

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 606 of 2014

- Chitranjan Verma S/o. Krishna Kumar @ Krishna Verma, aged about 24 years, R/o. Village Arjuni, P.S.-Bhatapara, District- Baloda Bazar, Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh through P.S. Bhatapara Rural, District-Baloda Bazar, Chhattisgarh

---- Respondent

For the Appellant : Mr. Adil Minhaj, Advocate.

For the State/Respondent : Mr. Arun Shukla, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

09/01/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 19.6.2014 passed by the learned Additional Sessions Judge, District-Baloda Bazar, Chhattisgarh in Sessions Trial No.11/2013 convicting the accused/appellant under Section 376 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for 10 years with fine of Rs.2,000/-, with usual default clause.
2. The prosecution case, in brief, is this that on the date of incident in the month of January, 2013 when the prosecutrix PW-7 had been to

the field for labor work, the appellant came there and forcibly committed the offence of rape with her. After about a week thereafter, when the prosecutrix had been to the house of appellant to deposit keys, the appellant, who was all alone in his house, had again committed sexual intercourse with her without her consent. Thereafter, whenever the appellant used to find prosecutrix alone he used to commit sexual intercourse with her. The prosecutrix whenever wanted to refuse for this relation, the appellant used to promise that he will marry her. After about two months, the prosecutrix became pregnant and then she disclosed this incident to her family members. On 6.3.2013 a meeting was convened in the village in which appellant promised to marry her and therefore the villagers directed the appellant and the prosecutrix to live together. Both of them started living together but after 8 to 10 days the appellant had deserted her and subsequent to which the pregnancy of the prosecutrix was also got aborted. FIR ExP-3 was lodged on 6.4.2013 in the concerned police-station on that basis the prosecutrix was medically examined vide report ExP-1. The doctor has not given any opinion regarding recent intercourse but has found that the prosecutrix was habitual to sexual intercourse. The appellant was also physically examined by the doctor. Statement of the witnesses were recorded.

3. On completion of investigation charge-sheet was filed before the concerned Court. The appellant was charged with the offence under Section 376 of IPC to which he denied and prayed for trial.

Statement of appellant under Section 313 of CrPC has been recorded in which he denied all the incriminating evidence available against him, pleaded innocence and false implication. No witness was examined by him in his defence.

4. After completion of trial, the impugned judgment has been passed in which the appellant stands convicted and sentenced as aforementioned.
5. It is submitted by counsel for appellant that the conviction against the appellant is bad in law without there being support of prosecution evidence beyond reasonable doubt. The age of prosecutrix was about 27 years. She had been a consenting party in the physical relation with the appellant. It is also a case of delayed lodging of FIR and that too has been lodged only for the reason that the appellant refused to marry the prosecutrix and had deserted her. Hence, under these circumstances, no case is made out for conviction against the appellant, therefore, it has been prayed that appellant be acquitted of the charge.
6. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the appellant. It is submitted that the prosecutrix has clearly stated in her Court statement that she was subjected to forcible sexual intercourse by the appellant in which she did not have any willingness, therefore, the prosecution has proved its case beyond reasonable doubt, hence, there is no infirmity or illegality in the impugned judgment

convicting and sentencing the appellant as aforementioned. Hence, the appeal is liable to be dismissed.

7. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
8. The question that requires determination in this appeal is as to whether on the basis of evidence available on record the prosecution has been able to establish guilt of accused/appellant beyond reasonable doubt ?
9. The prosecutrix PW-7 has stated that on 1.3.2013 the appellant gave her one chocolate and on her refusal, he forced her to take it because of which there was a quarrel between them. She has further stated that after 2-3 days when she went to the house of the appellant to deposit the keys of the house of her sister, the appellant was alone in his house, he took her inside, closed the door and then forcibly committed sexual intercourse with her because of which she became pregnant. She has also stated that the appellant had threatened her not to disclose the incident to anyone. However, when she became pregnant she informed about the incident to her parents and then a village meeting was called where the appellant agreed to keep the prosecutrix as his wife in his house but after keeping her for a few days he had deserted her. She has stated about the lodging of FIR ExP-3. In cross-examination, she has denied the adverse suggestion given by the defence.
10. It appears that the prosecutrix has changed and improved her

statement in the Court from her version in FIR ExP-3 lodged by her. She has clearly omitted the statement about the physical relation she had number of times with the appellant for about two months and she has also omitted that on 1.3.2013 there had been any sexual intercourse with her. Further, there are improvements by way of details given by her in the statement which were not there in the FIR ExP-3 lodged by her. Due to such omissions and developments the statement of prosecutrix has become partly reliable and partly unreliable. Statement of the prosecutrix can be believed only if it is sufficiently corroborated by the other evidence.

11. Rajesh Sahu PW-1 is the person who was present in the village meeting. He has stated that on being questioned, the appellant has admitted that he committed rape with the prosecutrix and then he agreed to keep the prosecutrix with him as his wife but subsequently he deserted her. In the cross-examination, he has denied that the appellant and the prosecutrix had physical relation with consent.
12. Sonsai PW-2, another witness who was present in the meeting, has stated that the prosecutrix and the appellant both had physical relation with consent and the appellant has also admitted about this relationship and agreed to keep the prosecutrix as his wife but then he deserted. This is unchallenged statement. Hence, the statement given by Sonsai PW-2 is contrary to the statement given by Rajesh Sahu PW-1.
13. PW-3 has stated that the appellant had raped the prosecutrix in his

house but in cross-examination she has admitted that the prosecutrix did not inform her about the incident. This witness is the aunt of the prosecutrix and she was told by the prosecutrix about the incident that had taken place about 8 months prior to the date when she was questioned. She has also stated that the prosecutrix had disclosed the name of the appellant and thereafter village meeting was called.

14. Baburam PW-4 is the father of the prosecutrix who has narrated about the information given by his daughter and the meeting. He has stated that in the meeting the appellant has admitted that he had physical relation with prosecutrix and he agreed to keep her as his wife. In cross-examination, he has admitted that the prosecutrix has not made statement that the appellant had raped her.

15. After closely scrutinizing the evidence of the prosecutrix and the witnesses of the village meeting, who are otherwise relevant, the evidence of Dr. Anita Verma PW-5 needs consideration. She has stated that after examining the prosecutrix she has reported vide ExP-5 in which she has opined that the prosecutrix was habitual to sexual intercourse. She has not given any opinion regarding recent sexual intercourse with her.

16. ASI S.K Sahu PW-8 has done part of the investigation and Inspector PW-9 has done remaining part of the investigation.

17. After due consideration on all the evidence present and scrutiny of the statement of each of the witnesses who has been examined, it has appeared, that the statement of prosecutrix is full of omissions

and improvements. As regards the evidence of village Panchayat, the statement of witnesses contradict each other, hence, on this basis it cannot be held that the appellant had made any confession admitting that he had committed the offence of rape with her. Lastly for the reason that the prosecutrix did not inform about this incident to anybody until she became pregnant and when pregnancy started showing up, she was inquired about it by her aunt and even thereafter she did not approach the police but a meeting was held and when the terms of meeting were not availed by the appellant, the FIR has been lodged. The age of prosecutrix is 27 years, hence, she is competent to give consent for physical relation. Hence, under these circumstances and after due consideration, it appears that the evidence of prosecution in this case does not inspire confidence of the Court for the purpose of holding the appellant guilty for the offence which alleged to have been committed. Hence, it is a case in which the appellant could have been given benefit of doubt, therefore the findings given by the trial Court in the impugned judgment are erroneous which needs to be interfered with.

18. After over all consideration, I am of this opinion that this appeal deserves to be allowed. Accordingly, the appeal is allowed. The conviction and sentence of the appellant under Section 376 of IPC are hereby set aside. It is reported that appellant is in jail hence, he be released forthwith if not required to be detained in any other case.

Sd/-
(Rajendra Chandra Singh Samant)
 Judge

Nisha

Nisha