

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1722 of 2017**

Shyamnath, S/o Sadhram Kujur, aged about 48 years, R/o Village Karabel
Khalpara, Police Station Sitapur, District Surguja, Chhattisgarh

---- Appellant**versus**

State of Chhattisgarh through Station House Officer, Police Station Sitapur,
District Surguja, Chhattisgarh

--- Respondent

For Appellant	:	Shri Vivek Kumar Pandey, Advocate
For Respondent	:	Shri K.K. Dewangan, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****2.8.2019**

- The instant appeal has been preferred against the judgment dated 31.8.2017 passed by the Additional Sessions Judge (FTC), Ambikapur at Surguja in Sessions Trial No.7 of 2015, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.500/- with default stipulation
Under Section 306 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.500/- with default stipulation
	Both the sentences are directed to run concurrently

- Case of the prosecution, in brief, is that on the fateful day, the prosecutrix (deceased) was aged about 36 years. On 3.11.2014 at about 4:00 am, the prosecutrix went towards the field to attend the call of nature. Allegedly, the Appellant came there and committed forcible sexual intercourse with her. Immediately thereafter, at about 7:50 am, the prosecutrix lodged First Information Report

(Ex.P15). Thereafter, she returned her house and poured kerosene on her and set her on fire. Her dying declarations (Ex.P3 and P4) were recorded. During the course of her treatment, she died on 3.11.2014 itself. During investigation, on being submitted by her prior to her death, her underwear was seized vide Ex.P8. Prior to her death, she was medically examined by Dr. Mrs. Rachna Arther (PW19). Her report is Ex.P31. Vaginal slides of the prosecutrix were prepared. Post mortem examination on the dead body of the prosecutrix was conducted by Dr. Sanjay Singh (PW7). Post mortem report is Ex.P11. Underwear of the Appellant was also seized. The seized underwears of the prosecutrix and the Appellant and the vaginal slides of the prosecutrix were sent to the Forensic Science Laboratory for chemical examination. As per FSL Report (Ex.P32), human spermatozoa was found on the underwears of the Appellant and the prosecutrix (marked as A and C) as also on the vaginal slide of the prosecutrix (marked as B). Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 376 and 306 of the Indian Penal Code. Charges were framed against him under Sections 376 and 306 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 20 witnesses. In his examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt. No witness has been examined in his defence.
4. After trial, the Trial Court convicted and sentenced the Appellant as

mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submits that without there being any evidence on record, the Trial Court has wrongly convicted the Appellant only on the basis of statement of alleged eyewitness Ilishia (PW3) and the FSL Report (Ex.P32). He further submits that during her cross-examination, Ilishia (PW3) has categorically admitted the fact that the prosecutrix had told her in the hospital that the person who committed rape with her was father of a girl Saraswati and the house of his in-laws was situated in Village Vasen. He further submits that there is no evidence on record to establish that the in-laws of the Appellant were residing in Village Vasen or name of the daughter of the Appellant was Saraswati. He further submits that since both the prosecutrix and the Appellant were married persons, if any human spermatozoa was found on their underwears, it does not mean that the Appellant committed rape with the prosecutrix.
6. Learned Counsel appearing for the State supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Since the prosecutrix died after lodging of the FIR (Ex.P15), the case of the prosecution is based only upon the FIR (Ex.P15), dying declarations (Ex.P3 and P4) of the deceased prosecutrix and the FSL Report (Ex.P32).

9. In the FIR (Ex.P15) and the dying declarations (Ex.P3 and P4), it was disclosed by the deceased prosecutrix that some unknown person committed rape with her and that rapist was father of a girl Saraswati and house of his in-laws was situated in Village Vasen.
10. Ilishia (PW3) was a resident of Village Karabel where the deceased prosecutrix was residing. Nitesh Bada (PW4) is son of the deceased prosecutrix. Nistol Bada (PW12), Julius Bada (PW13) and Alexander Bada (PW14) were also residents of Village Karabel. None of these witnesses has stated that the Appellant was having a daughter, namely, Saraswati and house of his in-laws was situated in Village Vasen.
11. The prosecution has not examined any other witness nor has produced any document to establish that the Appellant is the person whose daughter's name was Saraswati and house of his in-laws was situated in Village Vasen. Thus, from the evidence on record, it is not established that the Appellant had a daughter, namely, Saraswati and house of his in-laws was situated in Village Vasen. Therefore, as disclosed and alleged by the deceased prosecutrix in her FIR (Ex.P15) and dying declarations (Ex.P3 and P4) that the Appellant was the person who committed rape with her is not established.
12. The Trial Court has also relied upon the FSL Report (Ex.P32). According to Ex.P32, human spermatozoa was found on the underwears of the Appellant and the prosecutrix as also on the vaginal slide of the prosecutrix. Since both the Appellant and the deceased prosecutrix were married persons, if any human spermatozoa was found on their underwears and the vaginal slide

of the prosecutrix, it is natural. Therefore, the conviction cannot be sustained only on this ground. I find that the finding of conviction arrived at by the Trial Court is not in accordance with the evidence available on record.

13. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him. It is reported that he is in jail. He be set at liberty forthwith.
14. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge