

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1240 of 2002**

1. Ramkeshwar S/o Vrrindavan Kushwaha, aged about 23 years, Occupation – Agriculturist, R/o Village Pendari, Police Station – Basantpur, District Surguja (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through Police Station – Basantpur, District Surguja (C.G.)

---- Respondent

For Appellant	:	Shri T.R. Chandrakar, Advocate.
For Respondent/State	:	Shri Pawan Kesharwani, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****28/11/2019**

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 26/10/2002 passed by Additional Session Judge, Link Court Ramanujganj, District Surguja (C.G.) in Session Trial No. 257/2000; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 376(1) of Indian Penal Code (in short "IPC")	R.I. for 7 years & fine of Rs. 100/- in default of fine additional R.I. for 1 month.

- 2) Case of the prosecution in brief is that accused/appellant used to frequently visit the home of the prosecutrix. About a year ago from 04/04/1999 when prosecutrix was alone at her home, her parents had gone for field work and their brother and sister had gone to school, then accused came to the home of the prosecutrix, proposed her for marriage and thereafter had sexual

intercourse with her. Thereafter, also the accused/appellant used to come to the home of the prosecutrix and commit sexual intercourse with her. When prosecutrix was carrying pregnancy of 2 months, on the advice of the accused she consumed some medicine for abortion and terminated the pregnancy. Thereafter, the accused refused to marry her, then on 01/04/1999 first time she stated about the relation with accused to their parents and village Panchayat was assembled to resolve the disputed between prosecutrix and accused. Then accused admitted in Panchayat that he has relation with prosecutrix and thereafter the accused took her from Panchayat to his home. Thereafter, the prosecutrix remained with the appellant as his wife for four months and due to some disputes during this time prosecutrix left the house of the appellant and started living separately. FIR was lodged after 2 years on 15/06/2000 by prosecutrix vide Ex. P-2. Spot map was prepared as per Ex. P-4 and accused was examined as per Ex. P-5 (aged about 19-20 years) wherein he was found capable of performing sexual intercourse. After due investigation charge-sheet was filed against the accused/appellant for the offence punishable under Section 376 of IPC.

- 3) The Trial Court framed charge against the accused/appellant under Section 376 of IPC which was denied by him and he prayed for trial.
- 4) The prosecution in support of its case examined as many as 07 witnesses namely PW-01 Prosecutrix, PW-02 Dr. PL. Verma, PW-03 Ramnaresh (father of prosecutrix), PW-04 Dr. Manju Ekka, PW-05 Ramvriksh Yadav, PW-06 Indraso Bai and PW-07 Dadulal Mishra. The statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence he examined one Pradeep Kumar Kushwaha as DW-01.
- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the

accused/appellant as mentioned above in para 1 of this judgment.

- 6) Learned counsel for the appellant submits that on the date of incident prosecutrix was above 18 years of age and she was a consenting party looking to her statement Ex. D-1 where she admits that for about 6 months continuously she had physical relation with the accused and she did not inform about the same to her parents. She admits that she was living as wife at the home of the appellant and had physical relation with him. FIR is delayed by approximate 2 years as the prosecutrix herself admitted her relation for the first time with the accused on 01/04/1999 and 6-7 months prior to that she was having relation with the accused. Therefore, the prosecutrix, who was major at the time of incident had physical relation with the accused of her own free consent and as such no offence is made out. No any independent witness supported the prosecution case. Therefore, the learned Trial Court wrongly convicted the appellant.
- 7) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 8) Heard counsel for the parties and perused the material available on record.
- 9) It is not disputed by counsel for both parties that at the time of alleged incident the prosecutrix was major. The prosecutrix in her evidence has admitted that prior to village Panchayat she was having physical relation with the accused/appellant as the appellant had promised to marry her and that she did not inform about her relation with the appellant to her parents at the earlier point of time. It has come in the evidence of the prosecution witnesses including the prosecutrix that when Panchayat meeting was convened to resolve the disputes between the prosecutrix and accused, the accused took the prosecutrix to his

