

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1075 of 2019

Sunil Singh, S/o Raj Kishore Singh, Aged About 29 Years, Occupation Trade Constable, 14th Battalion, C-Company, Camp Balrampur, Police Station Balrampur, District Balrampur-Ramanujganj Chhattisgarh.

Permanent Address Village Pipri, Police Station Baroi, District Bhind Madhya Pradesh. **---- Appellant**

Versus

State of Chhattisgarh, Through- The Station House Officer, Police Station Balrampur, District- Balrampur-Ramanujganj, Chhattisgarh.

---- Respondent

For Appellant : Shri Rahul Mishra, Advocate

For Respondent/State : Shri Anand Verma, Dy. G.A.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

25.11.2021

1. The appellant in this appeal under Section 374 (2) of CrPC is challenging the judgment of conviction and order of sentence dated 28.06.2019 passed by Special Judge (Atrocities), Balrampur place-Ramanujganj (C.G.) in Special Sessions (Atrocities) Case No. 03/2018, convicting the accused/appellant for the offence punishable under Section 450 of Indian Penal Code (hereinafter referred to as "IPC") and sentencing him to undergo rigorous imprisonment for 4 years with fine of Rs.500/-, in default thereof to undergo rigorous imprisonment for 7 days.
2. Case of the prosecution, in brief, is that between 01.06.2017 to 20.10.2017 at Balrampur, the appellant entered the house of the prosecutrix PW/1, who is a member of Scheduled Tribe, aged about 27 years, residing in main road Balrampur, made forcible sexual

intercourse with her without her will and threatened her to life. The appellant had taken photographs of prosecutrix/victim in his mobile and threatened her to send her pictures to her husband. On the basis of continuous blackmailing, he committed forcible sexual intercourse with the prosecutrix on number of times. Ultimately, she disclosed the said fact to her husband and thereafter report was lodged against the appellant u/s 506, 450, 376 (2) (n) of IPC and Section 3(2)(v) of SC/ST Act and during investigation he was arrested.

3. FIR was lodged by the prosecutrix vide Ex.P/2 on 01.01.2018. During investigation site map was prepared vide Ex. P/4 by PW/10 Nitesh Gautam. Vide Ex.P/5 Nazri Naksha was prepared by PW/12 Dhansay Nagesh. Panty of the prosecutrix was seized vide Ex.P/6. Vide Ex.P/8 statement of the prosecutrix was recorded. Vide Ex.P/9 & 10 statements of the witnesses namely Urmila Lakda and Karmila Minz were recorded. Vide Ex.P/13 undergarment of the appellant was seized. Vide Ex.P/14 appellant was arrested by the police on 02.01.2018. Vide Ex.P/15 vaginal slide of the prosecutrix was prepared and sealed for medical examination. Vide Ex.P/12 no stain of semen was found in the seized underwear of the appellant and it was handed over to constable for further chemical examination. Vide Ex.P/11 the appellant was examined medically and he was found capable of performing sexual intercourse. As per FSL report human sperm was found on the panty of the prosecutrix and underwear of the appellant. After completing investigation, charge-sheet was filed against the appellant u/s 376 (2-n), 506, 450 of IPC and Section 3 (2) (v) of SC/ST Act.
4. Learned trial Court framed charges against the appellant u/s 376 (2-n), 506 Part-II, 450 of IPC and Section 3 (2) (v) of SC/ST Act and accused appellant denied the aforesaid charges and prayed for trial.
5. To establish its case the prosecution examined as many as 13 witnesses. Thereafter, statement of the accused appellant was recorded under Section 313 of CrPC where he denied the circumstances appearing against him in the prosecution case, pleaded

innocence and false implication. However, no witness was examined by the appellant in his defence.

6. Learned counsel for the appellant submits that the impugned judgment has been passed by the trial Court overlooking the material contradictions and omissions in the statements of the witnesses. The prosecutrix PW/1 prior to lodging of the FIR was well acquainted with the appellant and she herself called the appellant to her home. The learned Court below based on testimony of witnesses without there being any clinching or cogent evidence convicted the appellant u/s 450 of IPC. The material prosecution witnesses have not supported the case of the prosecution and they turned hostile. Even the prosecution has failed to prove charges u/s 376(2)(n), 506 Part-II of IPC and Section 3 (2)(v) of SC/ST Act and appellant was acquitted of the said charges. No cogent evidence has been adduced by the prosecution to prove that appellant committed house trespass. Thus, the prosecution has failed to prove its case against the appellant beyond all reasonable doubt and as such the appellant deserves to be acquitted of the charge u/s 450 of IPC levelled against him.
7. On the other hand learned State counsel supports the impugned judgment and submits that trial Court after due appreciation of the entire oral and documentary evidence on record has rightly convicted and sentenced the appellant by the impugned judgment which needs no interference by this Court.
8. Heard learned counsel for the parties and perused the material available on record.
9. In her deposition, the prosecutrix PW-1 has categorically stated that she was living at main road of Balrampur with her five children in her house, at around 10 pm she was looking for her domestic duck outside her home, at that time door of the house was open, she was having no idea that the appellant was inside her home, after sometime she returned her home and closed the door, at that time the appellant caught hold of her from back and he committed rape on her. She told

her son to open the door, thereafter door was opened by her son, who is 10 years old and then the appellant went from there. She further stated in para-4 that she had fallen in love with the appellant and the appellant frequently visited her home and the physical relation between them was consensual. She further stated in para-5 that her husband had come to know about their illicit relations and thereafter he told her that he would live with her only if she lodged report against the appellant. In paras 16, 17, 18 and 19 she states that whatever happened between the appellant and herself was consensual.

10. PW/2 father-in-law, PW/3 Urmila Lakda, sister-in-law, PW/4 mother-in-law of the prosecutrix are hearsay witnesses.

11. PW/5 Karmila Minz, Anganbadi worker, PW/7 Lalchand, have turned hostile. PW/6 Dr. Arun Kumar, medical officer, examined the appellant and found him capable of performing sexual intercourse vide Ex.P/12. PW/7 son of the prosecutrix admitted in his deposition that he saw the appellant visiting his home number of times, he saw the appellant holding his mother and both were locked in one room. PW/9 husband of the prosecutrix deposed that appellant committed forcible sexual intercourse with his wife and his son PW/7 had seen the incident. PW/10 Nitesh Goutam, SDOP investigating officer supported the prosecution case.

12. The Trial Court considering the material available on record by the impugned judgment, acquitted the appellant of the charges under Section 376(2) (n) of IPC and Section 3 (2) (v) of SC/ST Act and convicted him only for the offence u/s 450 of IPC.

13. The Prosecution absolutely failed to prove the case against the appellant that he entered the house of the prosecutrix to commit rape with her which is an offence punishable with life imprisonment. As per the findings of the learned trial Court, the prosecutrix a consenting party and on the basis of that, the appellant was acquitted of the charge u/s 376 (2) (n) of IPC.

14. From the evidence of the prosecutrix PW/1, her son PW/8, it is clear that the prosecutrix was consenting party to the act of the appellant. In order to constitute u/s 450 of IPC, the prosecution is required to prove that the accused committed house trespass in order to commit offence punishable with imprisonment for life. In this case, since the prosecutrix was consenting party, having affair with the appellant, entry of the appellant in the house of the prosecutrix to have physical relation with the prosecutrix with her free consent said to be an act constituting the offence u/s 450 of IPC. Being so, the conviction of the appellant u/s 450 of IPC is not adduced on proper appreciation of the evidence on record and therefore, the appellant is acquitted of the said charge.

15. In the result, the appeal is allowed. The appellant is acquitted of the charge u/s 450 of IPC. The fine amount, if already deposited be refunded to the appellant. The appellant is reported to be on bail, therefore, his bail bond shall remain in operation for a period of sixth months from today in view of Section 437-A of Cr.P.C.

Sd/-

Gautam Chourdiya

Judge

Nadim