide Ex.P/5. According to her, hymen of the prosecutrix appears to be torn about three weeks back and x-ray was advised for determination of her age. As per X-ray report, the prosecutrix could have been between 17-19 year of age. She has further stated that for the first time the prosecutrix was subjected to physical relation about three weeks prior and for the last time she was subjected to physical relation about 5-7 days back.

11. Ramesh (PW/1) has stated that when he reached the place of occurrence after hearing cries of the girls, he found Om Prakash and Nirmala in objectionable condition, whereas the accused/appellant was fleeing from the spot.

12. Arun Kumar Kannoje (PW/3) has stated that he saw Om Prakash and Nirmala in objectionable condition, whereas the prosecutrix was standing beneath the tree but the accused/appellant was not standing there.

13. Nirmala (PW/6) has stated that the prosecutrix was subjected to physical relation by the accused/appellant and after hearing their cries,

Arun and Ramesh reached there.

14. Shri Yogesh Kumar Sharma (PW/13) medically examined the accused/appellant vide Ex.P/14 and found him to be capable of performing sexual intercourse.

15. Ratnesh Mishra (PW/14) - Investigating Officer has duly supported the prosecution case.

16. As per the evidence of defence witnesses, the prosecutrix was having affair with the accused/appellant.

17. Close scrutiny of the evidence makes it clear that there is delay of about three days in lodging the FIR and the said delay has not been explained by the prosecutrix. Though the prosecutrix has levelled allegation of rape against the accused/appellant but she is not consistent while deposing in the Court and even after one month of the incident, she remained with the accused/appellant. The evidence of prosecutrix does not inspire full confidence of this Court. Even otherwise, the story put forth by the prosecution appears to be some what improbable where it is alleged that while the prosecutrix and her friend Nirmala were attending the nature's call, they were subjected to physical relation by two persons but surprisingly Nirmala, friend of the prosecutrix, has not lodged FIR though she has deposed in the Court against the accused/appellant. Further, medical report (Ex.P/5) does not support the prosecution and as per X-ray report of the prosecutrix, she appears to be a major girl. That apart, defence has proved the love letters (Ex.D-1 to D-5) written by the prosecutrix to the accused/appellant. Taking into consideration all the aforesaid facts, it is crystal clear that the prosecutrix was having affairs with the accused/appellant and the possibility of accused/appellant being falsely implicated in the crime in question

cannot be ruled out.

18. The findings recorded by the Court below thus appears to be beyond proper appreciation of the evidence adduced by the prosecution which cannot have affirmation from this Court. Since, the prosecution has failed on all fronts to prove its case beyond shadow of doubts, the benefit, of course, has to go to the accused/appellant. The appeal is thus allowed, judgment impugned is hereby set aside and the accused/appellant stands acquitted of the charge levelled against him. As the appellant is reported to be on bail, his bail bonds stand discharged.

19. Appeal is thus allowed.

Sd/-

(Pritinker Diwaker)

JUDGE