

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 4-7-2019****Pronounced on 8-7-2019****CRIMINAL APPEAL 351/2003**

(Arising out of judgment of conviction and order of sentence dated 11/03/2003 passed by Sessions Judge, Raipur (C.G.) in Sessions trial No. 32/2002)

Vishwanath S/o Budharu Satnami, aged about 32 years, R/o Kota, Near Housing Board Colony, Thana – Aama Naka Raipur (CG)

---Appellant**-VERSUS-**

State of Chhattisgarh, Through The District Magistrate, Raipur (C.G.)

---Respondent

For appellant	: Mr. Tarun Dansena, 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 11-3-2003 passed by Sessions Judge Raipur (CG) in Sessions trial No. 32/2002 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, IPC	8 Years	500/-	5 months

2. This is admitted by appellant that prosecutrix is wife of P.W.-2 Taran. Their children had gone to shop at the time of alleged incident.

3. In brief the prosecution story is that at the time of alleged incident on 13.12.2001 prosecutrix was about 28 years old and resident of village Sejbahar. On 13.12.2001 P.W.-2 Taran had gone to Raipur to search for the work. She was present in her house along with her children. At about 9 p.m. appellant who is the son of *Mausi Saas* had come to her house. He had sent her children Akash and Parmeshwar to purchase the 'Talab Gutka' to shop. Thereafter he pushed her on the cot, she shouted then he pressed her mouth and gave threats to kill her

and started to rape her. Meanwhile P.W.-2 Taran reached their and said him that even being a brother, he is committing bad work. He did not leave her and get up after completing the sexual intercourse. P.W.-2 Taran got seated him and went to call Kura Sasur Baiju, brother-in-law Dukalu. When those persons reached there he ran away. Next day she narrated the incident to the Kotwar Dailal and village head Raj Mahant. On 14.12.2001 she went to the Police Station and lodged an FIR in Police Station Tikrapara. After completion of investigation, a charge sheet was filed against him under Section 376, 506 of Indian Penal Code (in brief, 'IPC'). Trial Court framed charge against him under Section 376 of IPC. He abjured the charge and faced trial. To bring home the charge the prosecution examined 5 witnesses at all, he examined three witnesses on his defense. After completion of trial, trial Court convicted and sentenced him as aforesaid.

4. Being aggrieved the appellant has preferred this criminal appeal.
5. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. The prosecutrix was consenting party in alleged sexual intercourse. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charge.
6. 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.
7. As per the alleged M.L.C. report Ex. P-4, P.W.-3 Dr. H.K. Dua had examined appellant and no injury was found on his body.
8. There is no such evidence on record on strength of which it can be said that Ex.P. 4 is not believable, thus this court believes on Ex.P.4.
9. As per the alleged M.L.C. report Ex. P-6, P.W.-4 Dr. (Smt.) Sarita Dubey had examined prosecutrix and found that no injury mark was present on her body as well as on her private parts. She opined that no definite opinion can be given about recent sexual intercourse.
10. There is no such evidence on record on strength of which it can be said that Ex.P.6 is not believable, thus this court believes on Ex.P.6.
11. P.W.1 prosecutrix says in para No. 3 during her cross-examination that without her knowledge appellant had sent her children to the shop, at that time she was inside the house. Prosecution failed to

give explanation that why she permitted him to remain present in her house specially when her husband was not present. Moreover, this is not the prosecution case that at the time of alleged giving threats to kill, he had holding some dangerous weapon which was shown to her. Moreover, this is the prosecution case that doors were not closed from the inside. Moreover, this is not the prosecution case that after reaching of P.W.-2 Taran he had run away, instead of it, despite of saying of P.W.-2 Taran he did not leave the prosecutrix and after completing the sexual intercourse he left her. Moreover, P.W.-2 Taran says in para No. 1 of his statement given on oath that he got up appellant, as per the alleged F.I.R. Ex. P.1, P.W.-2 Taran got seated him and went to call her relatives. Moreover, this is not the prosecution case that prosecutrix had tried to cause injury on his body, she tried to scratch his body by her nails. Moreover as per Ex.P.4 and P.6 no injury was found on his and her body. On strength of these circumstances this Court finds that at the time of alleged sexual intercourse prosecutrix was 'free consenting party'.

12. Looking to the above mentioned facts and circumstances of the case, this Court finds that prosecution failed to prove beyond reasonable doubt the charge punishable under Section 376 of I.P.C. against the appellant. Thus, impugned judgment of conviction and order of sentence are set-aside. Appellant is acquitted from the charge punishable under Section 376 of I.P.C.

13. 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.

14. 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.

15. Appeal is allowed accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge