

HIGH COURT OF CHHATTISGARH, BILASPUR

NAFR

Criminal Appeal No.714 of 2002

Kuleshwar, son of Late Kanhaiya Lal Deshmukh, aged about 26 years,
occupation Shopkeeper, resident of Birejhar, Tahsil and District Durg,
Chhattisgarh

---- Appellant

versus

State of Chhattisgarh

--- Respondent

For Appellant	:	Shri N.S. Dhurandhar, Advocate
For Respondent	:	Shri Amit Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

30.1.2020

1. The instant appeal has been preferred against the judgment dated 1.7.2002 passed by the Special Judge and Additional Sessions Judge, Durg in Special Case No.71 of 2001, whereby the 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.1,000/- with default stipulation

2. Prosecution case, in brief, is that on 16.5.2000 at about 12 O'clock in the night, the Appellant and co-accused Manoharlal came to the house of prosecutrix (PW2). At that time, she was sleeping with her two sons. Allegedly, the Appellant entered inside the house of the prosecutrix and committed forcible sexual intercourse with her. At that time, co-accused Manoharlal was standing outside and

keeping a watch over visitors. At the time of incident, husband of the prosecutrix was not present at home. He had gone in the village. The prosecutrix shouted. On this, the Appellant and the co-accused ran away from the spot. While running away, the co-accused said the prosecutrix that whatever was happened should not be told by her to anyone. Thereafter, the prosecutrix shouted “*chor chor*”. Her neighbours reached her house. She told them about the incident. On return of her husband, she told him also about the incident. Next day, i.e., 17.5.2000, she lodged First Information Report (Ex.P2). Her statement and statements of other witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant and the co-accused. Charges were framed against them under Sections 376(2)(g) and 450 of the Indian Penal Code and Sections 3(2)(v) and 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth ‘the Act’).

3. In support of its case, the prosecution examined as many as 11 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant and the co-accused denied the guilt and pleaded innocence. One witness Paragabai has been examined in defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court acquitted co-accused Manoharlal of all the charges framed against him. The Trial Court also acquitted the Appellant of the charge under Section 450 of the Indian Penal Code and the charges under Sections 3(2)(v) and 3(1)(xii) of the Act, but

convicted him under Section 376 of the Indian Penal Code in place of Section 376(2)(g) of the Indian Penal Code and sentenced him as mentioned in first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submits that without there being sufficient evidence on record against the Appellant, the Trial Court has wrongly convicted him. The statement of the prosecutrix is unnatural and unreliable. There are material contradictions and omissions in her statement. Her statement is not corroborated by Kriparam (PW5) and Pursottam (PW4). Since on the same facts and evidence, the co-accused has been acquitted of all the charges, on this ground also, conviction of the Appellant is not sustainable. The finding of the Trial Court is bad in law. It is further submitted that even if for the sake of argument it is considered that any such alleged act was done, from the material collected by the prosecution and the statement of the prosecutrix, it reveals that the prosecutrix was a consenting party because, as stated by her, at the time of incident, she was alone at her house as her husband was not present at home and according to the FIR, when the Appellant was committing sexual intercourse with her, the co-accused was keeping a watch outside on visitors. This clearly shows that the prosecutrix was a consenting party.
6. Learned Counsel appearing for the State opposes the above submission and supports 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 (PW2) has deposed that at about 12 O'clock in the night, she was sleeping in the courtyard of her house. Her husband was not present at home. He had gone in the village. Her two children aged about 2½ years and 8 years were also sleeping. At that time, both the Appellant and the co-accused came to her. The Appellant mounted over her chest and the co-accused caught her both hands. Thereafter, the Appellant committed forcible sexual intercourse with her. When she tried to shout, a portion of her *saree* was put in her mouth by the Appellant. After completing the sexual intercourse, the Appellant left her. Then the co-accused threatened her that if she tells about the incident to her husband, they will kill her. She has further deposed that when they left her, she took out the portion of her *saree* from her mouth and shouted. On this, Kriparam (PW5) and Mahesh (not examined) reached her house. Thereafter, at about 1:30 a.m., her husband returned home. She told him about the incident. Next day, she lodged the report. During cross-examination, she has further deposed that before arrival of Kriparam (PW5) and Mahesh at the spot, the Appellant and the co-accused had run away from there. But, according to her, one Kamal saw the Appellant and the co-accused running away from the spot. Kriparam (PW5) has deposed that having heard the shouts of *chor chor*, he went to the spot. But, according to him, neither he saw anyone running away from the spot nor did the prosecutrix tell him anything. This witness has been declared hostile. Mahesh has not been examined by the prosecution. Kamal, who, according to the Court statement of the prosecutrix, witnessed the incident, has also not been examined by the prosecution nor has he been cited as a witness.

9. Dr. Mamta Pandey (PW9) examined the prosecutrix. Her report is Ex.P14A. According to this witness, she did not find any injury over the body of the prosecutrix. She found that the prosecutrix was habitual to sexual intercourse. This witness could not give any definite opinion regarding recent sexual intercourse with the prosecutrix.
10. On a minute examination of the evidence available on record, it is clear that though according to the FIR and the Court statement of the prosecutrix the Appellant committed forcible sexual intercourse with the prosecutrix, the statement of the prosecutrix and the story narrated by her do not inspire confidence of this Court. Her version is suspicious because the alleged incident took place in the midnight. At that time, the prosecutrix was alone at her house. Her husband was not present at home. She was sleeping in the courtyard of her house. According to the contents of the FIR, when the Appellant was committing forcible sexual intercourse with the prosecutrix, the co-accused was standing outside the house and keeping a watch over visitors. This shows that the alleged act was done with the prosecutrix with her consent as the co-accused was keeping a watch over visitors from outside the house for their safety. But, contrary to this, in her Court statement, the prosecutrix has deposed that at the time of incident, when the Appellant was committing sexual intercourse with her, her both the hands were caught by the co-accused. Thus, it is also established that she has developed her statement on material points and contradicted her own statement. Apart from this, according to the prosecutrix, the Appellant had committed forcible sexual intercourse with her and at that time her both the hands were pressed over the cot by the co-

accused. In the circumstance, she would have suffered abrasions over her hands or other parts of her body, but, no injury was found over any part of her body during her medical examination. As stated by the prosecutrix, on her shouting, Kriparam (PW5) and Mahesh had reached at the spot and she had told them about the incident. But, Kriparam (PW5) has not supported the above version of the prosecutrix and Mahesh has not been examined by the prosecution. One Kamal, who, according to the prosecutrix, saw the Appellant and the co-accused running away from the spot, has also not been examined by the prosecution nor has he been cited as a witness. As stated by the prosecutrix, her child, aged about 2½ years was also sleeping with her. Therefore, looking to the circumstance, it does not appear to be natural that any forcible sexual intercourse was done with her. For the reasons aforesaid, in my considered opinion, the offence alleged against the Appellant is not duly proved. The finding of conviction arrived at by the Trial Court is not sustainable.

11. 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.
12. 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