

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 01.08.2019

Pronounced on 05.08.2019

CRIMINAL APPEAL No. 661 of 2006

(Arising out of judgment of conviction and order of sentence dated 23.08.2006 passed by the Sessions Judge, District- Korba (C.G.) in Sessions Trial No. 49/2005)

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Sundar Lal, aged about 22 years, son of Shri Dau Ram Kurmi, occupation labourer, resident of village Kurudih, P.S. Kotwali Korba, District Korba (C.G.)

Versus

State of Chhattisgarh, through the Police Station Kotwali Korba, District Korba (C.G.)

For appellant : Ms. Seema Singh, Advocate.
For Respondent/State : Ms. M. Asha, Panel Lawyer.

Hon'ble Mr. Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 23.08.2006 passed by the Sessions Judge, District- Korba(C.G.) in Sessions Trial No. 49/2005 whereby and whereunder he convicted and sentenced the appellant as under:-

Sr. No.	Offence u/S.	Sentence	In default of payment of fine
1.	376, IPC	RI for 7 years+ fine of Rs.500/-	RI for six months.
2.	450,IPC	RI for 5 years+ fine of Rs.500/-	RI for six months.

Both the substantive jail sentences have been directed to run concurrently.

2. In brief, the prosecution story is that at the time of alleged incident dated 21.04.2005 prosecutrix was about 17 years old. She was the resident of village Kurudih. On 21.04.2005 her parents had gone to korba for labour work. She and her younger brother Manoj Kumar were present in the house and watching T.V. About 2:00 p.m. Manoj Kumar went out of the house for playing. At that time, appellant entered in her house, pressed her mouth and committed forcible sexual intercourse with her. At that time, Manoj Kumar returned back in the house, seeing

him he ran away from the scenario. Manoj Kumar shouted then neighbour Deena Nath reached there. She narrated incident to him. In the evening when her parents returned back, she narrated incident them also. Thereafter, she narrated the incident to Sarpanch Uttari Kumari Kanwar and Kotwar. Next day on 22.04.2005 at about 10:30 hours she lodged an FIR in police Kotwali, Korba. After completion of the investigation a charge-sheet was filed against him under Section 376 Indian Penal Code(hereafter called as I.P.C.). The trial Court framed charges against him under Section 376 and 450 IPC. He abjured the charges and faced trial. To bring home the charges the prosecution examined as many as 17 witnesses. He examine one witness on his defence. After conclusion of the trial, trial court convicted and sentenced him as aforesaid.

3. Counsel for the appellant strenuously argued that the prosecution has failed to prove the charges against appellant beyond reasonable doubt. Trial Court did not appreciate the evidence in proper perspective. She was consenting party. Thus, aforesaid conviction and sentences are bad in the eyes of law and not sustainable. Thus, aforesaid conviction and sentences may be set aside and he may be acquitted of the aforesaid charges.

4. Panel Lawyer for the State submitted that aforesaid conviction and sentences are based on clinching evidence led by the prosecution. She supported the aforesaid conviction and sentences and submitted that no interference is called for by this Court.

5. Trial Court has already given the finding that at the time of the alleged incident prosecutrix was major.

6. P.W.1 prosecutrix says in Para 2 of her statement given on oath that nobody was present in her house, her brother was playing cricket outside the house. Appellant reached there and committed forcible sexual intercourse with her. When Manoj Kumar reached he ran away from the spot.

7. P.W.2 Manoj Kumar says in Para 2 of his statement given on oath when he returned back in his house feeling thrust. He saw that appellant was running towards courtyard from the house.

8. P.W.3 Sakat Ram who is the father of the prosecutrix says in Para 2 of his statement given on oath that his wife had told him that

appellant had caught hold hands of prosecutrix and dishonoured her.

9. P.W.4 Usha Bai who is the mother of the prosecutrix says in Para 2 of her statement given on oath that prosecutrix had told that appellant caught hold her hand except it she had not narrated any other incident, she narrated the same to her husband.

