

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRIMINAL APPEAL No 2153/1999

Reserved on 08-3-2019

Delivered on 27-3-2019

(Arising out of judgment of conviction and order of sentence dated 9-8-1999 passed by 2nd Addl. Sessions Judge, Ambikapur Surguja (MP), (now in CG) in ST No. 79/1998)

Shiv Prasad S/o Adhari Gond, aged about 32 years, Caste- Gond, R/o. Village Pandari (Banwaripara) P.S. Basantpur, District Surguja (M.P.) (now Chhattisgarh)

----Appellant

VERSUS

The State of M.P. (now Chhattisgarh), through P.S. Basantpur, District Surguja (C.G.)

----Respondent

 For Appellant : Mr. Manoj Mishra, Adv.
 For Respondent : Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta

CAV JUDGMENT

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 9-8-1999 passed by 2nd Addl. Sessions Judge, Ambikapur Surguja (MP), (now in CG) in ST No. 79/1998 whereby and whereunder he convicted and sentenced appellant as under:-

Conviction u/S.	Sentence	Fine sentence
376 (1), IPC	RI for 5 Years	Rs. 200/- in default of payment of fine to undergo RI for 1 year

2. In brief the prosecution case is that at the time of alleged incident prosecutrix was aged 30 years. She was resident of village Pandari. On 12-1-1998, she had gone along with her husband to the house of Hirawan in the invitation of 'Chhatti' programme. At about 7.00 pm she had gone outside for toilet. Appellant reached there, took her to back side of the house of Ramlakhan Gond by lifting her. When he removed her sari and saya she shouted but he pressed her mouth and

committed forcible sexual intercourse with her. After completion of sexual intercourse her husband reached there, on seeing him, the appellant fled away from the spot. Next day a Panchayat was convened in the village. Thereafter on 14-1-1998 at 19.00 hours she lodged an FIR in PS Basantpur. After completion of the investigation a charge sheet was filed against him under Sections 376 of the Indian Penal Code (in brevity 'IPC'). The trial Court framed charge against him under Section 376(1), IPC. He abjured the charge and faced trial. To bring home the charge prosecution examined as many as 5 witnesses. He did not examine any witness in his defence. After conclusion of the trial, the trial Court convicted and sentenced him as aforesaid.

3. Being aggrieved by aforesaid conviction and sentence, the appellant has preferred this criminal appeal.

4. Counsel for the appellant submitted that the appellant has been falsely implicated, Trial Court has not appreciated the evidence in proper perspective. Prosecutrix was free consenting party. The statement of the prosecutrix does not inspire confidence. Therefore, the impugned judgment of conviction and order of sentence being bad in law may be set aside and he may be acquitted of the aforesaid charge.

5. On the other hand, State counsel supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellant. No interference is called for by this Court. Hence the appeal may be dismissed.

6. P.W.2 prosecutrix says in para No.3 of her statement given on oath during cross-examination that at the time of lifting her by the appellant, she had shouted loudly, but this is not the prosecution case. She says in para No.1 that on her shouting her husband was reached on the spot, P.W.3 Sigan husband of prosecutrix says in para No. 1 of his statement given on oath that on hearing of shout of his wife he went towards spot, but this is also not the prosecution case, moreover P.W.2 prosecutrix says in para No. 5 that this is true her husband was not reached there on her shouting, he had come towards spot for doing toilet, P.W.3 Sigan says in para No. 2 during his cross-examination that he was going to reply the nature's call, he was not reached on the spot hearing of some once's sound. P.W.2 prosecutrix did not made the

statement as per the prosecution case that appellant had closed her mouth by his hand on the spot.

7. P.W. 2 prosecutrix says in para No. 6 & 7 of her statement given on oath that after the alleged incident he and her husband had taken meals in the house of Hirawan, he and her husband had not narrated incident to other present persons, including Sarpanch and Deputy Sarpanch. In the night she and her husband went their house and slept.

8. P.W. 3 Sigan says in para No. 2 of his statement given on oath that he and prosecutrix had not narrated the incident to any villager who were gathered in the house of Hirawan. They had also taken meals along with villagers.

9. Allegedly the FIR Ex. P-3 has been lodged on 14-1-1998. As per the prosecution story a Panchayat was held. P.W. 2 prosecutrix says in para No. 7 that her husband had called the Panchayat. P.W.3 Sigan says in para No. 3 that no Panchayat was convened in village.

10. Looking to the above mentioned facts and circumstances, this Court finds that prosecutrix was allegedly 'free consenting party'. Thus, this Court finds that prosecution failed to prove beyond reasonable doubt the charge punishable under Section 376 (1) IPC against the appellant. Thus, this Court finds that trial Court had committed illegality in convicting and sentencing the appellant as aforesaid. Hence, the impugned judgment of the conviction and order of sentence of appellant are hereby set-aside. Appellant is acquitted of the charge punishable under Section 376(1) IPC.

11. After the expiration of prescribed the period for further remedy available to the parties the fine amount, if deposited by the appellant, be refunded to him.

12. Appellant is reported to on bail. His bail and bond stands discharged subject to the provisions contained in Section 437 A of Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge