

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 789 of 2004**

- Ramkripal, Son of Dhanushdhari, aged about 42 years, Occupation- Government Teacher, Resident of Village Dabari Para, Police Chowki, Basdei, Police Station Surajpur, District Surguja, C.G.

----Appellant

Versus

- State of Chhattisgarh, Through the Police Station, Surajpur, District Surguja, C.G.

---- Respondent

For Appellant	Shri V.K. Pandey, Advocate.
For Respondent/State	Shri Vimlesh Bajpai, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****16/09/2020**

1. The appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 31.08.2004 passed by the First Additional Sessions Judge Surajpur, District Surguja, C.G. in Sessions Trial No.82/2004, whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 323 of Indian Penal Code (for short 'IPC')	Fine of Rs.300/-, in default of payment of fine amount to undergo simple imprisonment for 15 days.

	(For commission of hurt to PW-1 prosecutrix)
Under Section 323 of Indian Penal Code (for short 'IPC')	Fine of Rs.300/-, in default of payment of fine amount to undergo simple imprisonment for 15 days. (For commission of hurt to PW-4 Pranpati)

3. Case of the prosecution, in brief, is that on 02.01.2003, in the morning, prosecutrix was going towards Bhaiyathan, on the way accused/appellant met her and said that he would drop her. Then, both of them went to Bhaiyathan on motorcycle and accused/appellant told her to meet in the evening. When accused/appellant was coming back, again prosecutrix met him and sat on his motorcycle. On the midway, he turned his motorcycle towards the forest and committed sexual intercourse with her and promised her to marry. Thereafter, appellant started making physical relations with her on regular basis as a result of which she became pregnant. On 20.07.2003, when prosecutrix, her sister-in-law PW-4 Pranpati and other persons went to the house of appellant and told him about the pregnancy, accused/appellant refused to keep her as his wife and started abusing filthily, threatening the prosecutrix of life and committed *marpeet* with them (PW-1 Prosecutrix and PW-4 Pranpati). Thereafter, on the same day i.e. 20.07.2003, she went to the police station, Basdei, District Surguja and lodged FIR Ex.P-1 against the accused/appellant which was registered on zero

number and transferred to the concerned police station Surajpur, Surguja where it was registered under Crime No.135/2003 vide Ex.P-7. Prosecutrix was medically examined by PW-2 Dr. Shashi Tirkey who found the following injuries on her person vide Ex.P-4:-

External injury over body-

1. Complaining of pain at left side of back of chest.
2. Complaining of pain at neck. No obvious injury present over body.

Examination of abdomen-

1. Complaining of amenorrhea of six months.
2. Last month period- 24th January.
3. Size of uterus- 24-26 weeks.
4. Complaining that she feels less foetal movement since assault.
5. Foetal heart sound present- 140/m.
6. Quickening Present.

Examination on private part-

1. No injury at labia mazora, labia minnora and clitosion.
2. Old penetrated tag of hymen present around vaginal introitus.
3. Vaginal orifice takes admission of two fingers easily.

According to her opinion- 1. She is habitual for intercourse.

2. On examination of whole body, no obvious injury present over body.
3. She has pregnancy of about 6 months, advise for sonography of abdomen to confirm gestational age of foetus and well being of foetus as she felt less foetus movement.
4. Two slides of vaginal smear taken sealed and handed over to same

constable.

4. During Investigation, spot map Ex.P-3 was prepared and as per seizure memo Ex.P-8, slides of prosecutrix were prepared. Accused/appellant was arrested on 20.07.2003 vide Ex.P-12. Accused/appellant was also examined by PW-3 Dr. Ravi Shankar Singh and was found to be capable of performing sexual intercourse vide Ex. P-6. After recording statements of the witnesses, charge sheet was filed against the accused/appellant under Section 376 of IPC.
5. The trial Court framed charges under Sections 376 (1), 323 and 506 Part-1 of IPC against the accused/appellant which were denied by him and he prayed for trial. The prosecution examined 11 witnesses i.e. PW-1 Prosecutrix, PW-2 Dr. Shashi Tirkey, PW-3 Dr. Ravi Shankar Singh, PW-4 Pranpati, PW-5 Balkumari, PW-6 Kumar Sao, PW-7 Sanjay Kumar Gupta, PW-8 Ramroop, PW-9 Kaushaliya, PW-10 Chatur and PW-11 K.P. Gupta. Statement of the accused/appellant was recorded under Section 313 Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, he examined only one witness i.e. Ram Prasad Yadav.
6. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above.

7. Learned counsel for the appellant submits that in this case neither medical report in respect of PW-4 Pranpati was produced and proved by the prosecution nor any independent witness has supported the prosecution case. He also submits that appellant is a government employee and for taking that benefit, prosecutrix has made a false allegation against him. He also submits that no physical injury was found on the body of the prosecutrix, appellant has been falsely implicated by the prosecutrix in this case. There are material contradictions and omissions in the statements of the prosecutrix and other witnesses. No cogent evidence is available on record against the appellant. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the said charge.
8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
9. In this case as submitted by both the parties, no appeal has been filed by the State against the acquittal of the accused/appellant under Sections 376 and 506 Part 1 of IPC.
10. Heard learned counsel for the parties and perused the material available on record.
11. PW-1 prosecutrix stated in her deposition that on 02.01.2003, in

the morning, she was going towards Bhaiyathan, on the way accused/appellant met her and said her that he would drop her. Then, both of them went to Bhaiyathan on motorcycle and accused/appellant told her to meet in the evening. When accused/appellant was coming back, again prosecutrix met him and sat on his motorcycle. On the midway, accused/appellant turned his motorcycle towards the forest and committed sexual intercourse with her and promised her to marry. Thereafter, appellant started making physical relations with her on regular basis as a result of which she became pregnant. On 20.07.2003, prosecutrix, her sister-in-law PW-4 Pranpati and other persons went to the house of appellant and told him about the 6 months pregnancy, accused/appellant refused to keep her as his wife and started abusing filthily, threatening the complainant of life and committed *marpeet* with them (PW-1 Prosecutrix and PW-4 Pranpati, sister-in- law of the prosecutrix). Thereafter, she went to the police station and lodged the FIR against him.

12. PW-2 Dr. Shashi Verma medically examined the prosecutrix vide Ex.P-4 and gave her report as mentioned in the preceding paragraph. She has duly proved the said report.
13. PW-3 Dr. Ravi Shankar Singh medically examined the accused/appellant vide Ex.P-6 and gave his report as mentioned in the preceding paragraph. He has duly proved the said report.
14. PW-4 Pranpati, Sister-in-law of the prosecutrix, has supported the statement of the prosecutrix and also stated in para 7 of her statement that on the date of incident appellant had scuffled with

her.

15. PW-5 Bal Kumari, PW-8 Ramroop, PW-9 Kaushaliya and PW-10 Chatur all have supported the statement of prosecutrix and stated that same facts as stated by prosecutrix.
16. PW-6 Kumar Sao, Head Constable, registered the FIR Ex.P-7 against the accused/appellant.
17. PW-7 Sanjay Kumar Gupta is the witness of seizure of slides Ex.P-8.
18. PW-11 K.P. Gupta, Assistant Sub-Inspector, lodged the FIR Ex.P-1 against the appellant, prepared the spot map Ex.P-3, sent the accused/appellant and prosecutrix for medical examination vide Ex.P-2 and recorded the statements of the witnesses and duly proved the same.
19. DW-1 Ram Prasad Yadav is the colleague of accused/appellant. He stated in his deposition that on the date of incident accused/appellant was present in the primary school and entry of his attendance was mentioned in attendance register Ex.D-6. He also stated that his primary school was of class 1st to class 5th and the timing of his primary school was 10:30 am to 4:30 pm. He again stated in his cross-examination that on the date of incident, accused/appellant was present in the primary school.
20. Considering the evidence of the prosecutrix as well as the evidence of other witnesses i.e. PW-4 Pranpati, PW-5 Balkumari, PW-8 Ramroop, PW-9 Kaushaliya and PW-10 Chatur, who have duly supported the evidence of the prosecutrix, it stands proved that it was the accused/appellant who voluntarily caused hurt to

PW-1 prosecutrix and PW-4 Pranpati. There is no major contradictions or omissions in the statements of the above witnesses which could suggest of false implication of the appellant in the crime in question. The evidence of the prosecutrix also finds corroboration from the promptly lodged FIR and medical report. In view of the above, unrebutted oral and medical evidence, the evidence of DW-1 Ram Prasad Yadav does not inspire confidence of this Court and as such it is of no help to the appellant. From the evidence, it is also seen that appellant assaulted upon both the PW-1 Prosecutrix and PW-4 Pranpati and committed *marpeet* with them thereby causing them hurt. Being so, the trial Court was fully justified in convicting and sentencing the appellant by the impugned judgment and as such no interference is called for by this Court.

21. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. However, it is made clear that conviction and sentence of the appellant as affirmed by this Court shall not in any affect the service prospects of the appellant.

Sd/-
Gautam Chourdiya
Judge