

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.87 of 2011**

Vinod Kumar Bande, aged about 28 years, S/o Shri Radheshyam Bande, Occupation Service, R/o Village Rajauti, P.S. Narayanpur, District Jashpur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station Kansabel, District Jashpur, Chhattisgarh

--- Respondent

For Appellant	:	Shri Vivek Bhakta, Advocate
For Respondent	:	Smt. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board**

18.7.2019

1. The instant appeal has been preferred against the judgment dated 14.1.2011 passed by the Sessions Judge, Jashpur in Sessions Trial No.111 of 2009, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(1) of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.100/- with default stipulation

2. As per the prosecution story, at the relevant time, age of the prosecutrix was about 27 years. On 27.12.2008, the Appellant along with one person went to the house of the prosecutrix and said that they had come to see a girl. Both stayed there in the night. Allegedly, in the night, when the prosecutrix was in her room, the Appellant entered the room and committed forcible sexual intercourse with her. Since he promised to marry her, she did not report the matter. Thereafter, on 29.4.2009, when the

Appellant performed his marriage with one girl, thereafter report was lodged by the prosecutrix on 1.5.2009. On the basis of the report, offence was registered. The prosecutrix was medically examined by Dr. Smt. K. Tirkey (PW1). Her report is Ex.P1 in which she opined that sexual intercourse had been done with the prosecutrix many times. The Appellant was examined by Dr. R.N. Kerketta (PW6). His report is Ex.P9 in which he opined that the Appellant was capable to perform sexual intercourse. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 376 of the Indian Penal Code. A charge was framed against the Appellant under Section 376(1) of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 11 witnesses. In his examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt. No witness has been examined in his defence.
4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the entire case of the prosecution is based upon the statement of the prosecutrix (PW2). Her entire statement is suspicious. If her statement is taken as it is, it establishes that she was a consenting party to the act done with her. Therefore, the Trial Court has wrongly convicted the Appellant. The judgment of the Trial Court is

bad in law.

6. Learned Counsel appearing for the State supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Dr. Smt. K. Tirkey (PW1) is the witness who examined the prosecutrix on 1.5.2009. Her report is Ex.P1. As opined by this witness, sexual intercourse was done with the prosecutrix many times. It has also been deposed by this witness that at the time of examination, the prosecutrix had told her that an abortion of her pregnancy was done in February, 2009. At that time, she was carrying pregnancy of 2 months.
9. The prosecutrix (PW2), in her Court statement, has stated that on 27.12.2008, the Appellant along with one person came to her house saying that they had come to see a girl. Both stayed at her house in the night. She has further stated that in the said night, the Appellant entered her room and after removing her pajama and his pant committed sexual intercourse with her and thereafter fled from there. She has further deposed that thereafter on 20.1.2009, the Appellant again came to her house and thereafter he took her along with him to the house of his *mami* (maternal aunt) situated at Village Kunkuri. At that time, she (the prosecutrix) was pregnant. When the *mami* of the Appellant asked about her pregnancy, the Appellant kept mum. Thereafter, the Appellant took her to the house of his *bua* (maternal aunt) situated at Village Kaliba. Thereafter, on the next day, the Appellant left her at her village.

She has further stated that since the Appellant had promised her that he will marry her, she had not reported the matter. 4 months thereafter, when the Appellant married some other girl and she came to know about this then she lodged the FIR. In her Court statement, she has admitted the fact that the Appellant was like her *mama* (maternal uncle) in relationship. She has further admitted that at the time of commission of offence with her in the night, neither she shouted nor did she do any scuffle with the Appellant. She has further admitted that on 21.1.2009, the Appellant had come to her house. At that time, her family members had talked with the Appellant about her marriage with him. The Appellant, saying that he will come on the next day, went back, but he did not come again. She has further stated that she did not want to lodge any report, but when the Appellant performed marriage with some other girl then she reported the matter.

10. Balmati Bai (PW3), mother of the prosecutrix has also stated that the Appellant along with one person had come to their house for seeing the prosecutrix for the purpose of marriage and they had stayed at their house in that night. On the next day, in the morning, the prosecutrix told her that the Appellant had committed wrong with her in the night on the pretext that he will marry her. This witness has admitted the fact in her cross-examination in paragraphs 9 and 10 that her husband Sukheshwar had warned her and the prosecutrix many times to leave the business of making physical relationship with other persons. This witness has also admitted that they did not like the talks of her husband and, therefore, her husband had left them and gone away. She has further admitted that they lodged the report against the Appellant

with an intention that marriage of the prosecutrix with the Appellant could anyhow take place.

11. Pradeep Kumar Naik (PW4) prepared the spot-map (Ex.P4) and panchnama (Ex.P5). Dr. R.N. Kerketta (PW6) examined the Appellant and gave report Ex.P9. He opined that the Appellant was capable to perform sexual intercourse. Assistant Sub-Inspector Harishankar Singh (PW9) is the witness who investigated the offence in question. Prahlad Rathore (PW10) partly investigated the matter. Jivendra Lal Lakda (PW11) registered numbered FIR (Ex.P17).
12. On a minute examination of the above evidence available on record, it is clear that sexual intercourse with the prosecutrix (PW2) was done many times. Though the prosecutrix has stated that in the fateful night, the Appellant had entered her room and committed sexual intercourse with her without her consent, her statement is not reliable because as stated by her as well as her mother Balmati Bai (PW3), the Appellant had come to their house to see the prosecutrix for the purpose of marriage and, therefore, it is not natural and reliable that on the pretext of marriage, in the first meeting and first night itself, the Appellant will commit sexual intercourse with the prosecutrix. From the admissions made by the prosecutrix, it is also clear that thereafter neither the prosecutrix told about the incident to anyone nor did she lodge any report and even when she along with the Appellant visited the houses of *mami* and *bua* of the Appellant, she did not tell any of them anything about the incident. Apart from this, as stated by the prosecutrix, on 21.1.2009, when the Appellant again came to her house and talked

about marriage and said that he will again come to her house next day but did not come, even then the matter was not reported nor was told to anyone. 4 months thereafter, when the Appellant proceeded to perform his marriage with some other girl then the prosecutrix reported the matter. From the admission made by her mother Balmati Bai (PW3), it is also established that father of the prosecutrix was suspecting character of the prosecutrix and her mother and for this reason he had also left home and gone away. Statements of the prosecutrix (PW2) and her mother Balmati Bai (PW3) are not natural and trustworthy. Even if the entire statement of the prosecutrix is taken as it is, the prosecutrix appears to be a consenting party. Therefore, the finding of the Trial Court is not in accordance with the evidence available on record.

13. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge.
14. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge