

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2080 of 2000

Ganeshram Satnami, aged 38 years, son of Dukalha Satnami, by occupation Labourer, resident of Chorbhatthi, Police Station Bemetara, District Durg, M.P. (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellant : Ms. Sharmila Singhai and Shri F.S. Khare, Advocates
For Respondent : Shri Ghanshyam Patel, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

26.2.2021

1. The instant appeal has been preferred against the judgment dated 26.7.2000 passed by the Additional Sessions Judge, Bemetara, District Durg in Sessions Trial No.84 of 1998, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 450 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.300/- with default stipulation
Under Section 376(1) of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.500/- with default stipulation

2. According to the case of prosecution, on the date of incident, the prosecutrix (PW1) was a married woman of age of about 24 years. In the intervening night of 17th and 18th of October, 1997 at about 12:15 a.m., she was sleeping at home. Her husband was not

present at home. Allegedly, the Appellant entered her house. He climbed on her bed as a result of which she woke up. She saw in the light that it was the Appellant. When she tried to raise a voice, the Appellant gagged her mouth and committed forcible sexual intercourse with her. Thereafter, the Appellant ran away. Her maternal father-in-law Hemlal (PW6) saw the Appellant running away. Hemlal (PW6) asked her then she told him about the incident. The matter was also informed to Bisahat (PW2), another maternal father-in-law of the prosecutrix. Next day, First Information Report (Ex.P14) was lodged by the prosecutrix. She was medically examined by Dr. Pratibha Dani (PW3). Her report is Ex.P2. Statements of witnesses were recorded under Section 161 of the Cr.P.C. On completion of the investigation, a charge-sheet was filed against the Appellant. The Trial Court framed charges against him.

3. To bring home the offence, the prosecution examined as many as 14 witnesses. Statements of the Appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the guilt, pleaded innocence and false implication. No witness has been examined in his defence.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in 1st paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that without there being any clinching and sufficient evidence on record, the

Trial Court has wrongly convicted the Appellant. It was further submitted that the entire story narrated by the prosecutrix is suspicious. From the statement of witnesses, it appears that there was a previous enmity between the parties. Therefore, possibility of false implication of the Appellant cannot be ruled out. It was further submitted that even if the entire case is taken as it is, it appears that the prosecutrix was a consenting party. Since Hemlal (PW6), maternal father-in-law of the prosecutrix saw the Appellant running away from the spot, the matter was reported.

6. On the contrary, Learned Counsel appearing for the State opposed the submissions put-forth on behalf of the Appellant and supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the entire material available on record including the statements of witnesses.
8. In her Court statement, the prosecutrix (PW1) has deposed that she was sleeping alone at home in the night. At that time, at about 12 O'clock, the Appellant entered her room, climbed on her bed, lifted her petticoat up and penetrated his penis in her vagina then she woke up. She has further deposed that thereafter the Appellant gagged her mouth. He completed the sexual intercourse. After his discharge, she wiped her private part with her petticoat. She has further deposed that having heard voice, Hemlal (PW6) came there then she narrated him about the incident. During cross-examination in paragraph 4, she has deposed that Tarandas was

her fifth husband with whom she was residing for the last 4 years. She has further admitted that in her house there were two rooms and one verandah. She has further admitted that Hemlal (PW6) and Bisahat (PW2) lived nearby her house. She has further admitted that Balaram (not examined) is her maternal father-in-law. She has further admitted that son of the Appellant, namely, Rajkumar was allegedly charged for outraging modesty of Hemin, daughter-in-law of Balaram and later on after taking money a compromise had taken place. During cross-examination, this witness has deposed that Sahebadas (not examined) is her *devar* (brother-in-law). In paragraph 11 of her cross-examination, she has also admitted that when Bisahat (PW2) came to the spot, at that time, before her telling anything to Bisahat (PW2), Hemlal (PW6) told to Bisahat (PW2) that he saw Sahebadas going away.

9. Hemlal (PW6) has deposed that at about 1 a.m., he woke up for doing *manjan* (rubbing of teeth with some substance). At that time, the prosecutrix made a call. He went to her house. He saw the Appellant running away from there. However, during cross-examination, this witness has admitted that there was a previous enmity between him and the Appellant.
10. Apart from the above two witnesses, i.e., the prosecutrix (PW1) and Hemlal (PW6), the other witnesses examined by the prosecution are not material witnesses.
11. On a minute examination of the statement of the prosecutrix (PW1), it appears that the entire story narrated by her is suspicious

because when her husband was not present at home, she being a married woman was sleeping alone at home without bolting the door of the house is suspicious. Even if the door was bolted then the Appellant without having any previous relation with her would enter her house in the midnight is also suspicious. Statement of the prosecutrix (PW1) that she woke up after penetration of penis in her vagina is also unnatural. If the entire statements of the prosecutrix (PW1) and Hemlal (PW6) are taken as they are, it appears that the prosecutrix was a consenting party. Since Hemlal (PW6) saw the Appellant running out of the house of the prosecutrix, then, on being asked by Hemlal, the prosecutrix, for the first time, made complaint to him about the incident. Looking to the entire evidence adduced by the prosecution, it appears that either the Appellant has been falsely implicated due to previous enmity or the alleged act was committed with the consent of the prosecutrix. Therefore, the Appellant is certainly entitled to get benefit of doubt. In my considered view, the Trial Court has wrongly convicted him.

12. Consequently, the appeal is allowed. The judgment under challenge is set aside. The Appellant is acquitted of the charges framed against him.

Sd/-
(Arvind Singh Chandel)
JUDGE