

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.395 of 2002

Judgment Reserved on : 20.11.2019

Judgment Delivered on : 10.2.2020

Mohd. Jameel, son of Abdul Mazid, aged about 22 years, resident of Ayodhyapuri, Darri, District Korba, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Darri, District Korba, Chhattisgarh

--- Respondent

For Appellant : Ms. Ranjana Jaiswal and Shri Gurudev I.
Sharan, Advocates
For Respondent : Shri Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 27.3.2002 passed by the Additional Sessions Judge, Korba in Sessions Trial No.160 of 2000, whereby the present 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

2. Prosecution case, in brief, is that on 29.1.2000 at about 12:55 p.m., the prosecutrix (PW1), who was aged about 14 years, lodged First Information Report (Ex.P3) in Police Station Darri stating that at about 10:00 a.m., when she had taken her goats for grazing, at that time, the Appellant caught her and with an intention to outrage

her modesty tried to open the lace of her underwear. At that time itself, her father Firoz Kumar (Firatram) (PW4) reached there. On this, the Appellant ran away from there. On the basis of the said report, offence under Section 354 of the Indian Penal Code was registered by Police Station Darri. Thereafter, on 16.2.2000, when an application for grant of bail was moved by the present Appellant as well as by acquitted accused persons Mohd. Latif and Mukhtyar Ahmed, a written objection was filed by father of the prosecutrix through a Counsel. In the written objection, it was stated that on the date of incident, virtually the Appellant as well as the other acquitted accused persons, total 3 persons, had committed sexual intercourse with the prosecutrix and when the report of rape was made, the police registered the report of offence only under Section 354 of the Indian Penal Code. The Chief Judicial Magistrate forwarded the said written objection to the concerned police station for further investigation. Thereafter, on 17.2.2000, statements of the prosecutrix as well as her father Firoz Kumar were recorded under Section 164 of the Code of Criminal Procedure by the Magistrate on 17.2.2000 itself. The prosecutrix was medically examined by Dr. Beena Agrawal (PW2). It was found by the doctor that there was no visible injury present over the body of the prosecutrix. Hymen of the prosecutrix was old ruptured at 2-3 places. 2 fingers entered in her vagina with some pain. It was opined by the doctor that sexual intercourse was done with the prosecutrix, but no definite opinion could be given regarding recent sexual intercourse. Report of the doctor is Ex.P4. Statements of the prosecutrix and other witnesses under Section 161 of the Code of Criminal Procedure were also recorded. On completion of the investigation, a charge-sheet was filed against the present

Appellant as well as Mohd. Latif and Mukhtyar Ahmed. A charge under Section 376 of the Indian Penal Code was framed against the Appellant and against the other accused persons charge under Section 376 read with Section 34 of the Indian Penal Code was framed.

3. In support of its case, the prosecution examined as many as 10 witnesses. In examination under Section 313 of the Code of Criminal Procedure, all the accused persons denied the guilt and pleaded innocence. In defence, the Appellant and the other accused persons examined 2 witnesses, namely, Revenue Inspector Rajeshwar Singh (DW1) and Dhananjay (DW2). Before the Trial Court, it was the defence of the Appellant and the other accused persons that the prosecutrix and her mother were of loose character and her mother also used to falsely implicate persons. It was their further defence that on the date of incident, a quarrel had taken place between Firoz Kumar (Firatram) (PW4), father of the prosecutrix and the Appellant and the other accused persons and thereafter, the report was lodged exaggerating the issue to falsely implicate the Appellant and the other accused persons.
4. On completion of the trial, the Trial Court acquitted Mohd. Latif and Mukhtyar Ahmed of the charge framed under Section 376/34 of the Indian Penal Code, but convicted the Appellant under Section 376 of the Indian Penal Code and sentenced him as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that without there being clinching evidence on record against the Appellant, he has wrongly been convicted by the Trial Court. The

Trial Court ignored the fact that from the material it is well established that between the father of the prosecutrix and the Appellant and other co-accused persons, a quarrel had taken place in which a *marpeet* was committed with father of the prosecutrix and due to that the Appellant and other co-accused persons have been falsely implicated. It was further submitted by the Learned Counsel that initially the FIR was registered making only allegation of offence under Section 354 of the Indian Penal Code. Thereafter, on the date of filing of the charge-sheet, an objection was raised by father of the prosecutrix through his Counsel which was an after-thought and on that basis offence under Section 376 of the Indian Penal Code was registered. If the incident had been of a rape with the prosecutrix, her father would already have raised his objection at the time of registration of the offence under section 354 of the Indian Penal Code and if the offence under Section 376 of the Indian Penal Code was not registered at the initial stage itself, why her father remained silent for about 17-18 days and raised his objection after the period of 17 days. Father of the prosecutrix, in his Court statement, has admitted the fact that he raised his objection on getting a notice from police. If he had received the notice from police, he would have already raised his objection. But, he did not do so. It was further submitted that there are material contradictions and omissions in the statements of the prosecutrix as well as her father. The statements of both the witnesses are not reliable. From the statement of the doctor also, it is established that she has not been able to give any definite opinion regarding recent sexual intercourse with the prosecutrix. Though according to the doctor, hymen of the prosecutrix was old ruptured, she has not stated the

duration of rupturing of the hymen. Thus, on the date of incident, any sexual intercourse was done with the prosecutrix is not established beyond reasonable doubt.

6. Learned Counsel appearing for the State supported 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. In her Court statement, the prosecutrix (PW1) has deposed that on the date of incident, she had gone for grazing her goats. At that time, the Appellant took her few goats along with his goats. Searching her goats, she reached near the drainage and started to bring back her goats who were mixed with the goats of the Appellant. At that time, the Appellant tore her clothes and committed forcible sexual intercourse with her. It has been further deposed by this witness that at that time her father reached there. The Appellant had mounted over her. Her father lifted him up and committed *marpeet* with the Appellant. Acquitted accused persons Latif and Mukhtyar were standing nearby. All the three accused persons started committing *marpeet* with her father. Thereafter, her father took her back to home. Thereafter, her father went to Police Station Darri for lodging a report, but report was not registered there. Thereafter, on the date when bail of the Appellant was to take place, they went to the Court and raised their objection. On this, again her statement was recorded by the police. During cross-examination, this witness has admitted that on 29th day, she had gone to the police station along with her father and mother and she had also lodged a report in the police station

and put her signature. In paragraph 13, she has further admitted that the objection which was raised before the Court was got typed through their Counsel and she had put her signature on the objection after reading the same. But, from perusal of the objection letter (Ex.P8), it reveals that it does not contain either signature of the prosecutrix or of her father. It contains signature of the Counsel only. This witness has further deposed that her statement (Ex.P2) under Section 164 of the Code of Criminal Procedure was recorded in the Court. This witness has further admitted that she had not told names of any of the two acquitted accused persons nor does she know their names or she has any acquaintance with them. But, in her statement recorded under Section 164 of the Code of Criminal Procedure, she has named the two acquitted accused persons also. This witness has also stated that since her father had witnessed the incident, she did not tell about the incident to her mother. In paragraph 26 of her statement, this witness has stated that her bangles had broken and broken pieces of the bangles had pierced and she had suffered injuries and she had shown the said injuries to the doctor.

9. Firatram (Firoz Kumar) (PW4) is father of the prosecutrix. He has deposed that at the time when he reached at the spot, the Appellant had mounted over the body of the prosecutrix. He abused the Appellant. Then the Appellant and other acquitted accused persons committed *marpeet* with him. Then he took the prosecutrix and ran away from there. Thereafter, at about 12:30 p.m., he made a report at the police station. This witness has further deposed that no medical examination of the prosecutrix was done. The accused persons were not arrested. Then he went to

the Superintendent of Police on 5.2.2000 and told him also about the whole incident and thereafter in the Court when hearing of the bail application was to be done, he raised his objection. In paragraph 13 of the his cross-examination, this witness has admitted that he, his wife and the prosecutrix had received a notice from the Court, therefore, he had gone to the Court to raise his objection. In paragraph 20, this witness has further stated that the prosecutrix had suffered injuries on various parts of her body and she had also suffered injury from her broken bangles.

