

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 13 of 2015**

Mohanlal Meshram S/o Dhoku, aged about 45 years, R/o Gali No. 2, Bakhtawar Chal, Tulsipur, Police Station Kotwali, Civil and Revenue District Rajnandgaon (C.G.).

----Appellant**Versus**

State of Chhattisgarh, through the Station House Officer, Police Station- Kotwali, District Rajnandgaon (C.G.)

---- Respondent

For Appellant	:	Ms. Priya Sharma, Advocate along Mr. Goutam Khetrapal, Advocate
For Respondent	:	Mr. Ghanshyam Patel, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****18/02/2021**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 06/08/2014 passed in Sessions Trial No. 95/2013 by the Additional Sessions Judge, Fast Track Court, Rajnandgaon (C.G.), whereby the Appellant has been convicted under Section 376 of the IPC and sentenced to undergo RI for 10 years and to pay fine of Rs. 1000/- with default stipulation.
2. In this case, the Prosecutrix is a major married lady aged about 40 years. According to the case of the prosecution on 27/09/2013 at about 2:00 pm, when the Prosecutrix was in her house and her husband was sleeping, at that time the appellant who is elder brother-in-law of the Prosecutrix asked her for taking rice. When the Prosecutrix went to take rice in the house of the appellant, the appellant caught hold her and took her in the house, and committed sexual intercourse with her. The

incident was narrated by the Prosecutrix to her husband and neighbour Nasiman (PW3) and Jamuna Bai (PW5). The matter was reported. Statements of the Prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. As many as 9 prosecution witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence. She further submits that from the evidence adduced by the prosecution, it is well established that prior to the incident also, 4-5 times the appellant had committed sexual intercourse with the Prosecutrix and she had not lodged any complaint against the appellant. From perusal of the statement of the Prosecutrix and looking to her conduct, it appears that she was the consenting party. She further submits that since the Prosecutrix was the consenting party and is a married lady, therefore, no offence is made out against the appellant and the conviction of the appellant is not sustainable.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and

perused the record as well as statements of the Prosecutrix and witnesses minutely.

7. In her court statement, the Prosecutrix (PW1) has deposed that on the date of incident when she was at her house and her husband was sleeping, the appellant asked her for rice and when she went to take the rice, the appellant caught hold her and committed sexual intercourse with her. She further deposed that after returning from there she narrated the entire incident to her husband and neighbour Nasiman Bai (PW3) and Jamuna Bai (PW5). Thereafter, the matter as reported. In paras 7, 8 & 12 of her cross-examination, it has been admitted by her that before this incident, the appellant had committed sexual intercourse with her 4-5 times and she had disclosed this to her husband, but no complaint was made against the appellant by anyone.
8. Nasiman (PW3) has also deposed that when she saw the Prosecutrix coming out from the house of the appellant, her clothes was not properly dressed. When this witness asked the Prosecutrix then she told that the appellant had committed sexual intercourse with her. This witness has been declared hostile. Jamuna Bai (PW5) has also not supported the case of the prosecution. Karudas (PW4), husband of the Prosecutrix in para 7 of his cross-examination has also admitted that there was relationship going on between her wife and the appellant for a long time.
9. On minute examination of the above evidence, it makes clear that the appellant is Jeth of the Prosecutrix and they had developed physical relationship 4-5 times before the incident, but no complaint was made in this regard before this incident. On the date of incident also, when

Nasiman Bai (PW3) saw the Prosecutrix coming out from the house of the appellant, then the Prosecutrix first time made complaint. Moreover, from the admission made by the prosecutrix herself and looking to the conduct of the prosecutrix, it is clear that she was the consenting party and the act has been done with the Prosecutrix with her consent, therefore, the finding of the trial Court is not in accordance with the evidence available on record and thus the conviction of the appellant is not sustainable.

10. Consequently, the appeal is allowed. The judgment dated 06/08/2014 passed in Sessions Trial No. 95/2013 is set-aside. The appellant is acquitted from the charge framed against him. It is reported that the accused/appellant is in jail. He be released forthwith, if not required in any other case.
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