

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1170 of 2002

Judgment Reserved on : 10.12.2019

Judgment Delivered on : 9.3.2020

- 1. Mahipal Singh, son of Govind Singh, Caste Gond, age 20 years, occupation agriculture
 - 2. Bhanwar Singh, son of Sundar Sai, age 20 years, Caste Gond, occupation agriculture,
- Both residents of Village Dawna, P.S. Ramanujnagar, District Surguja, Chhattisgarh

---- Appellants

versus

The State of Chhattisgarh through P.S. Ramanujnagar, District Surguja, Chhattisgarh

--- Respondent

For Appellants : Shri A.K. Prasad, Advocate
For Respondent : Smt. Seema Dixit, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 30.8.2002 passed by 5th Additional Sessions Judge (FTC), Surajpur, Surguja in Sessions Trial No.100 of 1999, whereby the Appellants have been convicted and sentenced as under:

<u>Appellant</u>	<u>Conviction</u>	<u>Sentence</u>
Appellant No.1, Mahipal Singh	Under Section 342 of the Indian Penal Code	Fine of Rs.500/-, in default, 3 months' simple imprisonment
	Under Section 354 of the Indian Penal Code	Fine of Rs.500/-, in default, 3 months' simple imprisonment

Appellant No.2, Bhanwar Singh	Under Section 342 of the Indian Penal Code	Fine of Rs.500/-, in default, 3 months' simple imprisonment
	Under Section 354/34 of the Indian Penal Code	Fine of Rs.500/-, in default, 3 months' simple imprisonment

2. Prosecution case, in brief, is that at the relevant time, the prosecutrix (PW4) was aged about 14 years. Date of incident is 20.9.1998. First Information Report (Ex.P4) was lodged by the prosecutrix on 22.9.1998. According to the FIR (Ex.P4), Appellant No.2 is the uncle of the prosecutrix and Appellant No.1 is cousin brother (maternal) of the prosecutrix. On 20.9.1998, the prosecutrix went to the house of Appellant No.2 along with her friends Mantoriya and Fulmati. There, all these girls drunk kosna (a toxic substance). Thereafter, Mantoriya and Fulmati returned from there. Thereafter, on being asked by her aunt, the prosecutrix again consumed 2 glasses of kosna. As a result of which, she got intoxicated and, therefore, Appellant No.2 made her sleep on a cot in a room of his house. Allegedly, thereafter, Appellant No.2 sent Appellant No.1 inside that room and closed the door of that room from outside. According to the FIR, thereafter, Appellant No.1 saying that he will outrage her modesty, pressed her breasts. On being shouted by her, her brother Raghuvar (PW2) reached there and shouting, he got the door of the room opened and took out the prosecutrix. She returned home and told about the incident to her sister-in-law (*Bhabhi*) Chandramati (PW6). Since her father was not present at home, she did not go to police station to lodge a report on that date. When her father returned home, then she went to the police station along with her father and brother and lodged

the FIR (Ex.P4) on 22.9.1998. Police registered the offences punishable under Sections 342, 354, 34 of the Indian Penal Code. During the course of investigation, on 23.9.1998, statement of the prosecutrix was recorded under Section 161 of the Code of Criminal Procedure. Thereafter, on 17.11.1998, supplementary statement of the prosecutrix was also recorded under Section 161 of the Code of Criminal Procedure. At that time, she disclosed the fact that on the date of incident, Appellant No.1 had committed forcible sexual intercourse with her. She was medically examined by Dr. Shashi Prabha Jaiswal (PW9). Her report is Ex.P7 in which she did not find any injury over private part or over any other part of the body of the prosecutrix. Hymen was found intact. No pain was complained. According to the opinion of the doctor, no sexual intercourse was done with the prosecutrix. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellants. Charges were framed against Appellant No.1 under Sections 342, 376(1) of the Indian Penal Code and against Appellant No.2 under Sections 342, 376(1)/34 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 12 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt and pleaded innocence. No witness has been examined in defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court acquitted the Appellants of the respective charges under Sections 376(1) and 376(1)/34 of the Indian Penal Code, but,

convicted and sentenced them as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellants submitted that without there being sufficient evidence against the Appellants on record, the Trial Court has wrongly convicted them. All the witnesses are close relatives of the prosecutrix. Therefore, their statements cannot be believed. From the evidence on record, it is also established that there was a previous enmity between the families of the prosecutrix and the Appellants. Therefore, it cannot be ruled out that there is a possibility of false implication of the Appellants. The incident took place on 20.9.1998, but the FIR (Ex.P4) was lodged on 22.9.1998. Despite delay of 2 days in lodging the FIR, no allegation of rape was made. 2 months thereafter, just to falsely implicate the Appellants, the allegation of rape has been levelled. From the medical examination report (Ex.P7) also, it is established that no rape was committed with the prosecutrix and on this ground itself, the Trial Court has acquitted the Appellants of the respective charges under Sections 376(1) and 376(1)/34 of the Indian Penal Code. Thus, it is clear that the entire prosecution story has been exaggerated and developed just to falsely implicate the Appellants. In these circumstances, the entire prosecution case is suspicious. There are material contradictions and omissions also in the statements of the witnesses. In her cross-examination, in paragraph 4, the prosecutrix has categorically admitted that due to consumption of kosna, she had got highly intoxicated and had vomited and due to her drunken condition, on being asked by her uncle/Appellant No.2, she had slept and continued to sleep till 8 p.m. When her

brother Raghuvar (PW2) came, at that time also, she was sleeping. Thus, from the above also, it is established that the alleged incident had not taken place with the prosecutrix.