- 10.** Vimal Kumar Sahu (PW7) is an Advocate. He prepared the objection letter (Ex.P8) which was submitted before the Court of Chief Judicial Magistrate at the time of submission of the charge-sheet. He has deposed that the prosecutrix and her father and mother had come to him and as was told by them he had prepared and submitted the objection letter (Ex.P8) before the Court.
- 11.** Dr. Beena Agrawal (PW2) examined the prosecutrix on 17.2.2000. According to her, there was no injury present over outer parts of the body of the prosecutrix. Hymen of the prosecutrix was old ruptured at 2-3 places. 2 fingers entered in her vagina with some pain. This witness has opined that earlier sexual intercourse was done with the prosecutrix, but she was not able to give any definite opinion regarding any recent sexual intercourse with her. During cross-examination, she has admitted that she had not told about duration of rupturing of hymen of the prosecutrix. Her report is Ex.P4.
- 12.** Sub-Inspector Dikeshwar Diwan (PW9) is the witness who investigated into the offence in question. He has admitted the fact

that at the time of recording FIR (Ex.P3), parents of the prosecutrix had come along with her and he had recorded the contents in the FIR as was told by the prosecutrix in presence of her parents. In paragraph 28, this witness has deposed that he had not seen any injury either on the hands of the prosecutrix or on any other part of her body nor did he find any broken pieces of bangles at the spot.

- 13.** Revenue Inspector Rajeshwar Singh (DW1) has deposed that mother of the prosecutrix Shobhabai (PW3) was getting a house constructed over an encroached land of the government. He had prevented her on the spot. On this, she had abused him and on the next day after tearing her saree she had made a false complaint before the Additional Collector, Korba in which a departmental inquiry was conducted against him, but he was acquitted of the charges. The above statement of this witness has not been duly rebutted during his cross-examination.
- 14.** Dhananjay (DW2) has also deposed that a dispute had taken place between him and mother of the prosecutrix and thereafter mother of the prosecutrix had lodged a false report against him.
- 15.** Shobhabai (PW3) and Firatram (Firoz Kumar) (PW4), both mother and father of the prosecutrix, respectively have admitted that a complaint was made by Shobhabai (PW3) against Rajeshwar, but, according to them, that Rajeshwar was not a Revenue Inspector. He was a different person.
- 16.** On a minute examination of the evidence available on record, it is clear that initially on 29.1.2000, FIR (Ex.P3) was lodged by the prosecutrix in which offence under Section 354 of the Indian Penal Code was registered. Though the prosecutrix as well as her father

have stated that the Appellant had committed rape with the prosecutrix on the relevant date and according to them their report was not properly written in the police station, the prosecutrix has categorically admitted that she herself had put her signature on the FIR (Ex.P3). From the admission made by the prosecutrix, it is also clear that the objection letter (Ex.P8), which was got drafted through their Counsel was also read by her. It means she is a literate girl. Therefore, if the FIR (Ex.P3) was not registered according to her then why did she not raise any objection at that time itself or immediately thereafter. From the statements of the prosecutrix as well as her father, it is also established that they had received a notice regarding submission of a charge-sheet and thereafter on the date of filing of the charge-sheet, they visited the Court and raised an objection (Ex.P8) through their Counsel. From the above also, it is established that before filing of the charge-sheet itself, through the notice, they were aware that the charge-sheet was being filed for the offence punishable under Section 354 of the Indian Penal Code only. If they wanted to raise an objection, they could have approached the Court or to higher officers of the police station immediately after receiving the notice, but they did not do so and reached the Court only on the date of hearing of the bail application of the Appellant. From the statement of Dr. Beena Agrawal (PW2), it is also established that at the time of examination of the prosecutrix, no injury was found over any part of the body of the prosecutrix. But, according to the prosecutrix herself and her father, she had suffered injuries on her back and hands and at the time of her medical examination, the prosecutrix had shown those injuries to the doctor. Though hymen of the prosecutrix was found old ruptured, what was period of rupturing of

the hymen has not been reported by the examining doctor. From the evidence adduced by the prosecution, it is also clear that at the time of incident, a quarrel had taken place between the Appellant and father of the prosecutrix in which the Appellant and other co-accused persons (acquitted) had committed *marpeet* with the father of the prosecutrix. From the statements of Rajeshwar Singh (DW1) and Dhananjay (DW2), it also seems that mother of the prosecutrix was in the habit of making reports. Therefore, a possibility cannot be ruled out that an exaggerative and false report would have been lodged by the father of the prosecutrix as a counter to the *marpeet* taken place with him in the quarrel done by the Appellant and other acquitted co-accused persons. From the statements of the prosecutrix and her father, it is also established that they have developed their statements on material points and there are material contradictions and omissions also in their statements. From the entire material available, in my considered opinion, the alleged offence is not proved beyond reasonable doubt. The Appellant is, therefore, entitled to get benefit of doubt.

17. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
18. 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