

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 874 of 2010

Rajkumar S/o. Rameshwar, Aged 21 years, Occupation- SECL employee, R/o. Village Narkalo, P.S. Bhatgaon, District Surguja (CG)

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Bhatgaon, District Surguja (C.G.)

---- Respondent

For Appellant : Mr. Bhupendra Singh, Advocate.
For Respondent : Mr. Sameer Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

13.08.2020

Facts of the case in brief are that FIR (Ex.P-8) was lodged by the prosecutrix (PW-3) on 10.03.2009 alleging that at about 9.10 AM when she was all alone in her house, accused/appellant along with co-accused namely Lalsai, Bajrang and other two made an entry therein, the appellant caught hold of the prosecutrix and closed the door from inside, threw her on the ground, undressed her and thereafter the appellant and co-accused started taking photographs of her on their mobiles. It is alleged that the appellant committed sexual intercourse without her consent thereafter he tied the hands and legs of the

prosecutrix with rope and ran away from there. It is stated that when her parents returned to home after work she narrated the entire incident to them. After completion of investigation, charge sheet was filed against the appellant and co-accused under Sections 342 and 376/34 IPC followed by framing of charge accordingly.

- 2.** Learned Court below vide judgment impugned dated 21.10.2010 passed in Sessions Trial No. 386/2007 has acquitted Lalsai, Bajrang and other two co-accused under all the sections but has held guilty the present appellant under Section 376 IPC with imposition of sentence of seven years RI with fine of Rs. 100/-, plus default stipulations. Hence, this appeal.
- 3.** Learned counsel appearing for the appellant submits that the judgment impugned convicting the accused/appellant under Sections 376 IPC is not based on proper appreciation of the evidence of the witnesses and therefore, liable to be set aside. He further submits that when the other accused persons have been acquitted by the Court below on the same set of evidence, the present appellant is also entitled for the same benefit. He submits that if overall conduct of the prosecutrix is seen, right from the beginning she appears to be consenting party to the act of the accused/appellant.
- 4.** On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. Heard counsel for the parties and perused the material available on record including the judgment impugned.
6. After hearing the pathetic tale of the prosecutrix (PW-3) who at the relevant time was all alone in house put in her deposition that on the fateful day when her parents had gone to their work place, the accused/appellant along with others gained an entry therein, accused/appellant asked her as to where her parents were, and on coming to know that they were outside, he dragged her to the kitchen, stripped her naked and committed forcible sexual intercourse with her even after the same being resisted by her. She has further stated while describing her woes that after sexually exploiting her the accused/appellant tied her limbs with a rope and left the spot. The deposition of the prosecutrix further reveals that while the accused/appellant was having sex with her, the persons accompanying him were busy in taking her photographs. In cross-examination also she has stated the same thing like in the examination-in-chief. Dileshwari (PW-2) - the friend of the prosecutrix has also supported the case of the prosecution stating that on the fateful day when she had gone to the house of the prosecutrix, she saw her limbs tied with rope. PW-4 - the mother of the prosecutrix who at the relevant time had been out of her house has stated that after she got back home the prosecutrix made a disclosure of physical and mental agony by way of her sexual exploitation at the hands of the accused/appellant. She also informed her mother as to the manner in which the accused/appellant subjected her to this shameful

act. Dr. Shashi Tirki (PW-5) is the doctor who medically examined the prosecutrix and gave her report (Ex.P-5) stating therein that there was an abrasion on her elbow and that sexual intercourse had taken place with her. Her report also shows that one finger entered the vagina of the prosecutrix with difficulty. Maheshwar Singh (PW-1) – the doctor who examined the accused and gave his report Ex.P-1 has also stated that the accused/appellant was fully capable of having sex. Investigating Officer (PW-6) has also supported the case of the prosecution to the fullest.

7. The evidence discussed here-in-above conclusively goes to show that on the date of incident taking advantage of the loneliness of the prosecutrix in her house the accused/appellant made an entry therein and made her a victim of his lust by way of sexual exploitation instead of resistance made by her. Not only this, the evidence shows that victim was also subjected to live photography of the incident by accomplices accompanying him and after ravishing her, he left the spot by tying her with a rope. This speaks volumes of the unbecoming and outrageous act of the accused/appellant and being so the Court below has not committed any illegality or irregularity in holding the accused/appellant guilty for the offences under Section 376 IPC. This Court is not inclined to make any interference with the same.
8. As regards sentence, the report received from the Superintendent, Central Jail, Ambikapur, Sarguja, dated 09.03.2020 shows that after getting the benefit of remission, the accused/appellant has already

been released from the jail on 18.10.2014, therefore, no observation regarding the sentence part is required to be made by this Court.

9. In view of what has been discussed as above, the appeal being without any substance is liable to be dismissed and is hereby dismissed as such.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Santosh