

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 597 of 2002

Mahendra Kapoor S/o. Beran Ram aged about 20 years, Occupation – Agriculture, Residence of Village Khamria, P.S. Lakhanpur, District Surguja, CG.

---- Appellant

Versus

State of Chhattisgarh, through P.S. Lakhanpur, District Surguja, CG.

---- Respondent

For Appellant : Shri Manoj Mishra, Advocate

For State/Respondent : Shri Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

17/09/2020

On 20.01.2001 in the mid-night when the prosecutrix (PW-8) and her elder sister Indramadi (PW-5) were sleeping in the house as their parents had been to the field for keeping watch on the standing crop, the accused/appellant first allegedly knocked at the door and when it was not opened, he gained an entry inside by scaling the wall. After gaining entry, the appellant is alleged to have confined the elder sister of the prosecutrix (PW-5) there itself and after taking the prosecutrix in the veranda of a nearby school, he subjected her to forcible sexual intercourse by threatening her of life on the point of knife. After the offence was over, the prosecutrix got back home, disclosed the incident to PW-5 and then to her parents in the morning after their arrival from the field. The parents in turn apprised the Sarpanch and secretary of the village about the incident. Medical examination of the prosecutrix was done and after completion of investigation *challan* was filed under Sections 450, 376 and 506-B IPC though the FIR was registered under Section 376 IPC only. Learned Court below framed the charge under Section 376 (1) and 342 IPC.

2. Learned Court below vide judgment impugned dated 29.05.2002 acquitted the appellant under Section 376(1) but held him guilty under Sections 354 and 342 IPC sentencing him to undergo RI for 2 years with fine of Rs.3000/- under Section 354 IPC and RI for 1 year with fine of Rs.1000/- under Section 342 IPC, plus default stipulations. Hence this appeal.

3. Counsel for the accused/appellant attacked the judgment impugned to be beyond the evidence of the witnesses and therefore, made a prayer for setting the same aside. Alternatively, a prayer for sentence being reduced to the period already undergone has been made if the conviction does not call for any alteration by this Court.

4. State counsel however supports the judgment impugned to be just and proper.

5. It is relevant to note that majority of the witnesses being PW-1, PW-2 and PW-3 have been declared hostile and not supported the case of the prosecution. The evidence of the prosecutrix (PW-8) also denies the involvement of the accused/appellant in the crime in question and therefore, she too has been declared hostile. As regards seizure, her evidence suffers from contradictions as at one place she does not talk of anything being seized by the police but subsequently she states of seizure of underwear, on the other. The testimony of elder sister of the prosecutrix who at the time of incident was very much present in the house has duly supported the case of the prosecution stating the things of prosecutrix being raped by the accused and her own captivity by him. For what reason the prosecutrix chose not to support the case of the prosecution is unclear to this Court, but elder sister (PW-5) had duly stood by the things witnessed by her that the accused/appellant came into her house by jumping over the wall, put her in another room, took the prosecutrix

elsewhere and committed rape on him. All this is said to have been disclosed to PW-5 by none else but the prosecutrix herself. Since the accused/appellant has already been acquitted under Section 376 IPC, the negative medical evidence is not essential to be dealt with in this case. In this view of the matter conviction of the accused/appellant under Section 354 and 342 IPC is maintained.

6. As regards sentence, looking to the facts and circumstances of the case, that the incident had taken place about 19 years back and that the accused/appellant had already remained in jail for about 3 and a half months and has thereby suffered a lot for his wrong, this Court thinks it proper and in the interest of justice to reduce the sentence imposed on him to the period already undergone. Order accordingly.

7. Appeal is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/ajay.