

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRIMINAL APPEAL No. 1008/2008**

(Arising out of judgment of conviction and order of sentence dated 28-5-2008 passed by Sessions Judge, Bilaspur (CG) in ST No. 162/2007)

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Tulsi Kumar Khare @ Bunta, son of Ganesh Ram Khare, caste Suryawanshi, aged about 24 years, resident of village Kadar, Police Station Chakerbhatha, Distt. Bilaspur (CG)

---Appellant

-VERSUS-

State of Chhattisgarh, through Police Station Chakerbhatha, Distt. Bilaspur (CG)

---Respondent

For appellant : Shri Suryakant Mishra, Adv.

For State : Shri Ashok Swarnkar, Panel Lawyer.

Hon'ble Shri Sharad Kumar Gupta, Judge

ORAL JUDGMENT

3-1-2019

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 28-5-2008 passed by Sessions Judge, Bilaspur (CG) in ST No. 162/2007 whereby and whereunder he convicted and sentenced the appellant as under :-

Offence u/S.	RI for	Fine Rs.	RI in default of payment of fine
376(1), IPC	7 Years	15000/-	6 months

2. This is admitted by the appellant that prosecutrix is his sister-in-law in relation.

3. In brief the prosecution story is that prosecutrix was a resident of village Kadar. She was about 12 years old at the time of incident. On 3-

5-2007 at about 1.30 pm she had gone to her field to watch the paddy crop. At that time, appellant reached there, caught hold her, threw her down on the ground, torn her frock and forcibly committed sexual intercourse with her. Kotwar was not present in the village thus, she lodged the FIR on the next day in police station Chakarbhatta. After the investigation, a charge sheet was filed against him. The trial Court framed charge against him under Section 376(1) of the Indian Penal Code (in brevity 'IPC'). After completion of trial, trial Court convicted and sentenced him as aforesaid.

4. Shri Suryakant Mishra, Counsel for the appellant submits that trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charge.

5. Counsel for the State argued that the conviction and sentence of the appellant are based on clinching evidence. The conviction and sentence of the appellant do not call for any interference by this Court.

6. As per the MLC report Ex. P-20, P.W. 9 Dr. A.R. Banjare had examined appellant and opined that there was nothing to suggest that he was incapable to commit sexual intercourse.

7. There is no such evidence on record on strength of which it can be said that Ex. P-20 is not believable. Thus this court believes on Ex. P-20.

8. As per the MLC report, Ex. P-21, P.W. 11 Dr. Geeta Ohdar had examined prosecutrix and found two abrasions on right side of back, one contusion on left side of breast, her hymen was ruptured, there was bleeding. She opined that forcible sexual intercourse was done with her.

9. There is no such evidence on record on the strength of which it

can be said that Ex. P-21 is not believable. Thus this Court believes on Ex. P-21.

10. P.W.1 Prosecutrix says in para 2 and 4 of her statement given on oath that she had gone to her field to watch the paddy crop. Appellant reached there and caught hold her from back side. He torn her clothes and committed forcible sexual intercourse with her.

11. P.W. 2 Smt. Ladhi Bai who is mother of the prosecutrix says in para 2 of her statement given on oath that her daughter had returned back from his field and stated that appellant had committed forcible sexual intercourse with her. Her frock was torn.

12. P.W. 3 Smt. Kunwara Bai who is maternal aunt of the prosecutrix says in para 3 of her statement given on oath that her niece had returned back from her field and stated that appellant had committed forcible sexual intercourse with her. Her frock was torn.

13. P.W. 4 Smt. Lalita Kashyap who is cousin younger sister of the prosecutrix says in para 2 of her statement given on oath that prosecutrix had told her that appellant had caught hold her and committed forcible sexual intercourse with her. Her frock was torn.

14. As per the alleged seizure Ex. P-2 one torn frock was seized from the prosecutrix by P.W. 8 ASI Surendra Prasad Chaturvedi.

15. There is no such evidence on record on the strength of which it can be said that Ex. P-2 is not believable. Thus this Court believes on Ex. P-2.

16. In FIR Ex. P-1 it has been mentioned that the appellant had committed forcible sexual intercourse with the prosecutrix and torn her cloth.

17. There is no such evidence on record on strength of which it can

be said that Ex. P-1 is fabricated or concocted.

18. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W. 1 Prosecutrix, P.W. 2 Smt. Ladhi Bai, P.W. 3 Smt. Kunwara Bai, P.W. 4 Smt. Lalita Kashyap are not simple, not natural, not normal.

19. Looking to the above mentioned facts and circumstances of the case, Ex. P-1, Ex. P-2, Ex. P-20, Ex. P-21, this court finds that prosecution has succeeded to prove beyond reasonable doubt that appellant had committed forcible sexual intercourse with the prosecutrix.

20. D.W. 1 Dr. Sujit Kumar Nayak says in para 1 of his statement given on oath that on 26-9-2007 he had examined the appellant brought by jail staff and he was suffering from adjustment disorder.

21. D.W. 2 Smt. Sarashwati Suryavanshi says in para 1 of her statement given on oath on 11-4-2008 that 3 years ago, the appellant was brought before her, he was suffering from ghost problem.

22. D.W. 3 Sarju Verma says in para 1 of his statement given on oath that the appellant was deviated some times.

23. D.W. 4 Rajendra alias Raju Dubey says in para 1 of his statement given on oath that appellant gets disturbed seldom.

24. D.W. 1 Dr. Sujit Kumar Nayak says in para 3 during his cross-examination that it is possible that aforesaid symptom might have been caused during custody. P.W. 2 Smt. Sarashwati Suryanshi says in para 2 during her cross-examination that after the exorcism, it was not complained that appellant is again suffering from ghost problem. In these circumstances, from the aforesaid statements of para 1 of DW. 1 Dr. Sujit Kumar Nayak, Para 1 of D.W. 2 Smt. Sarashwati Suryavanshi

Para 1 of D.W. 3 Sarju Verma, para 1 of D.W. 4 Rajendra alias Raju Dubey, it is not establish that at the time of committing rape with prosecutrix, the appellant was incapable of knowing the nature of the said act or that he is doing what is either wrong or contrary to law, by reason of unsoundness. Thus, the appellant does not get any help from the aforesaid statements of para 1 of DW. 1 Dr. Sujit Kumar Nayak, Para 1 of D.W. 2 smt. Sarashwati Suryavanshi Para 1 of D.W. 3 Sarju Verma, para 1 of D.W. 4 Rajendra alias Raju Dubey.

25. After appreciation of the evidence discussed herebefore, this court finds that trial Court has not committed any illegality in convicting and sentencing the appellant as aforesaid. Hence, the appeal deserves to be dismissed.

26. The appeal is accordingly dismissed. The conviction and sentence of the appellant are hereby affirmed.

27. As per the report received from the Central Jail, Bilaspur, dated 24-11-2018 the appellant has been released on 3-12-2012 after getting the benefit of remission extended to him and depositing the fine amount. Thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge