

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 578 of 2002

Judgment reserved on 03.10.2019

Judgment delivered on 16.10.2019

Raju Tiwari S/o. Jainarayan Tiwari, Aged about 23 years, R/o. Kushalpur Raipur, Purani Basti, Chhattisgarh,
Permanent resident vilage Usuri, District Shiwan, Police Station Hasanpura (Bihar)

---- **Appellant**

Versus

State of Chhattisgarh through Police Station Purani Basti, Bhilai-3, District Durg (C.G.)

---- **Respondent**

For Appellants : Mr. Malay Kumar Bhaduri, Advocate.
For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

FIR (Ex.P-1) lodged by Dilip Kumar Verma (PW-2)- son of the prosecutrix (PW-1) demonstrates that on 03.11.2001 he brought the accused to his house and on being asked by the accused he went to call one Khileshwari thereto. At that time, the prosecutrix - a blind married lady and the accused alone were present there. Since the prosecutrix was blind, the accused/appellant assured her of driving away her blindness by treating her and on this pretext he bolted the door from inside and committed forcible sexual intercourse with her. On account of door being closed from inside, PW-2 reached there by jumping over the wall and found the accused/appellant

committing sexual intercourse with PW-1. Thereafter, the accused/appellant was caught hold of, handed over to the police and the FIR Ex.P-1 came to be lodged. After completion of investigation charge sheet was filed under Sections 450 and 376 IPC followed by framing of charge accordingly.

2. Learned court below by its judgment dated 22.05.2002 passed in Sessions Trial No. 48/2002 acquitted the appellant under Section 376 but convicted him under Section 354 IPC and sentenced to undergo RI for two years. Hence, this appeal.

3. Counsel for the accused/appellant submits that even the prosecutrix (PW-1) much less her son PW-2 have not supported the case of the prosecution. He submits that the prosecutrix herself has negated the act of sexual intercourse committed by the accused/appellant. Medical report, according to the counsel for the appellant, also does not stand by the prosecution.

4. State counsel however, supports the judgment impugned to be fully justified.

5. Of course, the prosecutrix has not consistently stated anything like sexual intercourse committed with her by the accused yet she has categorically stated that on the date of incident the accused came to her house and on the pretext of giving treatment to her for her blindness, made her lie on the cot, by witchcraft made her unconscious and committed forcible sexual intercourse with her. However, she has not stated as to how and in what manner the sexual intercourse was committed with her as she was already unconscious. PW-2 has also stated that after he returned home the

accused/ appellant was involved in commission of sexual intercourse with PW-1. Though this witnesses has made this exaggerated statement yet looking to the version of prosecutrix and the medical evidence as well it becomes difficult for this Court to hold him guilty under Section 376 IPC and being so the trial Court has rightly acquitted of the said charge. However, there is ample evidence to show that the accused/appellant made the prosecutrix lie on the bed and made her unconscious by the act of witchcraft, and therefore, his conviction under Section 354 IPC cannot be said to be at fault. Since, the prosecutrix was not subjected to forcible sexual intercourse as is clear by her own testimony, the medical report being negative is quite natural.

6. Accordingly, the conviction of the appellant under Section 354 IPC is maintained. However, looking to the fact that the appellant has already remained in jail for more than six months and also keeping in mind the fact that the incident had taken place in the year 2001 and the appellant has already faced a long drawn prosecution, this Court is inclined to reduce the sentence imposed on him to the period already undergone. Order accordingly.

7. Appeal thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE