

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2676 of 2000

- Faguwa Kurmi, S/o Daya Ram Kurmi, Aged About 47 Years, Occupation – Cultivation, R/o Village Seoni Murkuta, PS Nawagarh, Distt. Durg M.P. (Now Chhattisgarh).

---- Appellant

Versus

- The State of M.P. (now Chhattisgarh) Through The District Magistrate, Durg, M.P.(Now Chhattisgarh).

---- Respondent

For Appellant	:	Shri B.D. Guru, Advocate.
For State/Respondent	:	Shri Rakesh Sahu, Dy. G.A.

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

08/03/2021

1. This appeal has been preferred against the impugned judgment dated 15/12/1999 passed in S.T. No.33/97 by the Additional Sessions Judge, Bemetara, District – Durg, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 376 (1) of the I.P.C.	R.I. for 7 years and fine of Rs.1,000/- with default stipulations.

2. In the present case, prosecutrix (PW-1) is a married lady, aged about

35 years. Brief facts of the prosecution case are that on 26/11/1996 at about 8:30 PM when prosecutrix was returning after attending call of nature, allegedly, appellant caught hold the prosecutrix and took her to varandah of one Pitamber and committed forcible sexual intercourse with her. When husband of the prosecutrix and other villagers came and saw them in compromising position, the appellant ran away from the spot. Thereafter, matter was reported by prosecutrix (PW-1) vide Ex.P-1. She was medically examined by Dr. Padmini Singh (PW-3). Her report is Ex.P-4. 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. No 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 trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. He further submits that entire story narrated by the prosecutrix is doubtful. There are material contradictions and omissions occurred in the statement of prosecutrix and other witnesses which were ignored by the trial Court. He further states that if the entire case is taken as it is, it appears that prosecutrix was the consenting party. Since, she was seen with the appellant in

compromising position by her husband and other villagers, she has falsely implicated the present appellant in this case. Since, prosecutrix is a married lady and consenting party, no offence can be made out against appellant. 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 entire material and statements of the witnesses minutely.
7. Prosecutrix (PW-1) in her Court statement has deposed that on the date of incident at about 8:00 PM, when she was returning after attending call of nature, near boring, appellant met with her and caught hold her with one hand in her mouth and one in her waist and took her in the varandah of one Pitamber and dashed her down and committed sexual intercourse with her. When she tried to get rid off from the appellant, her bangles were broken and got scratches on her hand and back. According to her, the alleged incident was seen by Kotwar, Harilal (PW-9) and her husband Dukuram (PW-2). On seeing them, appellant fled away from the spot. Thereafter, prosecutrix narrated the entire story to the villagers and lodged the report in the police station. During her cross-examination, she has admitted the fact that at the time of alleged incident, when the appellant was lying over her body at that time villagers and her husband came and saw them in torch light. She further deposed that the appellant committed the alleged act with her for about half an hour.

8. Dukhram (PW-2), husband of the prosecutrix has deposed that on the date of incident, his wife (prosecutrix) had gone to attend call of nature. When she did not return for about half an hour, he enquired and went for search for his wife. When he reached near boring, he saw Gyandas and Harilal (PW-9) were present there and they were having torch with them, then they saw in torch light that appellant was committing sexual intercourse with prosecutrix (PW-1) and on seeing them, appellant fled away from the spot. Then prosecutrix (PW-1) came to him and said that appellant had committed forcible sexual intercourse with her. Material witness Gyandas has not been examined by the prosecution.
9. Harilal (PW-9) has deposed that when he was returning along with Kotwar Gyandas having torch with them, they saw that the appellant was committing sexual intercourse with the prosecutrix. At that moment, husband of the prosecutrix also came there and saw them.
10. Dr. Padmini Singh (PW-3) deposed that on 28/11/1996 she examined the prosecutrix (PW-1). Her report is Ex.P-4 wherein she has categorically reported that no injury is found in the body and no injury mark of violence is seen on genital organ of the prosecutrix.
11. On a minute examination of the evidence and statement of the above witnesses, it makes clear that at the time of incident when appellant was committing sexual intercourse with the prosecutrix, husband of the prosecutrix Dukhram (PW-2), Harilal (PW-9) and Gyandas suddenly reached the spot and saw them in compromising position in the verandah of one Pitamber. According to their Court statement, appellant was committing the alleged act without the consent of the prosecutrix but from their admissions and other evidence adduced by

the prosecution, it appears that alleged act was committed with the consent of the prosecutrix because she is a major and married lady and the alleged act was committed in the varandah of one Pitamber. Though prosecutrix (PW-1) has deposed that appellant caught her forcefully and dashed her down, she sustained no injuries on her body. Therefore, the statement of prosecutrix wherein she has stated that appellant had committed forcible sexual intercourse with her, is not acceptable. From the evidence, it appears that when suddenly husband of the prosecutrix and other villagers reached at the spot and saw appellant and prosecutrix in compromising position, then she made complaint against the appellant. Since, prosecutrix (PW-1) is a consenting party, major and married lady, therefore, conviction of the appellant by the trial Court is not sustainable.

12. Consequently, the appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charge framed against him.
13. 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