home where they lived 3-4 months as husband and wife. During this period some disputes arose between the accused and the prosecutrix as the accused/appellant was demanding of dowry and due to non fulfillment of the said demand he was beating the prosecutrix. On account of this ill treatment the prosecutrix left home of the appellant. However, in her Dairy statement (Ex. D-1) she has stated that whenever she was alone in her home the accused used to come there and forcibly commit sexual intercourse with her, he continued to have such relation with her for about 6 months and when she was carrying pregnancy of 2 months and asked the appellant to marry her he told her to abort the pregnancy and gave her some *Jadibuti* (Ayurvedic medicine) for abortion. She states that after consuming the said *Jadibuti* her pregnancy was terminated. When she was asked the appellant for marrying her, he refused then on 01/04/1999 she informed about the entire incident to her parents and accordingly a Panchayat meeting was convened on 04/04/2000 where the appellant admitted his relation with the prosecutrix and took the prosecutrix to his home saying that he would marry her. In her Dairy statement Ex. D-1 the prosecutrix has stated that the appellant continued to have sexual relation with her for about 6 months as a result of which she was carrying 2 months pregnancy and on the assurance of the appellant that he would marry her after termination of her pregnancy she consumed some medicine (*Jadibuti*) given by the appellant for abortion and she suffered abortion. However, PW-04 Dr. Manju Ekka who medically examined the prosecutrix vide Ex. P-7A though found the prosecutrix is habitual to sexual intercourse but did not notice any sing of pregnancy or abortion.

- 10) PW-03 Ramnaresh, father of the prosecutrix states that on the date of incident the prosecutrix informed him that while she was alone in her home the accused/appellant came there and committed rape with her and on the next day a Panchayat meeting was convened. As per Diary statement of the prosecutrix Ex. D-1 which was recorded on 15/06/2000 she informed about the incident to her parents on 01/04/1999 and

that she was having physical relation with the appellant about 6 months prior to the said date and the village Panchayat was convened on 04/04/2000.

- 11) Statement Ex. P-10, PW-03 Ramnaresh has stated that he had fixed marriage of his daughter/prosecutrix at village Vengo and during this time his daughter/prosecutrix informed him about her illicit relation with appellant Ramkeshwar on which Panchayat meeting was convened where as per advised of the Panchayat his daughter lived with the appellant for about 4 months in his house. FIR Ex. P-2 was lodged by the prosecutrix on 15/06/2000 in which it has been mentioned that the appellant had physical relation with the prosecutrix about a year prior to 04/04/1999 i.e. after more than 26 months of the incident. PW-06 Indraso Bai, Sarpanch has admitted that the prosecutrix was married with the appellant and they lived as husband and wife for 3 days 4 months and during this period some dispute arose between them, therefore, the prosecutrix lodged a report.
- 12) Thus considering the nature and quality of evidence adduced by the prosecution in particular the Court Statement of the prosecutrix as well as her Diary Statement Ex. D-1 her conduct during the commission of the alleged offence and subsequent thereto, the medical evidence of PW-04 Dr. Manju Ekka that she neither noticed the sign of pregnancy of the prosecutrix nor any sing of abortion whereas in her Diary Statement Ex. D-1 prosecutrix has stated that she got pregnant from the appellant and suffered abortion due to consumption of certain medicine (Jadibuti) given by the appellant. From the Court Statement as well as Diary Statement Ex. P-10 of PW-03 Ramnaresh and the deposition of PW-06 Indraso Bai, it appears that the prosecutrix who was aged about 18 - 19 years at the time of incident, was a consenting party to the act of sexual intercourse committed by the appellant.
- 13) The Trial Court has recorded in para 15 of judgment that the appellant had sexual relation with the prosecutrix for 3 months

despite being aware that she is not his wife and the prosecutrix consented to the said act of the appellant because she believed the appellant to be her husband. However, in the given facts and circumstances of the case, and the evidence available on record as discussed above, the said finding appears to be unreasonable and cannot be sustained. It has come in the evidence of the prosecutrix and her father PW-03 Ramnaresh that prosecutrix had sexual relation with the appellant for about 6 months continuously and she is a major lady. Therefore, it cannot be said that the consent given by the prosecutrix to the act of sexual intercourse by the appellant was under any false pretext or false impression. Looking to the manner in which the incident has taken place and the conduct of the prosecutrix it can be easily inferred that she was a consenting party and was well aware of the consequence of such consent being given to the appellant. Therefore, the Trial Court was not justified in convicting and sentencing the appellant under Section 376(1) of IPC.

- 14) In the result, the appeal is allowed. The appellant is acquitted of the charge under Section 376(1) of IPC. He is reported to be on bail, therefore, his bail bond shall continue for a period of six months from today in view of provision of Section 437-A of Cr.P.C.

**-Sd/-
(Gautam Chourdiya)
Judge**