

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 894 of 2002

Judgment Reserved on 12/12/2019

Judgment delivered on 06/03/2020

Sakha Ram S/o Banshi Ram, aged about 22 years, Occupation: Agriculturist, R/o Village: Dongargaon, Police Station: Korar, District: Kanker (C.G.)

--- Appellant

Versus

State of Chhattisgarh through P.S: Korar, District: Kanker Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Shobhit Koshta, Advocate
For Respondent	:	Ms. Smriti Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel

CAV Judgment

1. This appeal is directed against the judgment dated 31.07.2002 passed in Sessions Trial No. 238/2000 by the First Additional Sessions Judge, Kanker, District: Kanker (C.G.), whereby the Appellant has been convicted and sentenced as mentioned below:

Conviction	Sentence	In Default
U/s 376 of IPC	RI for 05 years with a fine of Rs.500/-	In default of payment of fine amount additional RI for 06 months.

2. Facts of the case are such that at the time of incident, the age of Prosecutrix (PW-01) was about 18 years. On 05.04.2002, at night,

prosecutrix and her friend Kumari Suhata (PW-02) were going to the marriage ceremony to perform dance. At around 10:00 P.M. they were going towards dam for cleaning their teeth, during that time the Appellant came to the spot and told Kumari Suhata (PW-02) to return back and thereafter he forcibly committed sexual intercourse with the prosecutrix and ran away. When the prosecutrix didn't return back to the place of marriage, her brother Sahadev (PW-04) came to the spot, during that time one Shanti Bai and present Appellant also came to spot and at that time prosecutrix narrated the entire incident to his brother Sahadev. Then quarrel took place between Sahadev and the Appellant. Thereafter the matter was reported by prosecutrix vide Exhibit P-1. From the spot some broken bangles of prosecutrix were recovered vide Seizure Memo Exhibit P-4. Prosecutrix was medically examined by Dr. Smt. Hemlata Sahu and her report is Exhibit P-09. Statement of Prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, charge-sheet was filed. Charges were framed by the Trial Court. As many as 11 witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After 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 Appellant has been falsely implicated without there being any sufficient evidence available on record. He submits that Trial Court didn't consider the statement of Prosecutrix (PW-01) on its true prospect because she stated that when she went along with Suhata (PW-02) to the dam, during

that time, Appellant also accompanied with them and thereafter, the Appellant told Suhata to run away from the spot and then committed sexual intercourse which shows that prosecutrix was a consenting party. It is further submitted by learned counsel that from the evidence it is also established that before the incident, a quarrel took place between Appellant and one Pila Yadav who is the friend of the prosecutrix's brother Sahadev, therefore, it is established that due to the said, false and fabricated report has been lodged against the Appellant. According to the statement of prosecutrix, during incident, she sustained some injuries on her body and her bangles were also broken, but as per MLC report, it clearly appears that prosecutrix was found to be habitual of intercourse and no any bodily injuries were found on her body and from the aforesaid, it also appears that she was a consenting party. He submits that since, prosecutrix was a major lady and also a consenting party of the alleged act therefore offence is not proved against the Appellant and Trial Court has wrongly convicted the Appellant.

5. Learned counsel appearing on behalf of the State opposes the same and supports 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 (PW-01) has deposed that at the time of incident i.e. at the night, she along with her friend Suhata (PW-02) were going towards well for cleaning their teeth and at that time Appellant came there and asked them to give *Gudakhu*. Thereafter she along with Suhata went towards dam and Appellant also accompanied them saying that he would also come. It is further deposed by the prosecutrix that after cleaning their teeth, prosecutrix as well as Suhata were cleaning their

mouth and at that time the Appellant told Suhata to run away from that place and thereafter when she was also trying to move from that place, the Appellant caught hold her and lay her down and forcibly committed sexual intercourse with her. She has further deposed that she left that place and went to the house of Lohar and then brother of the prosecutrix came there and she narrated the whole incident to him. At that time Appellant also came there along with Shanti Bai and quarrel took place between the Appellant and Sahadev, brother of prosecutrix. Thereafter, village meeting was conducted and prosecutrix lodged a report vide Exhibit P-1. In her cross-examination, she has deposed that the Appellant had not pressed her mouth and after the incident he ran away from the spot. In Para 13, she has deposed that after the incident she went to the house of Ganga and Appellant as well as Shanti Bai also came there. At that time, the brother of prosecutrix also came there and committed *Maar-peet* with the Appellant. PW-02, Suhata has supported the statement of prosecutrix and deposed that she went to the marriage ceremony to dance with the prosecutrix and after that they went near the dam and Appellant also accompanied them. PW-03, Kunti has deposed that Appellant had told her that the brother of the prosecutrix Sahadev had committed *Maar-peet* with him. She further deposed that Sahadev told her that he had gone to Ganga's house searching his sister and when he saw the Appellant there, he committed *Maar-peet* with him. PW-04, Sahadev has deposed that at around 11:00 P.M. he was present at the spot where marriage ceremony was being held and at that time prosecutrix came there and narrated the whole incident to him and after that he was full of anger and went to search Appellant and he found the Appellant at the house of Ganga and then committed *Maar-peet* with him. PW-06 Ganga has not supported the case of prosecution and this witness has deposed that prosecutrix met her but she did not tell

anything about the incident to her. According to PW-09 Dr. Hemlata Sahu, who examined the prosecutrix, she found that hymen of prosecutrix was ruptured and two fingers could be easily inserted there. She has deposed that no injury was found in the private part of the prosecutrix. PW-10, Doctor D.B. Nag is the witness who examined the Appellant, his report is Exhibit P-11. PW-11, Krishna Pandey is the Sub-Inspector who investigated the entire matter.

8. On minute examination of above evidence, it is clear that the statement of Prosecutrix is not reliable and from the evidence adduced by the prosecution, it appears that prosecutrix was a consenting party of the alleged act because according to the deposition of the prosecutrix (PW-01) and Suhata (PW-02), both met the Appellant near a well thereafter they went towards dam and Appellant also accompanied them saying that he would also come. Thereafter, when they reached near the dam and cleaned their teeth, the Appellant told Suhata to run away from there and after that Suhata left prosecutrix alone with the Appellant. The said incident took place at 11:00 P.M., if there had been no previous relationship between prosecutrix and Appellant, prosecutrix as well as Suhata (PW-02) would have never gone with Appellant but simply they have gone with the Appellant near the dam and thereafter Suhata (PW-02), on being asked by the Appellant, left the spot. Apart from said, it is alleged that the Appellant caught hold the prosecutrix and forcibly committed sexual intercourse but according to the medical report of prosecutrix, no bodily injuries were found on the body of the prosecutrix. She has also admitted that at the time of incident, Appellant did not pressed her mouth. In the aforesaid circumstances, it appears that if the incident took place the prosecutrix could shout and yell for some help to save herself at that moment. It is

further admitted by the prosecutrix that after the incident when she was lying on the house of Ganga, Appellant came there and thereafter Sahadev, brother of the prosecutrix, also came there and committed *Maar-peet* with the Appellant. In her statement, PW-03 Kunti has stated that Sahadev told her that he committed *Maar-peet* with Appellant because he saw Appellant and prosecutrix together at Ganga's house. Looking to the aforesaid evidence adduced by the prosecution, it appears that Sahadev had seen the Appellant and prosecutrix in a compromising position therefore he committed *Maar-peet* with the Appellant and thereafter report was lodged. From the entire evidence appreciated above, it is well established that prosecutrix was a consenting party of the alleged act and also she was a major lady aged about 18 years, therefore, offence under Section 376 is not proved against the Appellant. Thus, finding of the Trial Court in this regard is not sustainable.

9. Consequently, the appeal is allowed. The judgment of conviction of the trial Court is set-aside. The Appellant is acquitted from the charge framed against him. His bail bond be discharged immediately.
10. Record 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