10. P.W.6 Raghunandan Lal says in Para 1 of his statement given on oath that Sakat Ram had told him that appellant raped prosecutrix.

11. P.W.7 Uttari Kumari Kanwar says in Para 3 of her statement given on oath prosecutrix had told her that appellant had committed forcible act with her.

12. D.W.1 Chhat Ram says in Para 2 of his statement given on oath that prosecutrix had told that appellant entered in her house.

13. P.W.1 prosecutrix says in Para 7 during her cross examination that this is true that in her house three small children namely Rani, Chhoti and younger daughter of one Heera were watching T.V. P.W.2 Manoj Kumar says in Para 4 during his cross-examination that this is true that when he went out of the house for playing at that time two-three children were also watching T.V. prosecution failed to explain as to when and why those children left the house of the prosecutrix and where they went. Moreover P.W.1 prosecutrix says in Para 2 that appellant had closed the door, but this is not the prosecution case that at that time she objected. There is the contradiction in alleged FIR Ex. P-1, in her alleged police statement Ex.D-1 and her statement given on oath that appellant had allegedly pressed her mouth. Moreover, she says in Para 7 that she did not shout due to fear. But this is not the prosecution case that at the time of alleged incident appellant had threatened her showing some dangerous weapons. Moreover, P.W.2 Manoj Kumar says in Para 2 that, when he returned back, he found that the door was closed from inside, he shouted to her sister to open the door. When the door was not opened, he opened the door by putting his hands inside, prosecution failed to explain why she did not raise alarm at that time.

14. As per the prosecution story prosecutrix had narrated the incident to neighbour Deena Nath who was allegedly reached there, but she says in Para 2 that she had not narrated the incident to Deena Nath. She does not give any explanation for not doing so. Moreover, as

per the MLC report Ex. P-9, P.W.8 Dr. Deepak Singh did not find any injury on the body of appellant. Moreover, as per the MLC report Ex.P-15A, P.W.14 Dr. Smt. Swati Sisodiya had not found any injury on his wrist, breast and back. Moreover, P.W.-1 prosecutrix says in Para 2 that prior to alleged incident no sexual intercourse was committed with her, but as per Ex. P-15A she was habitual of sexual intercourse.

15. On the basis of above mentioned facts and circumstances of the case this Court finds that allegedly prosecutrix was “free consenting party”.

16. P.W.4 Usha Bai does not say that prosecutrix had told that allegedly appellant had committed sexual intercourse with her. She had told her husband that prosecutrix told her that appellant caught hold her hand. There is the contradiction between Ex. P-1, Ex. D-1 and Court statement of prosecutrix that she had allegedly narrated the incident to Sarpanch Uttari Kumari Kanwar and Kotwar.

17. Looking to the above mentioned facts and circumstances of the case this court finds that from the aforesaid statements of Para 2 of P.W.1 prosecutrix, Para 2 of P.W.2 Manoj Kumar, Para 2 of P.W.3 Sakat Ram, Para 1 of P.W.4 Usha Bai, Para 1 of P.W.6 Raghunandan Lal, Para 3 of P.W.7 Uttari Kumari Kanwar, Para 2 of D.W.1 Chhat Ram, charges punishable under Sections 376 and 450 IPC, or any other minor offence of it, are not proved beyond reasonable doubt by the prosecution. Thus, appeal is allowed and aforesaid judgment of the conviction and order of sentences are set aside. Appellant is acquitted of the charges punishable under Sections 450 and 376 IPC extending him benefit of doubt.

18. After the expiration of prescribed period of legal remedy available to the party, the fine amount so deposited by the appellant be returned to him.

19. The appellant is on bail. His bail bond stands discharged subject to the provisions contend in Section 437-A of the Cr. P. C.

Sd/-
(**Sharad Kumar Gupta**)
Judge