

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 544 of 2014**

Yohan Masih S/o Basant Masih, aged about 30 years R/o Village Limtara, Police Station Simga, Civil and Revenue District Baloda Bazar/ Bhatapara (C.G.).

----Appellant**Versus**

State of Chhattisgarh, Through Station House Officer, Police Station Simga, Civil and Revenue District- Baloda Bazar/ Bhatapara (C.G.)

---- Respondent

For Appellant : Mr. Sashi Kumar Kushwaha, Advocate

For Respondent: Mr. Anand Verma, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****26/11/2019**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 07/05/2014 passed in Sessions Trial No. 05/2013 by the Additional Sessions Judge, Bhatapara, Civil and Revenue District Baloda Bazar/ Bhatapara whereby the Appellant has been convicted under Section 376 of the IPC and sentenced to undergo RI for 10 years and to pay fine of Rs. 1000/- with default stipulation.
2. Facts of the case are that on 07/02/2012 at about 2:30 pm, the Prosecutrix (PW3) a married lady was working in her field. At that time, one person came there and asked her for running bore well. Thereafter, the said person caught hold her and pressed her neck. He pushed the Prosecutrix on the floor and committed Marpeet with her by a brick. The Prosecutrix sustained injuries on her head. Thereafter, the said person looted one neckless of gold from her and fled away from the spot. She

returned to her house in injured condition. Thereafter, her husband took her to the hospital. Dehati Nalsi Ex.P-2 has been lodged against unknown person. On the basis of said Dehati Nalsi, FIR Ex.P-17 has been registered under Section 394 of the IPC. During course of investigation when the statement of the Prosecutrix was recorded under Section 161 of the Cr.P.C, she disclosed the fact that at the time of incident, the said person also committed forcible sexual intercourse with her and threatened her to kill. Statement of other witnesses have also been recorded. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges under Sections 376 and 394/397 of the IPC. As many as 12 prosecution witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial Court has acquitted the Appellant from the charge framed under Section 394/397 of the IPC and convicted and sentenced him as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. He further submits that while recording Dehati Nalsi, no fact regarding commission of rape was disclosed and later on the Prosecutrix disclosed this fact during recording her evidence, therefore, the entire evidence of the Prosecutrix is not reliable. He further submits that since the FIR has been lodged against unknown person and the trial Court has acquitted the Appellant from the charge framed under Section 394/397 of the IPC, therefore, on

the same set of evidence, the conviction of the Appellant under Section 376 of the IPC is not sustainable.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. In her court Statement, the Prosecutrix (PW3) deposed that on the date of incident when she was working in her field, the Appellant came there and demanded water for drinking. Thereafter, the Appellant caught hold her neck. She had bitten his hand and then the Appellant fallen down her on the floor. Thereafter, the Appellant committed forcible sexual intercourse with her. She further deposed that during test identification parade, she duly identified the Appellant. During course of cross-examination, this witness has categorically stated that she does not know the Appellant previously, but the Appellant had told her that he is resident of village Limtara. In para 12 & 13, some suggestion were made to this witness that the Appellant had firstly put off her clothes and she did not refuse, thereafter, she had seen the Appellant putting off his clothes. But she denied these suggestions. In para 14 also, suggestion was also made to her that during sexual intercourse, she was feeling good, but she also denied this suggestion.
8. V.N. Chandrawanshi (PW9) is a witness who conducted test identification parade. This witness has deposed that on 27/12/2012, he conducted TIP of the Appellant vide Ex.P-5. As deposed by this witness, during TIP three persons looking like the Appellant were confronted before the Prosecutrix and the Prosecutrix identified the Appellant by touching his

body.

9. On minute examination of above evidence, it makes clear that though initially in FIR no allegation was made regarding rape by the Appellant, during recording her statement she disclosed this fact and before the Court also, she categorically deposed that the Appellant had forcibly committed sexual intercourse with her. She duly identified the Appellant during TIP and she also identified the Appellant at the time of recording her statement before the court. Apart from this, from the suggestion made by the Counsel for the Appellant before this witness, it has been admitted by the Appellant that at the time of incident, the Appellant committed sexual intercourse with the Prosecutrix. Though, he tried to convince that the Prosecutrix was the consenting party, but from the statement of the Prosecutrix, it is well established that she previously did not see the Appellant and she firstly seen him on the date of the incident. Therefore, it is not established that she was the consenting party. In these circumstances, the finding of the trial Court is in accordance with the evidence available on record.
10. Consequently, I do not find any merit in this appeal and the same is dismissed.
11. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge