

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on : 03.04.2019****Judgment Delivered on : 14/05/2019****CRA No. 1223 of 2014**

- Balram @ Ballu S/o Bisalik Ram Sahu, Aged About 23 Years, R/o Village Chando, P.S. Dongargaon, Civil and Revenue District Rajnandgaon C.G., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh S/o Through The Station House Officer, P.S. Dongargaon, District Rajnandgaon C.G. , Chhattisgarh

--- Respondent

For Appellant : Shri B.P. Singh, Advocate.

For Respondent/State: Shri I. Lakra, Deputy Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Judgment

14/05/2019

1. This appeal has been preferred against judgment dated 18-11-2014 passed in Special Sessions Trial No.22/2013 by the Additional Sessions Judge (Fast Track Court) Rajnandgaon, Chhattisgarh convicting the appellant under Section 450 and 376 of the IPC and sentencing him with R.I. for 10 years and R.I. for 10 years along with fine of Rs.500/- and Rs.1000/- respectively with default stipulations and direction that both the jail sentences shall run concurrently.
2. The case of the prosecution, in brief, is this, that on 04-10-2013 at about 08:45 p.m. in the evening the appellant committed house-trespass in the house of the prosecutrix (PW-1) and then by use of physical force he committed the offence of rape with

her. When the prosecutrix raised alarm her grand-father Tularam (PW-2) came on the spot, seeing him the appellant fled from the spot. The FIR Ex.-P/1 was lodged on 05-10-2013, on the basis of which offences were registered against the appellant. On completion of investigation, charge sheet was filed before the Court below.

3. The appellant was charged under Section 450, 452, 376, and under Section 3-4 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act'), to which he denied and prayed for trial.
4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication. No witness was examined in defence.
5. On completion of the trial, the impugned judgment has been passed in which the appellant has been acquitted from the charges under Section 3-4 of POCSO Act and Section 452 of the IPC, whereas, he has been convicted and sentenced as aforementioned.
6. It is submitted by learned counsel for the appellant that the trial Court has itself given this finding that the prosecutrix was not a minor on the date of incident. Rest of the statement made by the prosecutrix (PW-1) is unreliable. It is mentioned in the FIR (Ex.-P/1) that at the time of sexual intercourse the grand-father of the prosecutrix suddenly came on the spot, it was the reason that the

appellant has been falsely implicated. Therefore, the statement of the prosecutrix (PW-1) should not have been believed by the Court below. Tularam (PW-2) has admitted in his cross-examination that the time of incident Disheshwari and Lokesh were also present in the house and he has also admitted that when he came back he saw Lokesh and the prosecutrix (PW-1) alone in the house, which indicates that he is making false statement before the Court. Similarly, there is admission in the evidence of witnesses that the prosecutrix was not alone in the house. The conduct of the prosecutrix (PW-1) itself shows that she was a consenting party and she did not raise any alarm. Doctor Ekta Denial (PW-10) has also not found any sign of resistance or struggle on the body of the prosecutrix vide report Ex.-P/10A. Therefore, the trial Court has failed to appreciate this evidence and convicted the appellant erroneously. Hence, the appellant is entitled for acquittal. Therefore, it is prayed that the appellant may be acquitted from the charges.

Reliance has been placed on the judgment delivered by Hon'ble the Supreme Court in the matter of **Krishan Kumar Malik Vs. State of Haryana**, (2011) 7 SCC 130.

Reliance has also been placed on the judgments of this High Court delivered in the matter of **Debara Vs. State of C.G.**, 2013(4) C.G.L.J. 78; **Vinod @ Pappu Vs. State of Chhattisgarh**, 2013 1 Crimes(HC) 681; **Narayan Vs. State of M.P. (Now C.G.)**, 2013(4) C.G.L.J. 330; and **Shivnarayan alias**

Shiva Gupta Vs. State of M.P. (Now C.G.), 2019(1) C.G.L.J. 316.

7. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made in this respect and submits that the prosecution has proved its case beyond reasonable doubt. The prosecutrix (PW-1) is reliable witness whose statement regarding commission of offence of rape is very clear and unrebutted in cross-examination. Similarly, evidence of Tularam (PW-2) is very clear and categorical that he has witnessed the incident of rape which has remained unrebutted in his cross-examination. Therefore, there is no any scope for interference in the impugned judgment. Hence, the appeal may be dismissed.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. The question that requires determination in this appeal is as to whether the prosecution has been able to establish guilt of accused/appellant, on the basis of evidence beyond reasonable doubt?
10. The prosecutrix (PW-1) has stated, that on 04-10-2013 at about 08:45 p.m. in the night she was studying in her room. The appellant at that time came into her house and then expressed his love for her. The appellant then by using force and by putting her under the threat forcefully had sexual intercourse with her. The appellant then fled after commission of offence. Her grand-

