

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 651 of 2009**

- Ranjit Thakur @ Pappu, aged about 26 years, S/o Darbari, R/o Village Murka, P.S. Patan, Distt.-Palamu, Jharkhand.

---- Appellant

Versus

- State Of Chhattisgarh Through D.M. Ambikapur, Distt.-Surguja, C.G.

---- Respondent

ACQA No. 365 of 2010

- State Of Chhattisgarh, through the District Magistrate, District Surguja C.G.

---- Appellant

Versus

- Ranjit Thakur @ Pappu, S/o Darbati Thakur, Aged about 26 years, R/o Village Murka, P.S. Patan, District Palamu Jharkhand

---- Respondent

For Appellant	:-	Ms. Nirupama Bajpai, Advocate
For Respondent-State	:-	Ms. Fouzia Mirza, Addl. A.G.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Gautam Chourdiya
Judgment On Board
By

Prashant Kumar Mishra, J.

14/02/2020

1. In CRA No.651 of 2009, the appellant would call in question his conviction under Sections 323 and 456 of the I.P.C. and sentence of R.I. for 1 year and a fine of ₹ 500/-, in default of payment of fine to further undergo additional imprisonment of 15 days and R.I. for 3 years and a fine of ₹ 500/-, in default of payment of fine to further undergo additional imprisonment of 15 days. Both the sentences were directed to run concurrently, whereas in ACQA No.365 of 2010, State would challenge his acquittal for offence under Section 376(1) and 450 of the I.P.C.
2. Since both the appeals are arising out of the same judgment they are being disposed of by this common order.
3. The prosecutrix aged about 62 years lodged FIR at 22:00 hours on 25.09.2007 vide Ex-P-1 alleging that she was alone in the house at about 9 p.m. on 24.09.2007 when the accused knocked at the door and on opening the doors he entered the house and requested for drinking water, thereafter, he demanded ₹ 500/- and started searching the box. When the prosecutrix tried to restrain him from opening the box he assaulted her by means of wooden raft due to which she sustained head injury and became unconscious. The appellant thereafter committed sexual intercourse and ran away. The incident was informed to PW-7 Surji in the

next morning and the prosecutrix was admitted to the hospital when her son and daughter-in-law returned from another village.

4. The prosecutrix was medically examined by PW-4 Dr. Smt. Lata Goyal on 26.09.2007 who submitted her report Ex-P/17 on 01.10.2007 finding that no definite opinion can be given regarding rape, however, she prepared vaginal smear slides for chemical analysis. The FSL report Ex-P/19 was positive for presence of semen and human sperms but it was not found sufficient for serological analysis. The vaginal smear taken on 01.10.2007 was seized by the Police vide seizure memo Ex-P/08 dated 02.10.2007.
5. In the charge-sheet 11 witnesses were cited, however, only 07 witnesses were examined during trial. The trial Court has acquitted the accused of the charges under Sections 376(1), 450 of the I.P.C. and convicted the accused for the charges under Sections 323, 456 of the I.P.C.
6. Ms. Nirupama Bajpai, learned counsel for the appellant would submit that charges under Sections 456 and 323 I.P.C. are not proved against the appellant due to material contradictions and omissions in the prosecution case. She would submit that the accused had not at all gone to the house of the victim at about 9 p.m. on 24.09.2007 and he

has been falsely implicated.

7. Ms. Fouzia Mirza, Addl. A.G. for the State would submit that appellant should have been convicted for offence under Section 376(1) of the I.P.C. It is further argued that the FIR is prompt, the FSL report is positive and the prosecutrix's statement is supported by PW-7 Surji, therefore, it is a case where all the offences for which the accused was charged have been fully proved.
8. In the consent memo for her medical examination, the prosecutrix has stated that the accused used to visit her house for consuming liquor. Similarly, in the FIR Ex-P/01 she states that the accused had earlier also visited her house. It would thus appear that the prosecutrix is engaged in selling country made liquor and in that connection the accused used to visit her residence. However, in her Court statement she would state that she saw the accused for the first time when he entered her house at the time of incident. This statement is contrary to her earlier statement in the FIR and in the consent memo Ex-P/03.
9. In her Court statement prosecutrix states that the incident happened at about 12 O' clock in the midnight whereas in the FIR the incident is said to have occurred at about 9 P.M. She would depose that one Sanjay and the accused

together entered the house, however, Sanjay had not been examined despite he being cited as a witness.

10. In the FIR, prosecutrix states that she was admitted to the hospital when her son and daughter-in-law returned from another village, however, again these two witnesses have not been examined before the trial Court.

11. True it is that the FSL report is positive, however, PW-4 Dr. Smt. Lata Goyal examined the prosecutrix on 26.09.2007 but the vaginal smear slides were prepared on 01.10.2007. There is no explanation why vaginal smear was not taken on the 26.09.2007 itself when the FIR was already lodged on the previous night i.e., at 22:00 hours on 25.09.2007. Moreover, the semen was not found sufficient for serological test, therefore, the origin of the semen is not proved.

12. In view of the above lacuna coupled with contradictions and omissions of material nature in the statement of the prosecutrix as also due to non-examination of material witnesses, the trial Court has rightly acquitted the accused of the charges under Sections 450 and 376(1) of the I.P.C.

13. In so far as, conviction under Sections 323 and 456 of the I.P.C. is concerned, it is to be seen that at the beginning, the appellant had not entered the house with intention to commit offences. He entered the house demanding drinking water

and the dispute arose when he requested the prosecutrix to give ₹ 500/- which she denied and tried to restrain the accused from taking ₹ 500/- from the box kept in the house. It appears that some assault has taken place at that time but it is not a case where ingredients of offence under Section 456 of I.P.C. is proved. The prosecutrix has definitely sustained injuries in the incident but again the said injuries are not found to be grievous in nature, therefore, his conviction under Section 323 of I.P.C. is maintained.

14. In the result :

- Acquittal Appeal No.365 of 2010 is dismissed.
- CRA No.651 of 2009 is allowed in part. Conviction & sentence imposed upon the appellant under Section 456 of the I.P.C. are set-aside. However, his conviction & sentence under Section 323 of the I.P.C. are maintained. He had already remained in jail from 08.11.2007 to 19.02.2009 which is more than the maximum sentence imposed for offence under Section 323 of the I.P.C.
- The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative

for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

SD/-
(**Prashant Kumar Mishra**)
Judge

SD/-
(**Gautam Chourdiya**)
Judge

Ayushi