6. Learned Counsel appearing for the State/Respondent 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 (PW4) has deposed that on the date of incident, she along with her friends Mantoriya and Fulmati had gone to the house of her uncle/Appellant No.2. There, she and her both friends consumed 2-2 glasses of kosna and thereafter her friends returned from there. She again consumed 2 glasses of kosna. As a result of which, she got intoxicated and started vomiting and due to which Appellant No.2 asking her not to go back to her house because she was in drunken condition made her sleep on a cot in a room of his house. Thereafter, Appellant No.2 sent Appellant No.1 inside the said room and closed the door of the room from outside. Thereafter, Appellant No.1 committed forcible sexual intercourse with her. Thereafter, her brother Raghuvar (PW2) came to the house of Appellant No.2 and opened the door of that room. On this, Appellant No.1 ran out of the room. According to the prosecutrix, since her parents were not present at home, she lodged the FIR (Ex.P4) after their return. In paragraph 4 of her cross-examination, she has admitted that due to drinking kosna, she had got intoxicated and she had also suffered vomiting. Due to getting highly intoxicated, Appellant No.2 asked her not to return home and made her sleep on a cot in a room of his house.

She continued to sleep there till 8 p.m. At the time when her brother came there, she was sleeping. Then her brother took her to home.

9. Raghuvar (PW2), brother of the prosecutrix has deposed that on the date of incident, Mantoriya told him that the prosecutrix was present at the house of Appellant No.2. He visited there along with Babulal (PW8). Raghuvar (PW2) has further deposed that he knocked the door of the house. Nobody opened the door. Then he went to the back side wall of the house. At that time, he heard voice of the prosecutrix "leave leave" and he also heard voice of Appellant No.1 "he will not leave her". Thereafter, this witness got the door opened and entered the room along with Babulal (PW8). At that time, Appellant No.1 was committing rape with the prosecutrix and having seen them he ran out of the room. According to this witness, next day, the prosecutrix told him that the Appellants had deliberately made her consume liquor and Appellant No.2 had hidden Appellant No.1 in a room of his house from before and he sent her inside that room and closed the door of that room from outside. Thereafter, Appellant No.1 committed rape with her. All these facts are not mentioned in the case diary statement of this witness. During cross-examination, both the prosecutrix (PW4) as well as Raghuvar (PW2) have admitted that on the date of incident, wife of Appellant No.2 and his other family members were also present at the house. Raghuvar (PW2) has further admitted that he and Appellant No.2 were at inimical terms. According to Raghuvar (PW2), Babulal (PW8) had also come along with him and witnessed the incident, but Babulal (PW8) has not supported the case of the prosecution and turned hostile.

10. Ramdas (PW1), father of the prosecutrix has deposed that on getting information of the incident, he returned home, but till that time, the FIR had been lodged. But, from the contents of the FIR (Ex.P4) and the statement of the prosecutrix (PW4), it is clear that the FIR (Ex.P4) was lodged on 22.9.1998 and at the time of lodging of the FIR, Ramdas (PW1) was also present in the police station.
11. Smt. Jagdish Kunwar (PW5), mother of the prosecutrix and Chandramati (PW6), sister-in-law of the prosecutrix are hearsay witnesses. Babulal (PW8) has not supported the case of the prosecution and turned hostile. Dr. Shashi Prabha Jaiswal (PW9) examined the prosecutrix. Her report is Ex.P7 in which she did not find any injury over private part or over any other part of the body of the prosecutrix. Hymen was found intact. No pain was complained. According to the opinion of the doctor, no sexual intercourse was done with the prosecutrix. Sub-Inspector P. Tete (PW12) investigated the entire offence in question.
12. On a minute examination of the evidence available on record, it is clear that initially, at the time of recording of the FIR (Ex.P4), no allegation of rape was made against the Appellants. In her first statement recorded under Section 161 of the Code of Criminal Procedure also, the prosecutrix did not state anything about commission of rape with her. Subsequently, when, her statement was again recorded under Section 161 of the Code of Criminal Procedure on 17.11.1998, she, for the first time, disclosed on that date that she was raped by Appellant No.1. But, from the statement of Dr. Shashi Prabha Jaiswal (PW9) and her report

(Ex.P7), it is established that no sexual intercourse or rape was committed with the prosecutrix. Raghuvar (PW2) has also, in his Court statement, has deposed that when he reached at the spot, at that time, he heard voice of the prosecutrix "leave leave" and he also heard voice of Appellant No.1 "he will not leave her". But, this fact is not mentioned in his case diary statement nor has the prosecutrix also stated anything in this regard in her Court statement. According to the statement of Raghuvar (PW2), when the door of the room in question was opened, at that time, this witness saw that rape was being committed by Appellant No.1 with the prosecutrix and this incident was also witnessed by Babulal (PW8). But, Babulal (PW8) has not supported the above story of the prosecution. The prosecutrix (PW4) too, in her cross-examination, has categorically stated that she was in drunken condition and was sleeping. She continued to sleep till 8 p.m. and when her brother Raghuvar (PW2) came there, at that time also, she was sleeping. Thus, the entire statement of Raghuvar (PW2) seems to be suspicious. From the above admissions made by the prosecutrix also, the entire prosecution case seems to be suspicious. From the evidence on record, it is also clear that the prosecutrix (PW4) as well as her brother Raghuvar (PW2) have developed their statements. There are material contradictions and omissions in their statements. For the reasons aforesaid, I find that their statements are not reliable. From the evidence adduced by the prosecution, no offence is proved against any of the Appellants beyond reasonable doubt. The Trial Court has wrongly convicted the Appellants.

13. Consequently, the appeal is allowed. The impugned judgment of

conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them.

- 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