

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 266 of 2013

1. Mohd. Kamran, son of Mohd. Harun, aged about 21 years, resident of Aamaprara, Near Haddi Godown, Dhamtari, P.S. & District Dhamtari (C.G.)
2. Sayed Saddam Ali, son of Sayed Ishaq Ali, aged about 21 years, resident of Aamapara, Near Sindhi Dharam Shala, Dhamtari, P.S. & District Dhamtari (C.G.)
3. Bilal Khan, son of Sultan Khan, aged about 19 years, resident of Aamapara, Near Sindhi Dharam Shala, Dhamtari, P.S. & District Dhamtari (C.G.)

---- Appellants

Versus

- State of Chhattisgarh Through:- the Police Station Dhamtari, District Dhamtari (C.G.)

---- Respondent/State

For Appellants : Shri Shobhit Koshta, Advocate

For Respondent/State : Shri Mateen Siddique, Deputy Advocate General

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment

29.06.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 18.02.2013 passed by the Additional Sessions Judge, Dhamtari, District Dhamtari (C.G.) in Sessions Case No. 58 of 2012, whereby the Appellants stand convicted and sentence as under:-

Accused/ Appellant	Conviction	Sentence
Appellant No.1- Mohd. Kamran (A-1)	Under Section 342 of IPC read with Section 34 of IPC	Remained in judicial detention for about 129 days as per para-24 of the impugned judgment and sentenced to suffer the period already undergone i.e. 129 days
Appellant No. 2- Sayad Saddam Ali @ Molu (A-2) and Appellant No. 3- Bilal Khan (A-3)	Under Section 342 of IPC read with Section 34 of IPC	Both remained in judicial detention for about 52 days as per para-24 of the impugned judgment and sentenced to suffer the period already undergone i.e. 52 days each and pay a fine of Rs.1,000/- each, in default of payment to further undergo S.I. for three months each

3. The case of the prosecution in brief is that the prosecutrix (PW-1) met accused/appellant No.1 Mohd. Kamran (A-1) through her friend Manisha on 01.01.2012, thereafter, the prosecutrix and Mohd. Kamran (A-1) used to talk with each other through mobile-phone. The allegation against appellant Mohd. Kamran (A-1) is that on the date of incident i.e. 06.10.2012, he sent a message to the prosecutrix through mobile-phone to come at Noorani Garagae. After receiving the aforesaid message sent by A-1, the prosecutrix went to Noorani Garage at about 07:30 pm. Appellant (A-1) told her that he had asked her to come at 06:00 pm whereas she is coming now. Thereafter, he closed the shutter of the Garage and he got the shutter locked from outside by his friends Sayed Saddam Ali @ Molu (A-2) and Bilal Khan (A-3). Thereafter, appellant (A-1) forcibly put off the jeans of the prosecutrix which was resisted by her, he gagged her mouth by hand and committed sexual intercourse against her will. The prosecutrix's brother came to know about the incident through someone's phone call and he reached there alongwith Vinay Chhabda (his uncle's son) and got opened the lock of shutter and took the prosecutrix out and brought his home. PW-1 prosecutrix did not tell her family about the incident due to fear and later, the whole incident was told to her sister-in-law Deepti Kaur (*Bhabhi*).
4. Written complaint was lodged by PW-1 prosecutrix on 11.10.2012 vide Ex.-P/1. On the basis of written complaint (Ex.-P/1), F.I.R. (Ex.-P/2) was registered on the same day at about 23:05 hours against all the accused persons/appellants under Sections 342, 376 read with Section 34 of IPC. Prosecutrix (PW-1) was medically examined by Dr. (Smt.) Madhuri Wankhede (PW-7) on 12.10.2012 and she gave her MLC report (Ex.-P/15). As per MLC report (Ex.-P/15), hymen was ruptured, no signs of injury was found over private part of the prosecutrix and Doctor opined that no definite opinion can be given regarding recent intercourse. She (Dr.) also prepared two slides from vaginal swab and packed, sealed and handed over to the

concerned police constable for chemical examination. Doctor referred to Radiologist for confirmation of age of the prosecutrix to Medical College Hospital, Raipur.

5. During investigation, one undergarment of the prosecutrix was seized vide Ex.-P/4. Spot map (Ex.-P/5) was prepared. One undergarment and Nokia mobile phone of appellant Mohd. Kamran (A-1) were seized vide Ex.-P/7. Slides of the prosecutrix were seized vide Ex.-P/8. Lock & key were seized from the place of occurrence vide Ex.-P/9.
6. As per ossification Test (Ex.-P/11) conducted by PW-6 Dr. Sakun Markam, the prosecutrix was found to be aged about 20 years and Ex.-P/12, Ex.-P/13 & Ex.-P/14 are X-ray plates of the prosecutrix. Details of Call and SMS of appellant Mohd. Kamram (A-1) were seized vide Ex.-P/21.
7. Accused/appellants Mohd Kamran (A-1), Sayed Saddam Ali @ Molu (A-2) and Bilal Khan (A-3) were arrested on 12.10.2012 and appellant Mohd. Kamran (A-1) was medically examined by PW-8 Dr. C.L. Sahu on the same day and he gave his MLC report (Ex.-P/18) and as per MLC report (Ex.-P/18), there is no suggestion has been given by the Doctor that the appellant (A-1) was not able to do intercourse.
8. After investigation, charge-sheet was filed against all the appellants/accused persons (A-1, A-2 & A-3) for the offence under Sections 376 & 342 read with Section 34 of IPC. While framing the charge, the Additional Sessions Judge framed the charge against the accused persons/appellants under Sections 376(g) & 342 read with Section 34 of IPC. Appellant Mohd. Kamran (A-1) has denied the charge framed against him and prayed for trial. Appellant Sayed Saddam Ali @ Molu (A-2) and appellant Bilal Khan (A-3) have denied the charge framed against them and pleaded that they had gone to village Tirra to attend rituals of their grandfather.
9. The prosecution in order to establish charge against the accused persons /appellants examined 11 witnesses namely PW-1 prosecutrix herself, PW-2

Dipti Kaur, PW-3 Ranjot Chhabda, PW-4 Amarjeet Singh, PW-5 Pankaj Kumar Wadhwani, PW-6 Dr. Sakun Markam, PW-7 Dr. (Smt.) Madhuri Wankhede, PW-8 Dr. C.L. Sahu, PW-9 Pradeep Kumar Jaiswal, PW-10 Ramesh Sahu and PW-11 Krishna Prasad Jangde. Statements of the accused persons/appellants (A-1, A-2 & A-3) were recorded under Section 313 of the Cr.P.C. in which appellant Mohd Kamran (A-1) denied the material appearing against him and stated that he is innocent, he has been implicated in a false case. Appellant Sayed Saddam Ali @ Molu (A-2) and Appellant Bilal Khan (A-3) have stated that on the date of incident i.e. 06.10.2012 they had gone to village Tirra to attend rituals of their grandfather Abdul Gaffar Khan and on the date of incident, they were in village Tirra from 10:00 am to 10:00 pm. The accused persons/appellants examined Dabbir Khan as DW-1 and Halal Khor as DW-2 in their defence.

10.After appreciation of the evidence available on record, the learned the Additional Sessions Judge, Dhamtari (C.G.) by the impugned judgment, while acquitting the accused/appellants of the charge under Section 376(g), convicted and sentenced them as mentioned in para- 2 of this judgment, hence this appeal.

11.Learned counsel for the appellants submits that prior to the incident, both appellant Mohd. Kamran (A-1) and the prosecutrix (PW-1) were known to each other and the prosecutrix was a consenting party to the act of the accused/appellant (A-1) as on SMS sent by appellant (A-1) through his mobile phone, she had gone to Noorani Garage on her own will. Hence, the offence under Section 342 read with Section 34 of IPC is not made out against the appellants and they deserve to be acquitted of the said charge.

12.On the other hand, learned counsel for the State supporting the impugned judgment submits that the trial Court has rightly convicted and sentenced the appellants for the above offence which needs no interference by this Court.

13.Heard learned counsel for the parties and perused the evidence available on

record.

14. Looking to the evidence of prosecutrix (PW-1), the trial Court acquitted all the appellants (A-1, A-2 & A-3) from offence under Section 376(g) of IPC and giving finding that if any sexual intercourse was committed by appellant Mohd. Kamran (A-1), the same was done with the consent of the prosecutrix (PW-1). However, the trial Court has convicted and sentenced the appellants for the offence under Section 342 read with Section 34 IPC holding that they wrongfully confined the prosecutrix in Noorani Garage. As submitted by learned counsel for the State, no appeal has been filed by the State against the acquittal of the appellants for the offence under Section 376 (g) of IPC.

15. Prosecution case is based on the evidence of prosecutrix (PW-1). Prosecutrix (PW-1) admitted in her deposition that she was with appellant Mohd. Kamran (A-1) for about 20-25 minutes in the Garage and appellant Mohd. Kamran committed intercourse with her. Thereafter, someone knocked at the Garage from the outside, she got scared and started wearing her clothes. When the shutter of the Garage was opened, her brother was standing outside and he (brother of the prosecutrix) slapped her and appellant Mohd. Kamran went away from the said Garage. Looking to the entire evidence of prosecutrix (PW-1) specially in para-8 of her deposition that when she and appellant Mohd. Kamran (A-1) were in the Garage and the Garage was locked from the outside by his friends (A-2 & A-3), she did not shout for help. In Para-7, she also admitted that prior to the incident, she met appellant (A-1) in the same Garage. Looking to the entire evidence and conduct of the prosecutrix (PW-1), it is clear that she willfully reached Noorani Garage and when the shutter of the said Garage was closed, appellant (A-1) committed sexual intercourse with the prosecutrix, at that time, she did not shout for help and did not object when the shutter of Garage was being closed by the friends (A-2 & A-3) of the appellant (A-1).

16. PW-3 Ranjot Chhabda, the elder brother of the prosecutrix (PW-1) has

stated in his deposition in para-6 that when the shutter of the Garage was knocked and he shouted, no voice of the prosecutrix came from inside and when the shutter of Garage was opened, his sister (PW-1) was standing there in normal condition, then he slapped her sister. PW-3 has also admitted that the appellant (A-1) is friend of her sister (PW-1), therefore, she came to meet him (A-1).

17.For bringing home offence under Section 342 of IPC, the following ingredients are required to be proved beyond reasonable doubt:

- (1) The accused voluntarily obstructed the complainant;
- (2) The obstruction was to prevent the complainant from proceeding beyond (the limits imposed) which he had a right to proceed.

18.In this case, the prosecutrix (PW-1) had willingly reached the place Garage to meet the appellant (A-1) on the SMS being sent by him to the mobile of the prosecutrix. When shutter of the Garage was closed by the friends (A-2 & A-3) of A-1 from outside, she did not try for proceeding away from the place of occurrence, nor objected when the shutter was being closed, nor shouted for help and as per her deposition, she admitted in para-7 that prior to the incident, she met the appellant (A-1) in the same Garage. In the present case, the incident happened on 06.10.2012 and the F.I.R. (Ex.-P/2) was lodged on 11.10.2012 after delay of 4 days. This shows that the prosecutrix (PW-1) reached Noorani Garage on her own will and she accompanied the appellant (A-1) on her own will for about 20-25 minutes in the Garage and it was not a case that the appellant (A-1) wrongfully confined the prosecutrix (PW-1) and committed sexual intercourse without her consent. Considering the contradictory evidence of the prosecutrix, evidence regarding her age and conduct of the prosecutrix, I am of the view that the prosecutrix was a consenting party and in the above facts and circumstances of the case, the offence under Section 342 read with Section

34 of IPC would not be made out against the appellant (A-1) and appellants (A-2 & A-3) who had locked the shutter of the Garage from outside. Thus, in view of the aforesaid factual and legal position, this Court is of the considered opinion that the conviction of the accused/appellants (A-1, A-2 & A-3) under Section 342 read with Section 34 of IPC is not sustainable in the eye of law and they are entitled to be acquitted of the said charge.

19. In the result, the appeal is allowed. Conviction and sentence imposed on the appellants (A-1, A-2 & A-3) under Section 342 read with Section 34 of IPC are set aside and they are acquitted of the said charge. As per order-sheet dated 18.02.2013 of Additional Sessions Judge, Dhamtari, the appellants (A-2 & A-3) have already deposited fine amount of Rs.1,000/- each through Receipt No. 194439/57 & 58, the same be refunded to them (A-2 & A-3). The appellants are reported to be on bail, therefore, their bail bonds shall remain in force of a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge