

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3103 of 1998

Order reserved on 04.07.2019

Order pronounced on 08.08.2019

Rampyare Patel, son of Lahar Singh Patel, aged about 54 years,
R/o Gidpuri, P.S. Masturi, (Pachpedi), District Bilaspur (MP)
(Now CG)

---- Appellant

Versus

State of M.P. through Police Station City Kotwali, Bilaspur (MP)
(Now CG)

---Respondent

For Appellant : Mr. Hemant Gupta, Advocate.

For State/Respondent : Mr. Himanshu Sharma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

From the FIR (Ex.P-1) lodged by the prosecutrix (PW-1) – a married lady aged about 23 years at the relevant time it emerges that on 14.07.1998 the accused/appellant herein accompanied by the prosecutrix and her friend (PW-2) had come down to Bilaspur in connection with the medical treatment of PW-1 as she is said to have developed a cyst in her armpit. It is alleged that they all had shared a common room in the Mansarovar lodge of Bilaspur and in the next night i.e. on 15.07.1998 she was subjected to forcible sexual intercourse against her will and without her consent. After medical examination of the prosecutrix and completion of other investigation related formalities, the *challan* was filed against the accused/appellant under Section 376 IPC followed by framing of charge accordingly.

2. Learned Court below, by the judgment impugned dated 23.12.1998, held the accused/appellant guilty under Section 376 IPC and sentenced him to undergo RI for 7 years with fine of Rs.1000/-. Hence this appeal.

3. Counsel for the accused/appellant submits that the accused/appellant is absolutely innocent and has been falsely implicated in the case in hand. He submits that it is almost impossible for the accused/appellant to commit rape on the prosecutrix in the presence of PW-2 in the same room. He submits that because of the old standing rivalry, the accused/appellant has been roped in a false case.

4. State counsel on the other hand supports the judgment impugned and submits that the findings recorded by the Court below are strictly in accordance with law and there is no infirmity in the same.

5. This Court has gone through the entire material available on record including the judgment impugned and the evidence adduced by the prosecution. The story put-forth by the prosecutrix (PW-1) that on the date of incident she was subjected to forcible sexual intercourse by the accused/appellant in the presence of PW-2 who was also sharing the same room becomes highly unnatural and a bitter pill to swallow. Had there really been an incident of like nature, it must have not skipped the notice of PW-2 but it is utterly surprising that she did not make any statement to this effect. On the contrary, in her deposition she (PW-2) has categorically denied regarding any such happening in the lodge in question. She has not even stated that the prosecutrix had informed her anything to that effect. Even assuming that such an incident of rape with the prosecutrix – a grown up and married lady,, had taken place, the possibility of the same being consensual cannot be ruled out. The other independent witness being her mother (PW-3) has not supported the case of the prosecution and has been declared hostile. PW-5 - the owner of the lodge has stated that as initially the room was hired by the accused/appellant alone, he did not entered the name of prosecutrix and the PW-2 in the register maintained by him which subsequently seized by the Police under Ex.P-8. However, he has not disputed the fact that the prosecutrix (PW-1) and her friend (PW-2) also shared the room taken by

the accused/appellant. The doctor (PW-6) who medically examined the prosecutrix and gave her report Ex.P-10 has stated that she did not notice any external or internal injury on the person of the prosecutrix, that her hymen was old torn and that two fingers easily entered her vagina. At the same time, she has also stated that no definite opinion regarding recent sexual intercourse with the prosecutrix could be given. She has also mentioned the age of the prosecutrix at the relevant time to be 23 years, which is not in dispute even otherwise.

6. Thus in view of the aforesaid factual analysis, this Court has no hesitation to say that the prosecutrix was a consenting party to the act of the accused/appellant and, therefore, the findings recorded by the Court below convicting and sentencing the accused/appellant as described above are contrary to the evidence on record, and being so they are liable to be set aside entailing acquittal of the appellant by allowing the appeal. Order accordingly.

7. As the appellant is already on bail, no order regarding his surrender etc. is necessary. Appeal is thus allowed.

Sd/-

(Vimla Singh Kapoor)

Judge