

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.51 of 2017

Judgment Reserved on : 5.7.2021

Judgment Delivered on : 16.7.2021

Naiharsay, son of Nouharsay, aged about 28 years, resident of Village Kumarta, Police Station Kapu, District Raigarh, Chhattisgarh, Presently resident of Village Thakur Podi, Police Station Kapu, District Raigarh, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Kapu, District Raigarh, Chhattisgarh

--- Respondent

For Appellant	:	Shri Awadh Tripathi, Advocate
For Respondent	:	Shri Amit Singh, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against judgment dated 21.12.2016 passed by the Additional Sessions Judge (FTC), Raigarh in Sessions Trial No.114 of 2012, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.10,000 with default stipulation

2. Case of the prosecution, in short, is that on 30.4.2012, i.e., the date of registration of First Information Report (Ex.P2), the prosecutrix (PW3) was 24 years old. On 30.4.2012 itself, she made a written

complaint (Ex.P1) alleging therein that she got acquainted with the Appellant in July, 2009. She met with him at Village Thakur Podi. In 2009, on the day of Dhanteras Festival, at about 7:30 p.m., the Appellant made forcible physical relationship with her. Thereafter, he apologised for his act and promised to marry her. Considering his apology to be genuine, she did not make any complaint. Next day, he took her to his house. There, his parents also assured her that on completion of her studies, they will perform her marriage with the Appellant. It is further alleged that thereafter the Appellant took her to many villages, namely, Patarapara, Kumrata, Miriguda, Dharamjaigarh, Surungpani and Gerwani and introduced her there as his wife. He also committed sexual intercourse with her there. Thereafter, surprisingly, in December, 2011, he refused to marry her. Prior to that, in July, 2011, a social meeting was convened in Kilkila Temple in which also he admitted his guilt. On the basis of the written complaint (Ex.P1), First Information Report (Ex.P2) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant. A charge was framed against him.

3. To bring home the offence, the prosecution examined as many as 13 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure 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, vide the judgment under challenge, 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 it is not in dispute that at the time of alleged incident, the prosecutrix was a major girl. According to her deposition, the first incident of sexual intercourse was done with her by the Appellant on the day of Dhanteras Festival in July, 2009. The written complaint (Ex.P1) was lodged by her in April, 2012. The delay in lodging the complaint has not properly been explained. It was further argued that from the statement of the prosecutrix (PW3), it is established that physical relationship continued between her and the Appellant for a long period of about 3 years. Both also visited various places as husband and wife. But, during this long period, she never raised any complaint against the Appellant. In July, 2011, when the Appellant admitted his guilt in a social meeting convened in a temple, at that time also, she did not raise any complaint against him. In December, 2011, when the Appellant refused to marry her, at that time also, she did not make any complaint. Therefore, it is clear that she was a consenting party and the physical relationship continued between them with her consent. Placing reliance on **(2020) 10 SCC 108 (Maheshwar Tigga v. State of Jharkhand)**, it was submitted that misconception of fact has to be in proximity of time to the occurrence and cannot be spread over years. Therefore, it was argued that it cannot be accepted that the prosecutrix consented to the Appellant for commission of sexual

intercourse for a long period of 3 years on a false promise of marriage. Since the prosecutrix was a major girl and was a consenting party, the conviction is not sustainable.

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 minutely perused the entire material available on record including the statements of the prosecutrix and other witnesses.
8. It is not in dispute that at the time of first incident, i.e., on the day of Dhanteras Festival in 2009, the prosecutrix (PW3) was 21 years old. According to her Court statement, at the time of first incident, the Appellant committed forcible sexual intercourse with her. Her statement in this regard is also supported by her sister Shakuntala (PW8) and brother-in-law Mohanlal (PW6). But, none of these three made any complaint in this regard. Without there being any acquaintance between the Appellant and the prosecutrix, the Appellant dragged her to the school and committed forcible sexual intercourse with her there appears to be doubtful.
9. As deposed by the prosecutrix (PW3), she and the Appellant visited Villages Patarapara, Kumrata, Miriguda, Dharamjaigarh, Surungpani and Gerwani and the Appellant introduced her there as his wife and made physical relationship with her there. She further deposed that a social meeting was convened in Kilkila Temple in

July, 2011 in which the Appellant admitted his guilt. Thereafter, finally, in December, 2011, he refused to marry her. But, she did not make any report in July, 2011 or in December, 2011. When engagement of the Appellant with another girl took place and his marriage was fixed then she made the written complaint (Ex.P1) in April, 2012. From her above conduct, it appears that whatever relation continued between her and the Appellant, her consent was involved therefor. From her statement, it is established that the physical relationship continued between her and the Appellant for a long period of 3 years. In July, 2011, the Appellant admitted his guilt in the social meeting and in December, 2011, he, finally, refused to marry her, but, she did not make any complaint against the Appellant on those occasions. Furthermore, from her statement, it is clear that the physical relationship continued between them during the period from July, 2011 to December, 2011 also. Even after admitting his guilt by the Appellant in the social meeting convened in July, 2011, she allowed him to make physical relationship with her and she did not make any complaint against him. In December, 2011 also, when he finally refused to marry her, she did not make any complaint against him. She made the complaint (Ex.P1) only after his engagement for marriage with another girl took place. Therefore, her statement that she consented for the physical relationship on a false promise of marriage is not acceptable. The evidence clearly establishes that there was her consent for the physical relationship for the long period of 3 years. Since she was a major girl and was a consenting party, the conviction under Section 376 of the Indian Penal Code

imposed upon the Appellant is not sustainable.

10. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.

Sd/-
(Arvind Singh Chandel)
JUDGE