

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.905 of 2001

1. Balam Say, S/o Hukum Say, aged about 22 years, occupation agriculture,
2. Bablu @ Bal Govind, son of Ramnath, aged about 20 years, occupation agriculture,
3. Bharat Sahu, S/o Banshdhari Sahu, aged about 25 years, occupation agriculture,

All R/o Village Shivnandanpur, P.S. Bishrampur, District Surguja, Chhattisgarh

---- Appellants

versus

The State of Chhattisgarh through S.H.O., Police Station Bishrampur, District Surguja, Chhattisgarh

--- Respondent

For Appellants	:	Shri A.K. Prasad, Advocate
For Respondent	:	Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

27.7.2018

1. This appeal is directed against the judgment dated 19.9.2001 passed by the Additional Sessions Judge, Surajpur, District Surguja in Sessions Trial No.206 of 2000 convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 450 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.500/- with default stipulation

2. Prosecution case, in brief, is that the prosecutrix (not examined) was residing in a hostel at Nawapara, Ambikapur. Ramautar

(PW1) was residing with his family in a rented house belonging to Appellant No.3, Bharat Sahu. On 22.9.1999, the prosecutrix had stayed at the house of Ramautar (PW1). Ramautar (PW1), his wife Budhiyaro (PW2) and mother-in-law (not examined) of Ramautar were present at the house. It is further alleged that at about 11:00 p.m., the Appellants entered the house of Ramautar (PW1), caught the prosecutrix and took her out of the house towards a field, where acquitted accused Krishna, Rajendra, Mangal, Amarjeet and Deosai were also present. All they committed rape with the prosecutrix. Thereafter, they fled from the spot. The prosecutrix returned and told about the incident to Budhiyaro (PW2) and mother of Budhiyaro. Thereafter, on 23.9.1999, the prosecutrix lodged First Information Report (Ex.P8). She was medically examined. 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 Appellants and the acquitted accused persons for offence punishable under Sections 376(2)(g), 450, 452 of the Indian Penal Code and Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the Act'). Against the present Appellants, charges were framed under Sections 450 and 376(2)(g) of the Indian Penal Code and against the acquitted accused persons charge was framed only under Section 376(2)(g) of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 7 witnesses. Statement of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt, pleaded innocence and false implication. No

witness has been examined in their defence.

4. After trial, the Trial Court acquitted Krishna, Rajendra, Mangal, Amarjeet and Deosai of the charge framed against them under Section 376(2)(g) of the Indian Penal Code. The Trial Court also acquitted the present Appellants of the charge framed against them under Section 376(2)(g) of the Indian Penal Code, but convicted and sentenced them under Section 450 of the Indian Penal Code as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants submits that there is nothing on record on the basis of which it could be established that the Appellants entered the house of Ramautar (PW1), which was originally owned by Appellant No.3, Bharat Sahu. He further submits that from the evidence on record, it is clear that the Appellants had gone to get the house vacated and a dispute had taken place against vacating of the house. The Appellants did not enter the house in question. Therefore, the offence alleged against them under Section 450 of the Indian Penal Code is not proved.
6. Per contra, Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Appellants 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. It is not in dispute that the house in question belonged to and

owned by Appellant No.3, Bharat Sahu and in that house Ramautar (PW1) was residing as a tenant. It is also not in dispute that on the date and time of incident, total 4 persons, namely, Ramautar (PW1), his wife Budhiyaro (PW2), mother-in-law of Ramautar (not examined) and the prosecutrix (not examined) were present in the said house. Therefore, the case of the prosecution is based on the statements of Ramautar (PW1) and Budhiyaro (PW2) only.

9. In his Court statement, Ramautar (PW1) has stated that due to festival of *Karma*, he had consumed liquor and was sleeping in drunken condition. At about 3:00 a.m., he got conscious. Then his wife told him that the Appellants had entered their house and they had taken the prosecutrix out of the house. In his cross-examination, he has admitted that after the incident, Appellant No.3, Bharat Sahu had asked him to vacate the house. From the above statement of Ramautar (PW1), it is clear that he himself did not witness any of the Appellants entering the house or going out of the house.
10. Budhiyaro (PW2), wife of Ramautar (PW1) has stated that in the night, all the 3 Appellants, after opening the *hatka* (hook) of the door, had entered the house and had taken the prosecutrix out of the house. She has further stated that thereafter she went to the house of Up-Sarpanch Jagmohan (PW3) and informed him about the incident. In cross-examination, she has admitted that the house in which they were residing was owned by Appellant No.3, Bharat Sahu and he had been asking them to vacate the house prior to the incident. She has further admitted that on the date of incident

also, Appellant No.3, Bharat Sahu had come along with his mother and asked them to vacate the house.

11. Up-Sarpanch Jagmohan (PW3) has supported the statement of Budhiyaro (PW2) to the extent that she had come to his house in the night along with her mother, but as per the statement of this witness, both Budhiyaro and her mother were in drunken condition and Budhiyaro told him that Appellant No.3, Bharat Sahu was asking them for the rent of the house and also asking to vacate the house. In his cross-examination, he has further stated that Budhiyaro had also told him that the Appellants had come to the house and shouted for rent of the house and they had also threatened of life.
12. Inspector Ramnarayan Yadav (PW7) has stated that he investigated into the offence in question. But, this witness has not prepared any spot-map as no such document is available on record.
13. A minute examination of the above statements of the witnesses makes it clear that Ramautar (PW1) was in drunken condition in the said night. He did not witness any of the Appellants entering the house or going out of the house. Other 2 witnesses, i.e., the prosecutrix and mother-in-law of Ramautar have not been examined by the prosecution. Though Budhiyaro (PW2), wife of Ramautar (PW1) has stated that the Appellants had entered the house after opening the *hatka* (hook) of the door, it is not reliable that any person would enter the house after opening the hook fixed inside the door. Budhiyaro herself has admitted the fact that

Appellant No.3, Bharat Sahu had come to the house along with his mother and had asked for rent of the house. From the statement of Up-Sarpanch Jagmohan (PW3) also, it is clear that the Appellants had raised a dispute for rent of the house, but they entered the house, no cogent evidence is available on record in this regard. Therefore, the offence alleged against the Appellants under Section 450 of the Indian Penal Code is not proved beyond reasonable doubt.

14. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge framed against them.
15. It is reported that the Appellants are on bail. Their 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.
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