

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 758 of 2001

Order reserved on 09.08.2019

Order pronounced on 05.12.2019

Shatrughan, S/o. Salikram, aged about 40 years, R/o. Village
Kesala, P.S. Pamgarh, CG. **---- Appellant**

Versus

State of Chhattisgarh through Station House Officer, Police
Station Pamgarh, CG. **---- Respondent**

For Appellants : Ms. Sharmila Singhai, Advocate
For State/ Respondent : Mr. Ishan Verma, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order

This appeal is directed against the judgment of conviction and order of sentence dated 31.05.2001 passed by the Additional Sessions Judge, (FTC) Janjgir in Sessions Trial No. 94/1998 holding the accused/appellant guilty under Section 376 IPC and sentencing him to undergo RI for 7 years.

2. Case of the prosecution in brief is that on 06.12.1997 at about 11 AM when the prosecutrix (PW-1) a blind girl aged about 17 years was in her house along with her younger sister Kamal Bai, and younger brother aged about 3 years, accused/appellant came there, sent her sister for getting gram by giving her Rs.10, caught hold of her hand, took her inside the house and committed forcible sexual intercourse with her by throwing her down. Thereafter, the FIR (Ex.P-7) was recorded by a Police official (PW-6) on being disclosed by the

prosecutrix under her thumb impression on the next day. After medical examination of the prosecutrix and conclusion of investigation, charge sheet was filed against the accused/ appellant under Section 376 IPC followed by framing of charge accordingly.

3. Learned Court below by judgment impugned dated 31.05.2001 convicted and sentenced the accused/appellant as described above. Hence this appeal.

4. Counsel for the accused/appellant submits that though no cogent evidence showing rape being committed on the prosecutrix has been adduced by the prosecution, Court below has erroneously arrived at the conclusion of holding the accused/appellant guilty under Section 376 IPC which is bad in law and therefore, liable to be set aside. She further submits that even the medical evidence does not support the case of the prosecution. Reliance is placed on the decisions of the Apex Court in the matter of Hemraj Vs. State of Haryana (2014) 2 SCC 395; in the matter of Narendar Kumar Vs. State (NCT of Delhi) (2012) 7 SCC 171 and in the matter of Lalliram and another Vs. State of MP (2008) 10 SCC 69.

5. On the other hand, learned Counsel for the respondent/State supports the judgment impugned and submits that it has been passed after consideration of all relevant materials in its proper perspective and therefore, there is no scope in this appeal for interference with the same.

6. Heard counsel for the parties and perused the material on record.

7. From the evidence of prosecutrix (PW-1) and that of her sister Kamal Bai (PW-2) it is apparent that on the date of incident the accused/appellant had come to her house and after giving Rs.10 to PW-2 he asked her to go out and get gram for him. The prosecutrix is also stated to have known the accused on the basis of his voice. Subsequently, when PW-2 went to the nearby shop, the accused/appellant took the prosecutrix in the veranda, threw her down and committed forcible sexual intercourse with her in spite of cries being raised and protest made by her. From the evidence of prosecutrix it also appears that by the time her sister PW-2 returned home, the accused/appellant had run away after commission of rape on her. Evidence of PW-2 also shows that when she returned home, the prosecutrix told her as to why she had left her alone and also disclosed to her of being ravished by the accused/appellant. Had the sexual intercourse between the accused and the prosecutrix been out of consent, there was no occasion for the prosecutrix to disclose the same to her sister (PW-2) after she return home from the shop because by the time she reached home the accused had already completed his act and come out of her house. If it was a case like that, prosecutrix would have chosen to keep mum but it is not the case here. Record also shows that when the accused/appellant was involved in the commission of offence, she had offered protest by abusing, scratching and by throwing her legs in the air but the accused/appellant did not budge and got up only after his act was over. From the evidence of PW-2 it is also clear that when she got back after getting gram, the prosecutrix was found weeping and told her about the act of the accused/appellant in detail. Though the

medical evidence speaks of prosecutrix being habitual to sex and absence of injuries on her person yet the act of the accused/appellant in sending PW-2 out and then committing forcible sexual intercourse with her against her will and without her consent is out of question in this case. No previous enmity has been brought on record on the basis of which it could be said to be a case of false implication. Though there are minor contradictions and omissions in the statement of the prosecutrix yet on material particulars she has been fully consistent and therefore, there is no occasion for this Court to disbelieve or discard the otherwise consistent testimony of the blind prosecutrix. This Court is not convinced as to why a blind girl would speak against the accused/appellant falsely by exposing her own character and thereby imperil her long future lying ahead for being lived bearing an indelible scar on her most cherished possession i.e her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman but it is also a crime against the entire society. It is a settled position of law that the statement of prosecutrix alone would be well enough for proceeding against the accused if it remains consistent on material particulars as to the commission of rape on her. This is what is the case here. This Court does not find any reason to disbelieve the version of the prosecutrix in narrating her pathetic experience she was subjected to at the hands of accused/appellant who played with her character taking advantage of her blindness. Mother (PW-9) and father (PW-7) of the prosecutrix have also stated that after they returned home, the prosecutrix informed them as to the manner in which she was ravished by the accused/appellant. The judgments referred to above

sought to be taken support of, being altogether on different footing, are not applicable to the case in hand where a blind prosecutrix has been subjected to forcible sexual intercourse by the accused/appellant. Absence of injuries on the person of the prosecutrix and her hymen being old torn as has been opined by the doctor conducting her medical examination cannot be of any advantage to the accused/appellant when she has narrated her ordeal in categorical terms. Thus in view of above the act of rape alleged by the prosecutrix against the accused/appellant does not seem to be a consensual one.

8. In aforesaid view of the matter, the conviction of the accused/appellant under Section 376 IPC being strictly on the basis of evidence on record cannot be said to be at fault and being so the judgment impugned is hereby maintained. Order accordingly.

9. Appeal thus being without any merits is liable to be and is hereby dismissed.

Sd/-

(Vimla Singh Kapoor)
Judge