

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 56 of 2000**

Narendra Sahu, aged about 21 years S/o Jai Krishna Sahu R/o Village Matidarha, P.S. Basna, Distt. Mahasamund

----Appellant**Versus**

State of Chhattisgarh, through PS Basna

---- Respondent

For Appellant	:	Mr. Ravindra Sharma, Advocate
For Respondent	:	Mr. Shubham Verma, PL

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

05/11/2019

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 20/11/2000 passed in Sessions Trial No. 113/2000 by the Second Additional Sessions Judge, Mahasamund whereby the Appellant has been convicted under Section 376 (1) of the IPC and sentenced to undergo RI for 7 years and to pay fine of Rs. 1000/- with default stipulation.
2. Facts of the case are that on 13/02/2000 at about 3:00 pm, the Prosecutrix (PW7) had gone to bring drinking water from the river. At that time, the Appellant was standing in his field adjacent to river. He saw the Prosecutrix and came there and proposed her for sexual intercourse. When the Prosecutrix refused, he forcibly took her towards Nala and committed sexual intercourse. When the Prosecutrix shouted, one Loboram came and thereafter, the Appellant fled away from the spot. The Prosecutrix told the entire incident to her husband Uttar Kumar

(PW3). Thereafter, FIR has been lodged. The Prosecutrix was medically examined by Dr. Smt. Tara Agrawal(PW5). Her report is Ex.P-6. From the spot, some broken bangles were also recovered. Statement of the Prosecutrix as well as other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 9 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. He further submits that material witness Lobaram has not been examined by the prosecution due to his death. Statement of the Prosecutrix is not reliable. If the entire case of the prosecution is taken as it is, yet it seems that the Prosecutrix was the consenting party. Since Loboram had seen the Prosecutrix in compromise position with the Appellant, therefore, the Prosecutrix had made a false report to secure herself.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.

7. In her Court statement, the Prosecutrix (PW7) has stated that at the time of incident when she was going to bring water from river, the Appellant came there and caught hold her. He proposed her for sexual intercourse and when she refused, he forcibly took her towards Nala and asked to sleep her with him. Thereafter, he committed sexual intercourse with her. She further deposed that the Appellant pressed her neck and she became unconscious. After some time, when she woke up, she saw that Loboram was there and the Appellant fled away from the spot. Thereafter, she came back to her house and narrated the incident to her husband. Later on, FIR has been lodged. In her cross-examination, this witness has deposed that the Appellant had taken her by pulling. She further deposed that due to forcibly fallen by the Appellant, her bangles were broken, but there was no injury on her wrist.
8. Uttar Kumar (PW3) has supported the statement of the Prosecutrix and deposed that her wife has told him about the incident. Thereafter, he discussed the matter with his relatives and had lodged the FIR. Nityanand (PW1) and Mukund (PW2) are the witnesses before whom the Police had seized broken bangles vide Ex.P-1. Dr. A.K. Ratre (PW4) is a witness who medically examined the Appellant. His report is Ex.P-5. He opined that there was no injury on the penis of the Appellant and the Appellant was capable to perform sexual intercourse. Dr. Smt. Tara Agrawal (PW5) had medically examined the Prosecutrix on 15/02/2000. Her report is Ex.P-6. This witness has deposed that there was redness and swelling in the private part of the Prosecutrix and she was feeling pain. There were abrasions in behind of her both hands. This witness has opined that the intercourse had been performed with the Prosecutrix

and the abrasions seems to be happened within 2 days. In her cross-examination, this witness has deposed that the injury found in the private part of the Prosecutrix appeared to be happened within 5-6 hours. She further stated that if a lady is forcibly fallen down by someone and her bangles is broken, then she would definitely sustain injuries in her hands. J.P. Chandrakar (PW8) and Yadavram (PW9) are the witnesses who investigated the matter.

9. On minute examination of above evidence, it makes clear that the Prosecutrix is a major married lady. The alleged incident took place on 13/02/2000. The Prosecutrix was medically examined by Dr. Smt. Tara Agrawal (PW5) on 15/02/2000 i.e. after 2 days. As per opinion of Dr. Smt. Tara Agrawal (PW5), there was redness and swelling in her private part, but redness appeared to be happened within 5-6 hours, therefore, it is not established that the redness and swelling found in private part of the Prosecutrix was happened due to alleged offence. As stated by the Prosecutrix, at the time of incident, the Appellant had fallen down her on the floor and due to that her bangles were broken, but at the time of medical examination of the Prosecutrix, there was no injury found on her wrist. It was also deposed by the Prosecutrix that the Appellant had taken her by dragging, but there was no abrasion like she was dragged. Apart from this, from the admission made by the Prosecutrix, it is also established that the alleged incident was happened 200 yards away from village at about 3:00 pm. If a person forcibly performed such type of act and is not seen by anyone is suspicious. Moreover, from the statement of the Prosecutrix, it is also established that the time of incident Loboram came there and seeing Loboram, the Appellant had fled away from the

spot, but due to demise of Loboram, his statement has not been recorded. From the statement of the Prosecutrix, it seems that Loboram had seen her in compromising position with the Appellant and due to that the Prosecutrix has lodged report, therefore, in my considered opinion, no offence is proved against the Appellant beyond all reasonable doubt. Thus, the impugned order dated 20/11/2000 passed in Sessions Trial No. 113/2000 by the Second Additional Sessions Judge, Mahasamund is quashed.

10. Consequently, the Appeal is allowed. The Appellant is acquitted from the charges framed against him. It is reported that the Appellant is on bail. His bail bond be discharged.
11. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge