

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 10 -4-2019****Pronounced on 12- 4-2019****CRA No. 2231 of 1999**

(Arising out of judgment of conviction and order of sentence dated 16-8-1999 passed by the 2nd Additional Sessions Judge, Ambikapur – Sarguja (MP) (now in CG) in ST No. 117/1994)

Umesh Gupta, son of Gareeba aged 28 years, resident of Nagar Mayapur, Ambikapur, Police Station Ambikapur, Distt. Sarguja (CG)

---- Appellant**Versus**

State of Madhya Pradesh (now Chhattisgarh) through Police Station Ambikapur, Distt. Sarguja (CG)

---- Respondent

For appellant	:	Mr. Sumit Singh Rathore, Adv.
For State	:	Mr. Wasim Miyan, Panel Lawyer.

Hon'ble Shri Sharad Kumar Gupta, J**C.A.V. JUDGMENT**

1. Challenge in this appeal is levied to the judgment of conviction and order of sentence dated 16-8-1999 passed by the 2nd Additional Sessions Judge, Ambikapur – Sarguja (MP) (now in CG) in ST No. 117/1994 whereby and whereunder he has convicted and sentenced the appellant as under :-

Conviction u/S.	Sentence RI.	Fine	In default of payment of fine
450, IPC	5 Years	Rs. 200/-	6 months RI
376, IPC	7 Years	Rs. 200/-	6 months RI

Both the jail sentences have been directed to run concurrently.

2. In brief, the prosecution story is that at the time of alleged incident prosecutrix was 22 years old. She was resident of Ambikapur. On 29-10-1992, at about 8.00 pm prosecutrix was sleeping along with her two children in her house closing the chain. Her husband had gone to work in Sarguja Band Party. Appellant who is the neighbour of the prosecutrix entered in her house by opening the chain and committed forcible sexual intercourse with her. When she tried to shout he pressed her mouth.

When he was going after wearing clothes her husband reached there. She had informed the incident to her neighbour Lala Sonar and others. Due to fear she went to PS Ambikapur on next day i.e. 30-10-1992 at about 9.35 hour and lodged an FIR against him. After completion of the investigation, a charge sheet was filed against him for the offences punishable under Sections 376 and 456 of the Indian Penal Code (in brevity 'IPC'). The trial Court framed the charges against him under Sections 450 and 376 of the IPC. He abjured the charges and faced the trial. To bring home the charges against him, the prosecution examined as many as 7 witnesses. He did not examine any witness in his defence. After conclusion of trial, the trial Court convicted and sentenced him as mentioned above.

3. Being aggrieved by the aforesaid judgment of conviction and order of sentences, the appellant has preferred this criminal appeal.

4. Counsel for the appellant submits that the appellant has been falsely implicated. No rape has been committed by him with the prosecutrix. Trial Court has not properly appreciated the evidence available on record in proper perspective. The prosecutrix could not be examined before the trial Court as she died. The FIR is delayed and no reasonable explanation has been given by the prosecution. Therefore, the impugned judgment of conviction and order of sentences may be set aside and he may be acquitted of the charges.

5. On the other hand, the Panel Lawyer appearing for the State supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellant. Hence the appeal may be dismissed.

6. As per the alleged MLC report Ex. P-4, P.W. 4 Dr. Smt. S.P. Jaiswal had examined prosecutrix and found that no external and internal injury was present on her body. She opined that no exact definite opinion can be given about recent intercourse.

7. There is no such evidence on record on strength of which it can be said that Ex. P-4 is not believable. Thus, this Court believes on Ex. P-4.

8. P.W. 1 Biju who is the husband of the prosecutrix says in para 1 of his statement given on oath that his wife – prosecutrix had told him that appellant had committed forcible intercourse with her.

9. P.W. 5 Lalan Prasad says in para 3 and 4 of his statement given on oath that next day of alleged incident near the police station P.W. 1 Biju had told him that appellant had committed forcible sexual intercourse with prosecutrix after entering into the house.

10. In the case in hand prosecutrix has not been examined as prosecution witness. P.W. 1 Biju says in para 2 that after some days of the alleged incident his wife committed suicide.

11. Counsel for the appellant placed reliance on decision of coordinate bench of this Court in the matter of **Chinta Ram Yadav -v- State of MP** [2017 (1) CGLJ 95], where it was observed that :-

“The place of incident is stated to be a rough surface but even then the prosecutrix did not receive even a single injury on her body. All this is indicative of the fact that no resistance was made by her at all and the sexual intercourse between the two was consensual. The evidence of the witnesses is also suggestive of the fact that had brother-in-law of prosecutrix not been to the spot along with his companions, probably she would not have raised her cries. Prosecution has thus not been able to prove the guilt of the accused beyond all reasonable doubt by adducing cogent and reliable evidence in support of its case.”

12. This is not the prosecution case that prosecutrix had allegedly offered any kind of resistance during commission of alleged forcible sexual intercourse by the appellant, for not doing so there is no explanation from the prosecution. Moreover, this is also not the prosecution case that when appellant was allegedly wearing his clothes after commission of forcible sexual intercourse, she had raised alarm, for not doing so prosecution could not offer any explanation. Moreover, this is the prosecution case that when appellant was wearing clothes, P.W. 1 Biju reached there, but P.W. 1 Biju says in para 1 that when he returned back to his house he saw that appellant was coming out from his house, when he asked prosecutrix then she narrated him about the incident. Moreover, as per the prosecution case prosecutrix had informed about the alleged incident in the night of the day to Lala Sonar and other neighbours, but P.W. 5 Lalan Prasad does not say as per the prosecution case that prosecutrix had informed him about alleged incident in the night of the same day, prosecution has failed to examine any other neighbour who

may say that prosecutrix had informed him about alleged incident in the night of the same day, for not doing so prosecution has not given any plausible reason. Moreover, Ex. P-6 was lodged on next day after the alleged incident, as per the prosecution case appellant had allegedly given threats to kill, thus Ex. P-6 was lodged on next day, but P.W. 1 Biju does not say as per prosecution case that in the night of the day appellant had allegedly given threats to kill, he says in para 2 that the family members of the appellant had prevented him to go to police station, thus, they did not lodge the report in the night, but this is not the prosecution case. Moreover, in the case in hand, prosecutrix had not been examined as prosecution witness, thus the appellant did not get opportunity to cross-examine her. In these circumstances and looking to the aforesaid observation made by coordinate bench of this Court in **Chinta Ram Yadav** (supra), this Court finds that prosecutrix was 'free consenting party'.

13. After the appreciation of the evidence discussed herebefore, this Court finds that prosecution failed to prove beyond reasonable doubt the charges punishable under sections 450 and 376 of the IPC against the appellant. Thus, trial Court committed gross illegality in convicting and sentencing the appellant as aforesaid. Hence, aforesaid conviction and sentences are set aside. The appellant is acquitted of the charges of Sections 450 and 376 of the IPC by giving benefit of doubt. The fine amount, as directed by the trial Court, if deposited by the appellant, be refunded to him after expiration of the prescribed period for further legal remedy available to the party.

14. The appellant is reported to be on bail. He need not surrender. His bail and bonds shall continue for a further period of six months as per requirement of Section 437-A of the Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge