

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 738 of 2009**

- Afjal Musalmaan, son of Ganif Khan, aged about 27 years, occupation Agriculture, residence of Village Saitangartoli, Tahsil Jashpur, District-Jashpur, Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh, Through Police Station Jashpur, District Jashpur, C.G.

---- Respondent

For appellant : Shri J. K. Saxena, Advocate.
For Respondent/State : Shri Ashish Gupta, Panel Lawyer.

Hon'ble Shri Justice Gautam Chourdiya**Judgment On Board****13/02/2020**

01 This appeal arises out of the judgment of conviction and order of sentence dated 14.10.2009, passed by Sessions Judge, Jashpur, Distt. Jashpur (C.G.) in Sessions Trial No. 93/2008 convicting the accused/appellant under Section 376(1) of Indian Penal Code (henceforth "IPC") and sentencing him to undergo rigorous imprisonment for 7 years and pay a fine of Rs.100/-, in default of payment of fine, to further undergo additional rigorous imprisonment for one month.

02. Case of the prosecution, in brief, is that on 25.04.2006 at around 7.00 am the prosecutrix, aged about 24 years, who is a deaf-and-dumb lady, was going to attend the nature's call, at that point of time the accused/appellant came there and committed forcible sexual intercourse with her against her will. A written complaint vide Ex. P/6 was made by the prosecutrix at Police Outpost-Lodham and on the basis of which, FIR (Ex.P/2) was lodged on 26.04.2006 under Section 376 (1) of IPC and Section 3(1)(xi) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act against the appellant. Spot map Ex. P/5 was prepared. The prosecutrix was medically examined on 25.4.2006 vide Ex.P/9A by Dr. Smt. Pramila Toppo (PW-7), who found that pubic hair is present on her person; there is no any injury mark on her person; slight swelling in libia majora & minora; hymen is ruptured; margins are edematous; irregular and pink in color; vaginal orifice admits two fingers. The doctor opined that the above findings are suggestive of recent sexual intercourse. The vaginal smear was prepared & sealed and handed over to police.

03. After usual investigation, charge sheet was filed against the appellant under Section 376 of IPC & Section 3 (1)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth "Act, 1989"). Thereafter, the trial Court framed charge under Section 376(1) of IPC against the appellant which was denied by him and he prayed for trial.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 8 witnesses namely- Madan Deepak (PW-1), Surjeel Kori (PW02), Dalaram Paikra (PW-3), Dukhram Mangal (PW-

4), prosecutrix (PW-5), Thomosh Tirki (PW-6), Dr. (Smt.) Pramila Toppo (PW-7) & Vinod Tirki (PW-8). Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No defence witness has been examined on behalf of accused/appellant.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in paragraph one of the judgment.

06. Learned counsel for the accused/appellant would submit that accused/appellant has been falsely implicated in the crime in question as there is no eyewitness to the incident nor any circumstantial evidence available on record to connect the appellant with the crime in question. He further submits that the prosecutrix is a deaf-and-dumb girl, the evidence given by prosecutrix in her court statement is contradictory to her medical report and, therefore, the trial Court is absolutely unjustified in convicting and sentencing the accused/appellant as aforesaid.

07. On the other hand, counsel for the State, while supporting the impugned judgment, submits that in the instant case the prosecutrix is a deaf-and-dumb girl but she has satisfactorily answered the queries put to her. He further submits that when the prosecutrix was examined by the trial Court, she answered all the questions correctly. The statement of the prosecutrix is also corroborated with her medical report. He further submits that after the incident, prompt written report

was made by the prosecutrix and on the basis of which, FIR (Ex.P-2) was lodged. Therefore, there is no illegality or infirmity in the judgment impugned warranting interference by this Court.

08. Heard counsel for the respective parties and perused the material on record.

09. Prosecutrix (PW-5) has stated in her evidence that on the date of incident when she had gone to attend the nature's call, the accused/appellant reached there, caught hold of her from backside and committed forcible sexual intercourse with her. Her (prosecutrix) statement was also corroborated with the medical report given & proved by Dr. Pramila Toppo (PW-7). Prosecutrix also states in her deposition that she made written complaint to Police Outpost Lodham and that report was written by her sister-in-law (*Bhabhi*) and she also supported Ex. P/3 report lodged at Police Station and admitted her signature in the report.

10. Dr. (Smt.) Pramila Toppo (PW-7) has stated in her statement that she conducted MLC of the prosecutrix vide Ex.P/9A wherein she found that pubic hair was present on her person; there was no any injury mark on her person; slight swelling was there in libia majora & minora; hymen was ruptured; margins were edematous; irregular and pink in color; vaginal orifice admitted two fingers. After examination she opined that the above findings are suggestive of recent sexual intercourse and the vaginal smear was prepared & sealed and handed over to police. The above medical report has also supported the statement of the prosecutrix.

11. Vinod Tirki (PW-8)- brother of the prosecutrix has proved this fact

that the prosecutrix is deaf-and-dumb and she has given statement in writing at the Police-Station. He further states that since there is no previous enmity between the accused & the prosecutrix and her family members, therefore, question of false implication of the appellant in the crime in question does not arise.

12. Now, the next question for consideration is whether the sexual intercourse between the appellant and the prosecutrix was consensual or against her wishes and without her consent?

13. According to the prosecutrix (PW-5), on the date of incident, when she was attending the nature's call in the morning, the accused/appellant caught hold of her and despite her all possible resistance, he committed forcible sexual intercourse with her against her wishes.

14. Learned trial Court in its judgment has discussed the reasons for conviction of the appellant in detail in paragraphs 9 to 15. Having gone through the said findings and the statement of the prosecutrix which finds due corroboration from promptly lodged written report, FIR and her MLC, this Court is of the opinion that the prosecution has proved its case beyond all reasonable doubt against the appellant and the trial Court has rightly convicted the appellant under Section 376(1) of IPC. Accordingly, the appeal, being devoid of merit, is liable to be and is hereby dismissed.

15. As per report received from the concerned jail, the appellant having completed the entire sentence has been released from jail on 07.02.2014. Therefore, there is no need to pass any further order with

regard to surrender of the appellant.

Sd/-

(Gautam Chourdiya)
Judge

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