

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 25.07.2019

Order pronounced on 05.12.2019

CRA No. 2284 of 1999

Suresh Kumar Yadav, son of Lakhan Prasad Yadav, aged 28 years,
resident of Deve, PS Amjhor, District Rohidas (Bihar), at present R/o
Mudhipar, District Raipur, MP (Now CG) --- **Applicant**

Versus

State of Madhya Pradesh (Now CG) --- **Respondent**

For Applicant	-	Shri Roop Naik, Advocate
For Respondent	-	Ms. Shriya Mishra, Advocate

Hon'ble Smt. Vimla Singh Kapoor, J.

CAV Order

As per FIR (Ex.P-25), on 09.10.1995 when the prosecutrix – a married lady aged about 26 years at the relevant time was going to her home village, the accused/appellant herein and one Shankar Chandrakar met her on the way and asked her as to where she was going. Meanwhile, other accused persons also came there and took her towards the nearby jungle where the accused/appellant committed forcible sexual intercourse with her in spite of the protest raised by her. Since the night had set in and the police station was far away the report could not be lodged on the same day. After lodgment of the report on the next day i.e. 10.10.1995 she was medically examined and after completion of investigation charge sheet was filed against all the accused persons under Sections 341, 376 (2) (g), 363/34 and 366 IPC. The Court below however framed the charge against all the accused persons under Sections 341/34, 363/34, 366 and 376 (2) (g) IPC.

2. Learned Court below by judgment impugned dated 29.07.1999 passed in Session Trial No.456/1995 acquitted the other accused persons of all the charges levelled against them but convicted the accused/appellant herein under Section 376 IPC and sentenced him to undergo RI for 7 years and pay fine of Rs.1000, plus default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submits that all the important witnesses including the prosecutrix (PW-15) have not supported the case of the prosecution and turned hostile, but even then the Court below has erroneously convicted and sentenced the accused/appellant as described above. He further submits that when the other accused persons have been acquitted on the same set of evidence, the present appellant was also to be extended the same treatment. Even the medical evidence, according to the counsel for the appellant, does not support the case of the prosecution and therefore, the judgment impugned is liable to be set aside.

4. State counsel however supports the judgment impugned and submits that it being based on just and proper appreciation of the evidence on record does not require any interference in this appeal.

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

6. Though in the FIR (Ex.P-25) prosecutrix (PW-15) has made number of allegations not only against the accused/appellant but also against 8 other persons who have been acquitted by the judgment impugned, she had taken a somersault while deposing in the Court and stated that she did not even know as to who had committed rape on her. She has further stated that she was not even aware as to what was written in the paper bearing her thumb impression put on being asked by the police people. Looking to all this, she has been declared hostile. Other witnesses being PW-1, PW-2 and PW-6 have also not supported the case of the prosecution and have been declared hostile. Dr. Rama Tiwari (PW-3) who medically examined the prosecutrix has

stated that no internal or external injury on her person were noticed by her, and likewise no definite opinion regarding commission of rape on her has been given by this witness. Medical report is Ex.P-3.

7. Thus in view of the overall evidence adduced by the prosecution particularly that of the prosecutrix herself and the doctor (PW-3) who medically examined her, the judgment impugned convicting and sentencing the accused/appellant as described above cannot be said to be based thereon. What to say of other witnesses, the prosecutrix herself has turned hostile and has not even fully supported the FIR lodged by her. Being this, the judgment impugned cannot be allowed to stand and therefore, it is hereby set aside and the appeal preferred by the accused/appellant is hereby allowed.

8. Since the appellant is already on bail, the bail bonds furnished by him stand discharged.

Sd/-

(Vimla Singh Kapoor)
Judge