

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 10-7-2019****Pronounced on 11-7-2019****CRIMINAL APPEAL 686/2002**

(Arising out of judgment of conviction and order of sentence dated 6-6-2002 passed by 1st Addl. Sessions Judge, Mahasamund (CG) in Sessions trial No. 297/2001)

Vasudev Seth son of Buti Seth, Dhobi, aged 33 years, residence of Gram Bhuthia, Thana Saraipali, Tahsil Saraipali, Jila Mahasamund (CG)

---Appellant**-VERSUS-**

State of Chhattisgarh, through PS Saraipali, Distt. Mahssamund (CG)

---Respondent

For appellant	: Mrs Savita Tiwari, Adv.
For respondent/State	: Mr. Ashutosh Pandey, Panel Lawyer.

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 6-6-2002 passed by 1st Addl. Sessions Judge, Mahasamund (CG) in Sessions trial No. 297/2001 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
392, IPC	7 Years	1,000/-	3 Months
376, IPC	7 Years	1,000/-	3 months

Both the jail sentences have been directed to run concurrently.

2. In brief the prosecution story is that at the time of alleged incident prosecutrix was about 23 years old and resident of village Bhuthia. On 31-3-2001 at about 1.30 pm she was going to house of her maternal uncle Kunjram. On calling by the appellant she went to his house. In his house his mother, wife and children were present. He got down her on the ground, forcefully snatched her two golden ear tops and nose pin, and committed forcible sexual intercourse with her. Thereafter she came to her house and narrated the incident to her uncle Kunjram,

mother Savitri, grand mother Sarashwati. Her father had gone to Saray, he returned back in the night and she also narrated the incident to him. Next day on 1-4-2001 she went to Out Post Baloda and lodged report which was registered in '0' number. Thereafter numbered FIR was registered in PS Saraipali. After completion of investigation, a charge sheet was filed against him under Section 392 and 376, of Indian Penal Code (in brief, 'IPC'). Trial Court framed charges against him under Section 392 and 376 of IPC. He abjured the charge and faced trial. To bring home the charges, the prosecution examined 7 witnesses at all. He examined two witnesses on his defense. After completion of trial, trial Court convicted and sentenced him as aforesaid.

- 3. Being aggrieved the appellant has preferred this criminal appeal.
- 4. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentences of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charges.
- 5. Counsel for the State argued that the conviction and sentences of the appellant are based on clinching evidence. The conviction and sentences of the appellant do not call for any interference by this Court.
- 6. As per the alleged M.L.C. report Ex. P-1(A), P.W.-1 Dr. Chandrakiran had examined prosecutrix and found that there was no vaginal injury and she opined that she was habitual for sexual intercourse. She found following injuries on her body :-

1	Four abrasion of dorsal surface of left wrist
2.	One abrasion on left elbow round shape
3.	Scratch mark on lateral border of left elbow
4.	Abrasion on lateral border of right wrist
5.	Scratch mark on near outer canthus of left eye
6.	Scratch on middle of forehead
7.	Lacerated wound at the level of T2-T3 vertebra
8.	Patecheal hemorrhage spread over the left scapular to right scapular region which is painful and tender.
9.	Scratch mark on inner side of left thigh.

7. There is no such evidence on record on strength of which it can be said that Ex. P-1(A) is not believable, thus this court believes on Ex.P-1(A).

8. As per the alleged M.L.C. report Ex. P-3(A), P.W.-2 Dr. Amrit Lal had examined appellant and found that no injury mark was present on his body as well as on his private parts. He opined that there is nothing to suggest that he was not capable of doing intercourse.

9. There is no such evidence on record on strength of which it can be said that Ex.P-3(A) is not believable, thus this court believes on Ex.P-3(A).

