

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1250 of 2000

Judgment reserved on 16.01.2020

Judgment delivered on 23 .01.2020

Justi @ Yudhisthir, son of Sirkerbhoie, aged about 27 years,
resident of village Saraipasars, Tehsil Bsna, District
Mahasamund, MP (Now CG) **---- Appellant**

Versus

State of Madhya Pradesh through PSH Officer, PSH Bsna,
District Mahasamund, MP (Now CG) **---- Respondent**

For Appellant	-	Mr. J.K. Shashtri, Advocate.
For Respondent	-	Ms. Shriya Mishra, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

The facts of the case in brief are that on 23.07.1993 in the evening when prosecutrix (PW-1) was alone in her house, the accused/appellant came there, started pressing her breasts and when she asked him as to what he was doing, he told her to keep quiet and saying so made her lie on the cot, removed her clothes and that of his own and committed forcible sexual intercourse with her. It is alleged that on hearing her cries, Janaklal (PW-4) and one Sanjay reached there and on seeing them the accused/appellant ran away and hid himself in his house. After arrival of her parents from their work place, she narrated the entire incident to them and thereafter a Panchayat meeting was called on that day and also on the next day where the accused/appellant confessed his guilt. Thereafter, on 25.07.1993 FIR (Ex.P-1) came to be registered at her

instance on the basis of which offences under Sections 450 and 376 (1) IPC were registered against the accused/appellant. After effecting seizure of the underwear and skirt of the prosecutrix, getting her medically examined and sending the seized articles for chemical examination, the charge-sheet was filed against them under the same sections followed by framing of charge accordingly.

2. Learned Court below by judgment impugned dated 03.04.2004 passed in ST No.146/1995 held the accused/appellant guilty under Section 376 (1) and 450 IPC with imposition of sentence of 8 years RI with fine of Rs.3000 under Section 376 (1) and 3 years RI with fine of Rs.1000 under Section 450 IPC, plus default stipulations.

3. Counsel for the accused/appellant submits that the judgment impugned being contrary to the evidence of the witnesses including the prosecutrix is liable to be set aside entailing acquittal of the accused/appellant. He submits that even the evidence of the prosecutrix is full of contradictions and omissions on material particular but this fact has been ignored by the Court below. According to the counsel for the appellant medical evidence also does not support the case of the prosecution. It is further argued that the incident occurred on 23.07.1993 but the report was lodged on 25.07.1993 and there is no explanation by the prosecution as to why such delay took place in doing so when the prosecutrix herself has stated that the Police Station was about one kilometer away from her house.

4. State counsel on the other hand supports the judgment impugned and submits that the findings recorded by the Court

below being strictly based on the evidence on record do not require any interference by this Court.

5. Heard counsel for the parties and perused the material on record.

6. If the evidence of the prosecutrix is seen, she has stated that on the date of incident when her parents were not at home, the accused/appellant came there and after undressing her committed forcible sexual intercourse with her and that when Janaklal (PW-4) and one Sanjay came there, the accused/appellant ran away. She has further stated that after arrival of her parents, she disclosed to them the act of the accused/appellant. This version of the prosecutrix gets belied from the evidence of Janaklal (PW-4) and her father Prem Singh (PW-2) because according to PW-4 he did not go to her house after hearing her cries and likewise her father PW-2 has stated that as on the date of incident the prosecutrix had suffered a dog bite injury and was taken for treatment at 12 noon and returned home at 3 PM and thereafter he did not go to his work place. The evidence of the prosecutrix (PW-1) further reveals that though the accused/appellant did not hold her hands while indulging in commission of sexual intercourse yet she neither nail scratched nor tooth bit the accused/appellant to get rid of him. In other words, she did not offer any resistance to the act of the accused/appellant. She has further stated that when Janaklal (PW-4) came to her house the accused/appellant was mounting on her and got up and ran away only after seeing him. This version of the prosecutrix also gets fortified from the medical evidence where Dr. (Smt.) Sashi Kawde (PW-10) who medically examined her and gave

her report Ex.P-13 did not notice any external or internal injury on her person and that she has also opined her to be habitual to sex. Another discrepancy in the statement of the prosecutrix is that she has stated that as a result of sexual intercourse by the accused/appellant her private part started bleeding, but the doctor (PW-10) has negated the same, rather making a specific statement that she was having sex for months and years. The doctor (PW-10) did not notice any recent injury on the private part of the prosecutrix. Another person namely Sanjay named by the prosecutrix to have come to her house along with PW-4 could be of some importance but he has been given up by the prosecution for the reasons best known to it. Furthermore, while being confronted with the seizure memo (Ex.P-2) the prosecutrix has denied her signature thereon. Even the delay in lodgment of the report has not been satisfactorily explained by the prosecution. Since the issue of prosecutrix being minor has already been answered in negative by learned Court below it is no more required to be debated upon. Other witnesses examined by the prosecution namely Nekram (PW-5) and Purander (PW-3) have also not supported the case of the prosecution and have been declared hostile.

7. Thus the aforesaid factual analysis made in the light of evidence of the witnesses does not establish the complicity of the accused in the crime in question and it appears that as PW-4 had reached the house of the prosecutrix and seen her in compromising position with the appellant as is clear from her own testimony, the report came to be lodged against him, otherwise her act seems to be a consensual one. Even otherwise, there are

innumerable contradictions in the evidence of prosecutrix (PW-1) and her father (PW-2) who have stated one thing at one place and subsequently resiled from the same and resorted to almost a new story, which creates doubt in the case of the prosecution. Accordingly, it is held that the prosecution has not been able to prove its case beyond reasonable doubt and so also the Court below fell in error in appreciating the evidence of the witnesses. Judgment impugned is therefore, set aside by allowing this appeal entailing acquittal of the accused/appellant of all the charges levelled against him. Since he is already on bail, there is no need of ordering as to his release etc.

8. Appeal allowed.

Sd/-

(Vimla Singh Kapoor)

Judge