

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 476 of 2009

Order reserved on 02.04.2019

Order pronounced on 17.10.2019

Anil Mishra, S/o Bachulal Mishra, aged about 38 years, Occupation
Service in S.E.C.L., R/o Miners Quarter, Pandopara, P.S. Patna,
District Korea (CG) **--- Appellant**

Versus

State of Chhattisgarh, through P.S. Patna, District Korea (Now CG)
--- Respondent

For Appellant : Mrs. Hamida Siddique, Advocate

For State/Respondent : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

FIR (Ex.P-2) lodged by the prosecutrix (PW-1) – a mother of two children alleges that on 05.12.2005 in the night hours when she was sleeping in her house, the accused/appellant came there, threw her on the cot and committed forcible sexual intercourse with her in spite of the resistance made. FIR further says that half an hour thereafter when her husband returned home she narrated entire incident to him and in the next morning report was lodged. Thereafter, she was sent for medical examination and after completion of investigation charge-sheet was filed against the accused/appellant under Sections 456 and 376 IPC and Section 3 (1) (xii) of Scheduled Castes and The Schedule Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “**Special Act**”) followed by framing of charge.

2. After appraisal of the evidence adduced by the prosecution, the Court below vide judgment impugned dated 26.06.2009 passed in Special Sessions Trial No.9/2006 acquitted the accused/appellant under the Special Act but convicted him under Sections 456 and 376 IPC and sentenced him to undergo RI for 3 years with fine of Rs.500/- under

Section 456 and RI for 7 years with fine of Rs.500/- under Section 376 IPC, plus default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submits that the evidence adduced by the prosecution is inadequate to convict the accused/appellant under Sections 456 and 376 IPC as all the important witnesses including the husband of the prosecutrix have not supported the case of the prosecution and declared hostile. He submits that even the medical report does not corroborate and that even the FSL report has not been filed by the prosecution in support of its case. He further submits that according to the prosecutrix herself at the relevant time she was in her house along with her two 5 and 10 years old children who were awake at the relevant time, but there was a serious flaw on the part of the prosecution in their non-examination.

4. State counsel however supports the judgment impugned and submits that the conviction and sentence awarded to the accused/appellant are based on proper appreciation adduced by the prosecution and, therefore, no illegality and infirmity can be attributed thereto, warranting any interference in this appeal.

5. This Court has gone through the evidence on record with a greater degree of diligence and circumspection. All the important witnesses including the husband of the prosecutrix have not supported the case of the prosecution and turned hostile. Even the statement of the prosecutrix is replete of number of contradictions and omissions. According to her, half an hour after the commission of offence her husband returned home and grabbed the accused/appellant there itself but if the evidence of the husband (PW-9) is seen, he has categorically denied that at the relevant time he was on night duty and returned home just the next day. PW-9 has even stated that after he returned home, the neighbours informed him that in the previous night there was exchange of hot words between his wife

and the accused on account of some money related transaction. He has further stated that the prosecutrix also disclosed to him that the accused/appellant came to his house in the previous night and picked up some dispute money related dispute. He has nowhere stated that the prosecutrix did not make any disclosure to him regarding any occurrence of rape on her. Other witnesses being PW-2 and PW-3 – neighbours of the prosecutrix have also stated that a day prior to the date of incident there was some dispute between the accused/appellant and the prosecutrix on account of some money transaction. The doctor (PW-6) who medically examined the prosecutrix vide report Ex.P-15 has also not given any definite opinion regarding commission of rape on prosecutrix. She however stated that the prosecutrix was habitual to sexual intercourse; her hymen was old ruptured; and two fingers easily entered her vagina. Doctor (PW-2) who medically examined the accused/appellant and gave his report Ex.P-17 has stated that accused/appellant was fully capable of performing sexual intercourse. Furthermore, the story put-forth by the prosecution that the prosecutrix was subjected to rape in the presence of her two sons in the age of 5 and 10 who at the relevant time were awake, becomes highly unnatural. Therefore, non-examination of the sons of the prosecutrix who could be of some help to the prosecution, benefits the accused in the long run. Even the FSL report has not been obtained by the prosecutrix to fortified its case which is another weakening factor to the case of the prosecution.

6. Thus the entire evidence gone through by this Court does not conclusively lead this Court to the conclusion that the prosecutrix was subjected to forcible sexual intercourse after gaining an entry in her house in the night hours. The evidence adduced by the prosecution is not sufficient for so doing. Being this, the findings recorded by the Court below convicting the accused/appellant under Sections 456 and 376 IPC cannot be allowed to stand and, therefore, they are hereby set aside by allowing

this appeal. As the appellant is already on bail, the bail bonds furnished by him stand discharged.

**Sd/-
(Vimla Singh Kapoor)**

Judge

Jyotishi|Ajay