father and other villagers came later on to whom she narrated about the incident and thereafter the FIR (Ex.-P/1) was lodged. In cross-examination according to the admission made by her, her uncle was also in the house, but he was sleeping because he was not well. She has denied the adverse suggestions given and has expressed ignorance regarding other suggestions and she has not at all admitted regarding any love affair with the appellant. Her statement that the appellant had put her under threat is developed statement, but it does not appear that it is material contradiction or discrepancy in her statement. Some other minor discrepancy has been pointed out in her cross-examination, but that is of no consequence, otherwise her statement in her examination-in-chief that the appellant made his entry into her room and by force has committed offence of rape with her is totally un rebutted.

11. Tularam (PW-2) has stated that on the date of incident at about 08:45 p.m. when he came back to the house he saw that the appellant was having physical relation with the prosecutrix and the prosecutrix was crying, he then tried to close the door, but the appellant forced him on the ground and when this witness raised alarm the appellant fled from the spot. Then, other witnesses arrived, to whom he narrated about the incident and thereafter the prosecutrix was enquired. In cross-examination he has denied all the adverse suggestions given to him. His admission that his daughter Tisheshwari and son Lokesh were also present

in the house is not a statement to lead to any conclusion that the incident might not have happened, because according to the statement of the prosecutrix (PW-1) she was studying alone in her room. His another statement, that when he came back to his house he saw Lokesh and the prosecutrix and nobody else, raises some doubt on his statement as to statement that he saw the appellant with the prosecutrix when the act was being committed, but his statement finds support from the statement of the prosecutrix (PW-1), that she narrated to him about the incident. Therefore, it cannot be said that this admission made by him is fatal. Therefore, in the way he has supported and verified the version of the prosecutrix and his evidence is sufficient to corroborate the statement of the prosecutrix (PW-1).

12. Peelaram (PW-4) is father of the prosecutrix (PW-1). He has informed about the incident when he came back from Nagpur to his village.
13. Shantibai (PW-5) is grand-mother of the prosecutrix she has also a hearsay witness.
14. Vivek Vaishnav (PW-7) is a witness who arrived on the spot immediately after the incident and he was informed by Tularam (PW-2) and the prosecutrix (PW-1) herself about the incident and his statement has remained unrebutted in cross-examination.
15. Chruraman Nayak (PW-8) has similarly stated and he was also a witness who came immediately after the incident.
16. Doctor Ekta Danial (PW-10) had examined the prosecutrix (PW-

1) and did not find any external injury on the body of the prosecutrix (PW-1) and in her opinion vide Ex.-P/10A, the prosecutrix (PW-1) was habitual to sexual intercourse. She has not given any definite opinion regarding offence of rape.

17. Rest of the witnesses examined by the prosecution are procedural witnesses and their evidence needs no appreciation for the purpose of coming to any conclusion in this appeal.
18. After considering the evidence of all the relevant witnesses in this case, I am of this view that the prosecutrix (PW-1) has made very clear statement that the appellant had committed the offence of rape without her consent and willingness and she has not made any admission about any previous affair with the appellant. The evidence of Tularam (PW-2) is although shaky to some extent, but even then it was sufficient to corroborate the statement made by the prosecutrix (PW-1). Further, the other witnesses namely Vivek Vaishnav (PW-7) and Churaman Nayak (PW-8), who came to the house of the prosecutrix (PW-1) immediately after the incident, were given narration of the incident by the prosecutrix (PW-1) herself and Tularam (PW-2). Though they are hearsay witnesses, but, on the ground of immediate disclosure, their statement has relevance, which is a support to the statement of the prosecutrix (PW-1). Therefore, after due consideration, I do not find any error in the finding of the Court below convicting the appellant for offences in which he has been convicted.
19. Considered on the prayer made for reduction in sentence. After

considering the facts and circumstances of this case, I am of this view that sentencing with minimum imprisonment in this case, will serve the purpose of punishing the appellant in this case. Therefore, I feel inclined to allow this prayer.

20. Consequently, this appeal is allowed in part. Conviction of the appellant under Section 450 and 376 of the IPC in the impugned judgment are upheld. Jail sentences imposed upon the appellant for both the offences, i.e., R.I. for 10 years are reduced to R.I. for 7 years along with fine of Rs.1000/- for each of the offences, with direction of concurrent running of both the jail sentences. In case of non-payment of the fine amount imposed upon the appellant by this Court, the appellant shall have to undergo additional R.I. for 2 months for each default in payment of fine.

Sd/-

(Rajendra Chandra Singh Samant)
Judge