10. P.W.3 prosecutrix says in para No. 1 and 2 of her statement given on oath that on call of the appellant she entered into his house. He forcefully snatched her nose pin and ear tops. At that time nobody was present in his house. He had closed the doors. He committed forcible sexual intercourse with her. Due to fear she did not shout. Due to wriggle she sustained injuries on her left wrist, back, left knee, near eye and forehead.

11. P.W. 4 Savitribai says in para 1 of her statement given on oath that prosecutrix had told her that she went to the house of appellant on his calling, he snatched her ear tops and nose pin and committed rape with her. She had also shown injuries on her back, mouth etc.

12. D.W. 1 Sarojinibai says in para 1 and 2 of her statement given on oath that prosecutrix had entered into the house of the appellant, she was not ready to return back with her family members and stated that she had come in his house voluntarily for living with him, her family members had taken back her by tying her hands and feet and lifting. She had worn ornaments.

13. D.W. 2 Janmo Pradhan says in para 2 and 3 of his statement given on oath that the uncle of the prosecutrix had told him that she had gone to the house of the appellant, and she told that she will not return back, her family members took her by pulling.

14. There are omissions in alleged FIR Ex. P-5 and alleged police statement of prosecutrix Ex. D-1 that, allegedly nobody was present in the house of appellant, she did not shout because she was under fear. Due to wriggle she sustained aforesaid injuries on her body, he had closed the doors. There is also omission in police statement Ex. D-2 of

P.W. 4 Savitri Bai that allegedly prosecutrix had shown her injuries to her. There is contradiction in Ex. P-5 and Ex. D-1 and her statement recorded by the Court, that allegedly his mother, wife and children were present in the house. There is also contradiction in Ex. D-1 and her statement that allegedly she had shouted. These omissions and contradictions are material, important and fatal to the prosecution case.

15. P.W. 1 Dr. Chandrakiran says in para 6 during her cross-examination that injuries of the prosecutrix may be caused due to dragging with beating. As per Ex. P-1(A), no injury was found on her ear or nose. As per the Ex. P-3(A) no injury was found on body of the appellant and his private part. Looking to the above mentioned facts and circumstances, these circumstances go against the prosecution case.

16. Looking to the above mentioned facts and circumstances of the case, possibility cannot be ruled out that she had allegedly gone voluntarily to the house of the appellant to live with him, when her family members took back her forcefully, she had sustained aforesaid injuries.

17. Moreover, in alleged memorandum Ex. P-12 it has not been clearly mentioned that appellant had allegedly concealed nose pin and ear tops in a particular place of his house.

18. Moreover, in alleged paper of identification Ex. P-7 it has not been mentioned that how many identical articles were mixed with allegedly seized articles, P.W. 7 Uttar Jagat, Sarpanch says in para 4 during his cross-examination that he has signed on Ex. P-7 at PS Saraipali.

19. Looking to the above mentioned facts and circumstances of the case, this Court finds that aforesaid aforesaid statements of P.W. 3 prosecutrix, P.W.4 Savitri Bai, Ex. P-12, alleged seizure Ex. P-13 are not simple, natural and normal. Thus, this Court disbelieves aforesaid statements of P.W. 3 prosecutrix, P.W.4 Savitri Bai, Ex. P-12, Ex. P-13 and believes aforesaid statements of D.W. 1 Sarojinibai and D.W. 2 Janmo Pradhan in the reference that appellant had allegedly not committed aforesaid offences.

20. After appreciation of the evidence discussed herebefore this Court finds that prosecution failed to prove beyond reasonable doubt the charges punishable under Section 392, 376(1) of the IPC against

the appellant. Thus, impugned judgment of conviction and order of sentences are set aside. Appellant is acquitted of the charges punishable under Section 392 and 376(1) of the IPC extending him benefit of doubt.

21. The fine amount if deposited be refunded to appellant after the expiration of prescribed period of limitation for further legal remedy available to the party.

22. The appellant is on bail. His bail bond shall continue for a further period of six months as per requirement of Section 437-A of the Criminal Procedure Code.

23. Appeal is allowed accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge