

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.101 of 2012**

Chhabil Das, S/o. Lal Das Satnami, aged 65 years, Village Lal Bahadur Nagar, OP Chichola, Thana Chhuriya, Distt. Rajnandgaon (CG)

---- Appellant**Versus**

State Of Chhattisgarh, Through OP Chichola, Thana Chhuriya, Distt. Rajnandgaon (CG)

---- Respondent

For the appellant : Shri Amiyakant Tiwari, Advocate

For the respondent/State: Shri Raghavendra Verma, Govt.
Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****14.01.2019.**

1. Shri Prafull N Bharat, Advocate has been engaged by the appellant, but despite repeated calls, none appeared, therefore, Shri Amiyakant Tiwari, Advocate present in the Court is appointed as Amicus Curiae to argue the matter on behalf of the appellant.

2. This appeal is directed against the judgment dated 13.12.2011 passed by Additional Sessions Judge Link Court, Dongargrh Distt. Rajnandgaon (CG) in Session Trial No.01/2011 wherein the said Court convicted the appellant for commission of offence under Section 376(1) read with Section 511 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for four years and to pay fine of 2000/- with default stipulation.

3. In the present case, prosecutrix is PW-1. It is alleged by the prosecution that the appellant is by profession a quack. On the date of incident, elder sister of the prosecutrix was not feeling well, the prosecutrix and her elder sister namely Kamini reached to the appellant for treatment and during the course of treatment, the appellant taken the prosecutrix towards kitchen garden of his house and asked her to remove her undergarments and thereafter committed sexual intercourse with her. The matter was reported and investigated and the appellant was charge sheeted and convicted as mentioned above.

4. Learned counsel for the appellant submits as under:

- (i) There is no eyewitness account of the incident.
- (ii) Version of the prosecutrix is not supported by the version of the medial expert, therefore her version is not reliable.
- (iii) Other piece of evidence is also suspicious in nature.
- (iv) Looking to the entire evidence, it appears that the appellant has been roped in false charges therefore, conviction and sentnece of the appellant is liable to be set aside.

5. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

6. Prosecutrix (PW-1) deposed that on the date of incident, she along with her sister Kamini went to the appellant for treatment who is a quack. After treatment of her sister, the appellant has taken her to the kitchen garden behind his house

where he asked the prosecutrix to remove her undergarments and thereafter committed sexual intercourse with her. Kamini (PW-2), Ram Charan Sahu (PW-3) and Narbadiya Bai (PW-6) are the witnesses whom the incident was informed later on.

7. Dr. S. Shrivastava (PW-7) examined the prosecutrix and found her hymen intact. Though she deposed that there was redishness and pain in the private part of the prosecutrix, but she is not in a position to opine whether the intercourse is committed with the prosecutrix or not.

8. After evaluating the entire evidence, the trial Court opined that the medical evidence is not supporting sexual intercourse with the prosecutrix, therefore, it is a case of attempt to rape.

9. There is no material contradiction in the statement of the prosecutrix. Version of the witnesses is unshaken during cross-examination and nothing could be elicited in favour of the defence. Therefore, arguments advanced on behalf of the appellant is not sustainable. Looking to the marshaling of the trial Court, it appears that the same is based on relevant material placed on record and not based on extraneous or irrelevant material. Therefore, it is not fit to interfere with the finding of the trial Court.

10. Heard on the point of sentence.

The trial Court awarded sentence of four years which cannot be termed as harsh or unreasonable. Therefore, sentence part is also not liable to be interfered with.

11. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per the report, the appellant has been released from jail after serving the full jail sentence awarded

to him and after remission granted to him by the jail authorities. In view of this no further order is required for his arrest.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

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