

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 03.07.2019

Order pronounced on 11.12.2019

CRA No. 2703 of 1998

Mangal Das, S/o Jhaitram, aged about 27 years, R/o Parasadeeh, PS
Mal Kharoda, District Bilaspur, MP (Now CG) -- **Appellant**

Versus

State of Chhattisgarh -- **Respondent**

For Appellant	-	Mrs. Savita Tiwari, Advocate
For Respondent	-	Ms. Shriya Mishra, PL

Hon'ble Smt. Vimla Singh Kapoor, J.

CAV Order

The story brought-forth by the prosecution in short is that on 12.09.1997 at about 10 PM the prosecutrix (PW-1) was returning from the neighbourhood after watching TV, accused/appellant met her on the way, dragged her inside his house, tied her to the cot, loosened her clothes, shut her mouth with one of his hands and committed forcible sexual intercourse with her. On the basis of FIR (Ex.P-1) lodged by her on the next day, the offences under Sections 342, 376 and 506-B IPC were registered against the accused/appellant and after completion of investigation *challan* was placed followed by framing of charge accordingly.

2. Learned Court below found the involvement of the accused in the case brought-up by the prosecution and held the accused/appellant guilty for the offences under Sections 342 and 376 IPC and sentenced him to undergo RI for 7 years with fine of Rs.250 under Section 376 whereas for the offence under Section 342 IPC he was just slapped a fine of Rs.250, plus default stipulation, vide judgment impugned dated 06.01.1998 passed in Sessions

Trial No.410/1997. The accused however has been acquitted of the charge under Section 506-B IPC. Hence this appeal.

3. Counsel for the accused/appellant submits that though the prosecution has utterly failed to prove its case beyond all reasonable doubts yet the Court below has fallen in a serious error in convicting the accused/appellant under Sections 342 and 376 IPC which is wholly unwarranted. She further submits that even the statement of the prosecutrix does not get corroboration from the other evidence on record but yet the Court below has not considered the same and abruptly recorded its finding holding the accused/appellant guilty for confining the prosecutrix in his house and then committing rape on her, and being so the judgment impugned is liable to be set aside.

4. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are strictly based on the evidence adduced by the prosecution and no infirmity or illegality is there calling for interference with the same in this appeal.

5. From the evidence of the prosecutrix (PW-1), her father (PW-2) and mother (PW-4) it is apparent that on the fateful night the prosecutrix had gone in the neighbourhood with PW-4 for watching TV. The evidence of prosecutrix (PW-1) shows that she halfway stopped watching TV and set out for home and while she was on the way back home, the accused/appellant met her, dragged her inside his house and when she raised hue and cry he pressed her mouth with one of his hands and removed her clothes with the other, tied her to a cot and committed forcible sexual intercourse with her. When her father (PW-2) got worried about prosecutrix not getting back home he started searching her and in the process he went near the house of the accused/appellant, heard the voice of his daughter from inside his house

that she was tied by the accused/appellant to the cot and was not in a position to set herself free. Statement of PW-2 further discloses that thereafter he got back, informed the villagers about the same, again went to the house of the appellant with them but even after being asked to open the door the accused/appellant did not do that and instead he threatened them all saying that the person opening the door would be put to death. Ultimately, one of the witnesses being PW-3 who also reached the spot after hearing commotion from the spot, pushed open the door and that way set the prosecutrix free. It is also apparent from the evidence of PW-2, PW-3, PW-4 and PW-6 that after being freed from the confinement of the accused/appellant the prosecutrix narrated the ordeal undergone by her at the hands of the accused/appellant. Though PW-5 has initially turned hostile, in the cross-examination he has stated that while he was going to answer the call of nature passing through the house of the accused/appellant which falls on the way, he heard the cries of the prosecutrix from inside the house of the appellant threatening to kill anyone coming forward to open the door. He is also stated to have disclosed about the prosecutrix being in the house of the accused/appellant to her parents. This version of PW-5 gets corroboration from the statement of the mother of the prosecutrix (PW-4). Seizure of underwear and petticoat of the prosecutrix made under Ex.P-3 has been duly supported by PW-2 and PW-7. The doctor (PW-17) who medically examined the prosecutrix and gave her report Ex.P-15 has stated that the prosecutrix was habitual to sexual intercourse and no definite opinion of rape on her has been given. At the same time, she has stated that there was an abrasion on her right wrist and that the petticoat seized by the prosecutrix contained the white spots. Another doctor (PW-18) who medically examined the accused and gave his report Ex.P-16 to the effect that he was capable of having sex. By his another report Ex.P-17 he has

noticed a white spot on the underwear of the accused/appellant also. Both PW-17 and PW-18 advised for chemical examination of the garments belonging to the accused and the prosecutrix containing white colour spots, and also the vaginal slides of the prosecutrix, but no report confirming the origin of the spots thereon has been received from the Forensic Science Laboratory. Investigating Officer has also fully supported the case of the prosecution.

6. All this minute analysis of the evidence leads this Court to the only conclusion that the accused/appellant dragged the prosecutrix inside his house, confined her therein and committed forcible sexual intercourse with her against her will and without her consent. The evidence does not whisper even slightly regarding the possibility of false implication of the accused/appellant. Right from the beginning the prosecutrix remained stuck to the things being stated by her and no variation in the form of contradictions and omissions finds place in her version which could lead this Court to arrive at a different conclusion to the one recorded by the Court below.

7. The judgment under challenge is already based on the proper appreciation of the evidence of the witnesses and does not call for any disturbance by this Court and being so it is hereby approved.

8. Appeal being absolutely unmerited is liable to be and is hereby dismissed. Since the appellant is on bail, his bail bonds stand cancelled and he is directed to be dispatched to prison forth-with to undergo the rest of the sentence imposed on him.

Sd/-
(Vimla Singh Kapoor)
Judge