

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1081 of 2002**Judgment Reserved on 06/02/2020Judgment delivered on 22/05/2020

Sheo Kumar alias Netaji S/o Sukhi Ram Suryawanshi, aged 26 years
resident of Aazad Chawk Mangla, Police Station Civil Line Bilaspur, Distt.
Bilaspur (C.G)

--- Appellant**Versus**

State of Chhattisgarh Through Police Station Civil Line, Bilaspur (C.G.)

---- Respondent

For Appellant : Mr. Sunil Sahu, Advocate
For Respondent : Mr. Amit Verma, PL

Hon'ble Shri Justice Arvind Singh Chandel

CAV Judgment

1. This appeal is directed against the judgment dated 03/09/2002 passed in S.T. No. 57/2002 by the Sessions Judge, Bilaspur, whereby the Appellant has been convicted as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 450 of the Indian Penal Code	Rigorous imprisonment for seven years and to pay fine of Rs. 200/- with default stipulation.
Under Section 376 of the Indian Penal Code	Rigorous imprisonment for seven years and to pay fine of Rs. 200/- with default stipulation.

2. Facts of the case are that the Prosecutrix (PW1) is a major married lady having one child. Her husband was in the jail due to some offence at the time of incident. The Prosecutrix was residing with her mother. On 12/10/2001, she was sleeping with her children and mother. At about 4:00 am, when her mother had gone to attend the call of nature, the Appellant entered into their house at about 4:30 am. He closed her mouth and committed sexual intercourse with her. She recognized the Appellant from his voice. She also saw the Appellant in light when he was fleeing from her Veranda. After some time, Girja Bai (PW2), mother of the Prosecutrix returned, she narrated the incident to her. The Prosecutrix also intimated this fact to her mother-in-law, Geeta Bai. When, they were going to lodge the report, on the way the Appellant met them and told not to lodge the report. He also told her to compromise the matter, but the Prosecutrix lodged the matter vide Ex.P-1. The Prosecutrix was medically examined by Dr. Smt. M. Pandey. Her report is Ex.P-10. Statements of the Prosecutrix and other witnesses were recorded. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 9 witnesses. Before trial Court, it was defence of the Appellant that Upsarpanch Jwala Prasad used to visit the house of the Prosecutrix, which the Appellant had protested and due to this a false and fabricated report has been lodged at the behest of Jwala Prashad. In his statement recorded under Section 313 of the Cr.P.C, an alternative defence has also been taken by the Appellant that the Prosecutrix had encroached his land and when he told her to vacant

the said land then the Prosecutrix made a false report. Two defence witnesses have been examined.

3. After completion of the trial, the trial Court has convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
4. Learned counsel appearing on behalf of the Appellant has submitted that the Trial Court has wrongly convicted the Appellant without there being any evidence available on record. It has been further submitted that the statement of the prosecutrix is not reliable. There are material contradictions and omissions occurred in the statements of the Prosecutrix and other witnesses. From the statement of the Prosecutrix and other witness, it is established that due to enmity of Appellant with Jwala Prashad, the Prosecutrix has lodged a false and fabricated report at the behest of Jwala Prashad.
5. Learned counsel appearing on behalf of the State opposes the same and supported the judgment of conviction passed by the trial Court.
6. I have heard learned counsel for the parties and perused the record minutely.
7. In her court statement, the Prosecutrix (PW1) has deposed that on the date of incident at about 4:00 am, when her mother had gone to attend the call of nature, she slightly closed the door, but not fully. According to this witness, the Appellant entered into her house and closed her mouth by a piece of cloth. He also pressed her neck. She

tried to get rid off the Appellant, but the Appellant forcibly committed sexual intercourse with her. She further deposed that she tried to raise alarm, but the Appellant closed her mouth. After the incident, when the Appellant was fleeing from the spot, she tried to catch him. According to this witness, when her mother returned she narrated the entire incident to her. Thereafter, when they were going to lodge the report, on the way the Appellant met them and told they have to think before lodging the report. But, she lodged the FIR (Ex.P-1). In her cross-examination, this witness has further deposed that she knows the Appellant by his name and also by face. She further deposed that the Appellant is uncle of her husband. In para 8, she deposed that when the Appellant entered into her house, she did not recognize him, but when the Appellant bowed and woke up, she recognized him. She denied the suggestion that when her husband was in jail, Upsarpanch Jwala Prashad used to visit her house.

8. Girja Bai (PW2) has supported the above statement of the Prosecutrix and deposed that when she was going to attend the call of nature, she saw the Appellant standing near Jaitkham. When she returned, the Prosecutrix was weeping. She asked her then the Prosecutrix narrated the entire story to her. This witness has also deposed that when they were going to lodge the report, the Appellant met them on the way and he, indirectly told them to not lodge the report.
9. The Prosecutrix (PW1) was medically examined by Dr. Smt. M. Pandey (PW7). Her report is Ex.P-10. She found no injury in the

private part of the Prosecutrix and stated that hymen of the Prosecutrix was already ruptured due to marriage. She was habitual of sexual intercourse, therefore, no definite opinion regarding sexual intercourse can be given.

10. Roshni Wasnik (PW9) is the witness who recorded FIR (Ex.P-1) and also partially investigated the matter. She admitted the fact that at the time of recording the FIR, Jwala Prashad was present along with the Prosecutrix. Inspector V.K. Mishra (PW10) is the witness who also partially investigated the matter.
11. On minute examination of the above evidence, it makes clear that the Prosecutrix was major lady at the time of incident. She was living with her mother and children as her husband was in jail. The alleged incident occurred at about 4:30 am. FIR (Ex.P-1) has been lodged immediately after the incident at about 7:00 am. The Prosecutrix in her court statement has categorically stated that the Appellant had entered into her house and committed forcible sexual intercourse with her. Immediately after the incident, she disclosed this fact to her mother, Girja Bai (PW2). Though Roshni Washnik (PW9) has stated that at the time of recording the FIR Jwala Prashad was present with the Prosecutrix, only on this basis it cannot be said that at the behest of Jwala Prashad the Prosecutrix had lodged the false report. The Prosecutrix has categorically denied that Jwala Prashad used to visit her house. There is no reliable evidence available on record on the basis of which it can be said that there was enmity between Jwala Prashad and the Appellant. Moreover, from the statement of the

Prosecutrix as well as her mother, it is established that when they were going to lodge the report, on the way the Appellant met them and told them to not lodge the report. This act of the Appellant itself shows that there was involvement of the Appellant in the alleged crime. The Appellant had taken alternative defence before the trial Court that the Prosecutrix had encroached his land and when he told her to vacant the said land, then she lodged the false and fabricated report. In this regard, no suggestion has been put before the Prosecutrix, therefore, this defence as taken by the Appellant, does not help in the present case.

12. From the entire evidence available on record, I do not find any reason to disbelieve the statement of the prosecutrix. Thus, in my considered view, the finding of the trial Court is in accordance with the evidence available on record.
13. In the result, I do not find any merit in this case. The appeal is dismissed.
14. Records of the court below along with the copy of this judgment be sent back forthwith for necessary compliance and action.

Sd/-
(Arvind Singh Chandel)
Judge