

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 5-2-2019****Pronounced on 14-2-2019****CRIMINAL APPEAL No. 1162/2001**

(Arising out of judgment of conviction and order of sentence dated 29-11-2001 passed by 5th Additional Sessions Judge, (FTC) Surajpur Distt. Sarguja (CG) in ST No. 201/1995)

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Krishna Kumar S/o. Mahabir Kumar, aged about 36 years, R/o. Village Rameshwaram, P.S. Ramanuj Nagar Distt. Sarguja (CG)

---Appellant**-VERSUS-**

State of Chhattisgarh through P.S.H. Officer, Ramanuj Nagar, Distt. Sarguja (CG)

---Respondent

For appellant : Smt. Meena Shashtri, Adv.

For State : Shri Vinod Tekam, P.L.

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 29-11-2001 passed by 5th Additional Sessions Judge, (FTC) Surajpur Distt. Sarguja (CG) in ST No. 201/1995 whereby and whereunder he convicted the appellant for offence punishable under Section 392 of the Indian Penal Code (in brevity 'IPC') and sentenced him to undergo RI for 5 years.

2. In brief the prosecution story is that prosecutrix is the resident of village Rameshwaram. On 11-2-1995 she and her husband were returning back from her maternal house to her in-laws' house. At village Lohardaga her husband had stayed at the river to wash bicycle. She alone proceeded on the way. On the way 4 persons were splitting the wood, one person was digging soil. One person who was splitting wood

came near to her snatched her nose pin. She further proceeded on the way. Thereafter same person who snatched her nose pin came along with another person and caught hold her. When she shouted they left her. She reached in her house and narrated the incident to her husband. On 14-2-1995 she lodged an FIR in the police station Ramanuj Nagar. During investigation she gave an application to SHO, of PS Ramanuj Nagar on 27-2-1995 that the person who snatched her nose pin was appellant Krishna. Another person who was along with appellant Krishna was co-accused Babulal. Appellant and co-accused Babulal committed forcible sexual intercourse with her one by one. Earlier at the time of lodging an FIR she had not stated about rape because she was feeling shame. After the investigation, a charge sheet was filed against him and co-accused Babulal for the offence punishable under Section 366, 376/34 of the IPC. The trial Court framed the charge against him and said co-accused under Section 392, 376(2) (g) of the IPC. After completion of trial, trial Court convicted and sentenced the appellant as aforesaid. However, the trial Court acquitted appellant and co-accused of the offence punishable under Section 376(2)(g) and co-accused Babulal of the offence punishable under Section 392, IPC.

3. Smt. Meena Shashtri, counsel for the appellant argued that trial Court has not appreciated the evidence in proper perspective. There is no test identification parade conducted by the investigating officer. Mere on the basis of Dock identification which is not corroborated by any other evidence, he cannot be convicted. Thus, the conviction and sentence of him are bad in eyes of law. Hence, he may be acquitted of the aforesaid charge.

4. 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.

5. P.W. 1 prosecutrix says in para 1 and 2 of her statement given on oath that after stopping her husband at nala she slowly proceeded on the way, one person who was splitting wood came near her and snatched her nose pin. His name is Krishna Kumar. As per the para 3 of her statement she touched appellant in doc saying that he is Krishna Kumar.

6. P.W. 2 Jairam who is husband of the prosecutrix says in para 2 of his statement given on oath that his wife had told him that one person had snatched her nose pin on the way.

7. P.W. 3 Lakchhan says in para 1 of his statement given on oath that the appellant had gone towards a girl who was going side by side the nalla. He had saved her from grip of appellant.

8. P.W. 5 Thakur Prasad says in para 1 of his statement given on oath that the appellant had gone towards a girl who was going alone.

9. In application Ex. P-2 it has not been mentioned that nose pin of prosecutrix was snatched. Instead of it it has been mentioned that her ear top was snatched. Moreover, in supplementary statement of the prosecutrix Ex. D-2 it has been mentioned that her nose pin might have fallen. Moreover, P.W. 3 Lakchhan says in para 5 during his cross-examination that when he reached near that girl to rescue her then she had not told that her nose pin has been snatched. In these circumstances this Court disbelieves aforesaid statements of P.W. 1 prosecutrix, P.W. 2 Jairam, P.W. 5 Thakur Prasad, para 1 of statement of P.W. 3 Lakchhan in the reference that the appellant had allegedly snatched nose pin from the prosecutrix.

10. After appreciation of the evidence discussed herebefore this Court finds that the prosecution has failed to prove beyond reasonable doubt the charge punishable under Section 392, IPC against the appellant. Thus, trial Court committed illegality in convicting and sentencing the appellant as aforesaid. Consequently, the appeal is allowed. The impugned judgment of conviction and order of sentence against the appellant are hereby set aside. The appellant is acquitted of the charge punishable under Section 392 of the IPC.

11. The appellant is reported to be on bail. His bail and bond shall continue for a further period of six months as per requirement of provision of Section 437-A of the Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge