

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 1162 of 2014

Chetanram Rajwar, S/o. Manbodh Rajwar, aged about 35 years, R/o. Village- Mouharipara (Barbaspur), Police Station – Ramanujnagar, Civil and Revenue District – Surajpur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through : Station House Officer, Police Station – Ramanujnagar, Civil and Revenue District – Surajpur (C.G.)

-----Respondent

For Appellant	: Mr. Syed Imtiaz Ali, Advocate
For Respondent/State	: Mrs. M. Asha, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

14/04/2018

Heard.

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned 1st Additional Sessions Judge, Surajpur, District – Surajpur (C.G.), passed in Sessions Trial No. 187/2011, passed on 07.10.2014 convicting the appellant for the offence punishable under Section 376 of the Indian Penal Code and sentenced to under go R.I. for 7 years along with fine of Rs.100/- with default stipulation.

2. Facts of the case in brief is this that on 03.02.2011, when the prosecutrix was alone in her house in the afternoon, the appellant came to her house on the pretext of taking digging tools, then finding the prosecutrix alone in her house by use of force, he raped her without her willingness and consent. Prosecutrix narrated the incident to her husband in the evening and the FIR was lodged on 04.02.2011. After completion of investigation, charge-sheet was filed before the concerned Court.
3. Appellant was charged with offence under Section 376 of the Indian Penal Code. The appellant denied the charges and prayed for trial. The prosecution examined 7 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned herein above.
4. Counsel for the appellant submits that erroneous judgment of conviction and order of sentence has been passed against the appellant. No offence is made out under Section 376 of the Indian Penal Code against the appellant on the basis of the evidence brought by the prosecution. The prosecutrix (P.W.-1) herself has not made a clear statement that she was raped, whereas her husband – Kismat Ram (P.W.-2), who has given statement is a hearsay witness. Apart from that, no other witnesses have made any statement in support of prosecution. Even the examining Dr. Shashi

Tirkey (P.W.-6) has stated that no symptoms were found of recent sexual intercourse with the prosecutrix and the injury that was found on her body was 3-4 days prior to the date of examination i.e. 05.02.2011. Hence, the conviction of the appellant is bad in law. Therefore, it is prayed that the appellant may be acquitted of the charges.

5. Counsel for the State opposing the submission made in the grounds raised in the appeal submits that the prosecution has proved its case beyond all reasonable doubts. Prosecutrix (P.W.-1) has made clear statement that the appellant after entering into her house, had forcefully ravished her and her statement is supported by Kismat Ram (P.W.-2). The evidence of Dr. Shashi Trikey (P.W.-6) about finding injury on the body of the prosecutrix is also suggest that force was used on her body. Hence, no case is made out for acquittal of the appellant in this case.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charge against the appellant on the basis of the evidence beyond reasonable doubt?
8. Statement of the witnesses have perused and scrutinized as under :-
9. Prosecutrix (P.W.-1) has stated that on the date of incident, appellant entered into the house and at first caught hold of her hand

then she raised alarm but the appellant threatened her and then he forcefully ravished her (did *Bejjati*). The prosecutor has not made any effort to clarify the word '*Bejjati*' and no other statement has been made by the prosecutrix herself to clarify or add to explain the incident that has taken place. In the cross-examination, her statement has remained as it is. Although on suggestion made, she denied about having assaulted on the appellant and denied having knowledge that any FIR was lodged by the appellant against her.

10. Kismat Ram (P.W.-2) has stated that when he came to his house at 6 o'clock in the evening, his wife narrated to him about the incident that the appellant had raped her at about 12.00 AM. In the cross-examination, he admitted that he himself, his wife and his daughter all had assaulted and thrashed the appellant after the date of incident. Dharampal (P.W.-3) has stated, that he was passing from near the house of the prosecutrix and he heard the voice of prosecutrix, who was saying to leave her, but he did not pay any heed to it and went for his work. Dilip (P.W.-4) has not supported the case of the prosecution and has been declared hostile. Aashik (P.W.-5) is the witness of seizure of articles Ex.P/4.
11. Inspector – Prakash Soni (P.W.-7) has given statement that FIR (Ex.P/1) was lodged by the prosecutrix herself on 04.02.2011 and he did the rest of the investigation. Dr. Shashi Tirkey (P.W.-6) has on examination of the prosecutrix on 05.02.2011 found one abrasion on her right elbow and prosecutrix complained of pain in her back. On examining her private parts, she did not find any injuries. Vide her

report Ex.P-6, she has opined that prosecutrix was habitual to sexual intercourse and there were no symptoms of recent sexual intercourse committed with her. In the cross-examination, this witnesses has admitted, that the injury found on the body of the prosecutrix was caused to her within 3-4 days prior to the date of examination.

12. After closely scrutinizing the evidence of the prosecution witness, it appears that statement given by the prosecutrix (P.W.-1) needed clarification, as to what she meant from *Bejjati*, because *Bejjati* is wide term ranging from outraging the modesty for committing the offence of rape. Kismat Ram (P.W.-2) is only the hearsay witness. Even the Dr. Shashi Tirkey (P.W.-6) has not given any opinion as to whether any sexual intercourse has taken place with the prosecutrix recently or not. No explanation by the prosecutrix herself and no effort being made by the prosecution itself. It is a lacuna, which can not be filled up with any imagination or any kind of presumption. Hence, on the basis of this evidence, the extent to which a conclusion can be drawn is only this that the modesty of the prosecutrix was outraged by the appellant at the time of incident. This would be the safe course to be taken without there being any clear and cogent evidence for holding the appellant guilty for offence of rape.
13. Hence, after due consideration I am of this view that the conviction of the appellant under Section 376 is not made out. Instead of that, the evidence is sufficient, believable and beyond reasonable doubt

to this extent, that the appellant has committed the offence of outraging the modesty of the prosecutrix, hence, this appeal is allowed in part. The conviction and the sentence of the appellant under Section 376 of Indian Penal Code is set-aside and instead of that appellant is convicted for offence under Section 354 of the Indian Penal Code.

14. The offence committed by the appellant is of dated 03.02.2011 and at that time, the offence under Section 354 of I.P.C. was punishable up to maximum imprisonment either description up to two years with fine or without fine. Appellant had been in jail since the date of arrest i.e. 07.02.2011 to 13.05.2011 and subsequent from the date of judgment of conviction and order of sentence dated 07.10.2014 and the total period of his detention in jail is near about 3 years, 9 months and 4 days. The appellant is sentenced with imprisonment of the period of detention already undergone in jail. The appellant is reported to be in jail, he be set at liberty forthwith, if not required in any other case.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram