

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 774 of 2009**

- Mainpratap, S/o Shri Maniram, aged about 30 years, Occupation Agricultural, Resident of village Dhummadand, Police Station Sonhat, District – Koriya (C.G.).

---- Appellant**Versus**

- State of Chhattisgarh Through Police Station – Sonhat, District – Koriya (C.G.)

---- Respondent

For Appellant	:	Shri Vishnu Koshta, Advocate
For State/Respondent	:	Shri H.S. Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board**26/08/2021**

1. This appeal has been preferred against the impugned judgment dated 09/10/2009 passed in Sessions Trial No.123/2007 by the Sessions Judge, Koriya, (Baikunthpur), (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 450 of the I.P.C.	R.I. for 3 years and fine of Rs.500/- with default stipulations.
U/s 376 of the I.P.C.	R.I. for 7 years and fine of Rs.500/- with default stipulations.

Both sentences to run concurrently.

2. According to case of the prosecution, in the present case, prosecutrix (PW-1) is a married lady aged about 26 years having two child. Appellant, herein is the '*devar*' of prosecutrix. Prior to 3-4 days of the alleged incident, appellant told the prosecutrix to develop sexual intercourse with him but she refused to do so. On 12.09.2007, prosecutrix after dinner went for sleeping alongwith his son in her room, at that time, husband of the prosecutrix was not present in the house as he has gone to village Katgodi. Allegedly, appellant entered in the room of prosecutrix and committed forcible sexual intercourse with her. It is further alleged that appellant has also brought liquor with him and offered the prosecutrix to consume on which prosecutrix refused to do so. Thereafter, husband of the prosecutrix knocked the door of the house. Prosecutrix opened the door and she narrated the entire incident to her husband. At that time, appellant was hidden in the house, then husband of the prosecutrix caught him and committed marpit with him. Brother of the appellant namely Shivprasad came to the spot and took away the appellant with him. Thereafter, matter was reported by prosecutrix vide Ex.P1 and on the basis of the said, offence was registered. Statement of prosecutrix and other witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. To prove the guilt of the accused/appellant, prosecution has examined as many as 10 witnesses. One defence witness has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein

accused/appellant has pleaded innocence and false implication.

3. After completion of trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.
4. Learned Counsel appearing on behalf of the appellant submits that appellant is innocent and is falsely implicated in the present case. He further submits that trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. He further submits that on perusal of statement of the prosecutrix and other witnesses, it appears that prosecutrix was the consenting party. Appellant and prosecutrix were having previous relationship and at the time of alleged incident, husband of the prosecutrix was not present in the house, then, prosecutrix and appellant developed sexual relationship with consent of prosecutrix. Thus, prosecutrix was the consenting party in the alleged act, therefore, conviction of the appellant is not sustainable.
5. Per contra, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing for the parties, perused the statements of the witnesses and other annexed documents available on record minutely.
7. Prosecutrix (PW-1) in her Court statement has deposed that on the date of incident, after having dinner she went to sleep alongwith her child. At that time appellant entered in her room and sat in cot in which

she was sleeping. Thereafter, appellant committed forcible sexual intercourse with her and also threatened her to stab with knife. She further deposed that appellant had also brought liquor with him and offered liquor to her. At that time, her husband namely Jaikumar (PW-2) came and knocked the door of the house. When she opened the door, the appellant hide inside the room. Then her husband searched the appellant with the help of torch and caught him and thereafter, committed marpit with him. Prosecutrix (PW-1) in her examination-in-chief itself has deposed that prior to 3-4 days of the alleged incident, appellant had proposed her to develop sexual intercourse with him but she refused to do so. In paragraph 22 of cross-examination of the prosecutrix, she had admitted that when appellant offered wine to her, at that time she was standing and appellant was sitting in cot near door of the house. Jaikumar (PW-2) also deposed that on the date of incident when he reached the house around 8:00 PM, he saw that door of his house was closed. He knocked the door and came inside the house, then his wife (prosecutrix) told him that appellant had committed sexual intercourse with her had also offered wine to her. Hearing this Jaikumar became angry and committed marpit with the appellant. He further deposed that his wife had not told him about the previous incident where appellant wanted to develop sexual relationship with her. Ayodhya Prasad (PW-3) i.e. younger son of the prosecutrix who is aged about 12 has also deposed that at the time of incident, he was sleeping. On hearing the shout, he woke up and saw that appellant was hiding in the room and when his father saw the appellant hiding, then he slapped the appellant.

8. Shivpratap (PW-8) during his cross-examination had admitted that

when he reached the spot, at that time he saw that Jaikumar (PW-2) was scolding and shouting over his wife (prosecutrix) as to why she had allowed appellant to enter in her room.

9. On a minute examination of evidence available on record particularly on perusal of statement of the prosecutrix (PW-1) and other witnesses, it appears that prosecutrix was the consenting party and there was previous relationship between prosecutrix and appellant. Since, at the time of alleged incident, husband of the prosecutrix was not present in the house, the alleged act has been committed with the consent of prosecutrix. All of sudden, when husband of prosecutrix came to house, then prosecutrix lodged a report in the police station. Thus, finding of the trial Court that forcible sexual intercourse has been committed by appellant with prosecutrix is not in accordance with the evidence available on record. Therefore, conviction of the appellant is not sustainable.
10. Consequently, appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charge framed against him.
11. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge