



Checked & Verified, 2013

20.A - 1430/2000

II-188/(Jail)
J.P.R.-5,000-9-81

APPEAL OF PRISONER

No. 896 Name Prakash Bhagwat
Father's name Cabine
Residence 7 yrs. Age 36 years.
Sentenced to 376 1st on 25.4.2000
Under section 143 by Vth A.S.J./Durg.

is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the case for seven days unless a legal practitioner appears. If the legal practitioner does not appear within seven days he may not be heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement 25/4/2000
2. Date of which copy received 25/4/2000
3. Date on which Appeal sent 1.5.2000
4. Whether the prisoner wishes to be represented or not - Yes/No.

No. 896 District Durg. Name Bhagwat.
Continued in 1982/100 Jail Durg.
No. 1982/100 dated 25.2.2000
wa the CHIEF JUDICIAL MAGISTRATE Durg.

transmiss a copy of judgement or order passed in the case for favour of the proper Appellate Court.
Superintendent [Signature]
Superintendent [Signature]

Date of receipt in C. J. M.'S Office
Date of receipt of record to accompany
Memo of Appeal of the Appellate Court.
No. 1982/100 Dated 25.2.2000
Forwarded to the C.J. Magistrate

Date of receipt in ate Court

(P.T.O.)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Justice T.P. Sharma

Criminal Appeal No.1430/2000

APPELLANT

Bhagwat

Vs

RESPONDENT

The State of Chhattisgarh

Present:

Mrs. Kiran Jain, Advocate for the appellant.

Mr. U.K.S. Chandel, Panel Lawyer for the State.

J U D G M E N T

(30.06.2014)

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 25.4.2000 passed by the 6th Additional Sessions Judge, Durg in S.T. No.303/99 whereby and whereunder the Court below after holding the appellant guilty for committing rape with the prosecutrix (PW-10), name not mentioned, convicted him under Section 376 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo R.I. for 07 years and fine of Rs.500/-, in default to undergo additional R.I. for three months.
2. Conviction is impugned on the ground that without there being any iota of evidence the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on 28.6.1999 at about 2.15 p.m. on account of illness (पेचिस) the prosecutrix (PW-10) was sleeping in the verandah. Her husband had gone out of the house. The appellant, who had consumed liquor, came to her house, asked about her husband, thereafter caught hold her hands, abused her, dragged her inside the room and there committed rape with her. Raju & his wife have seen the incident. She came out from the house and went to the house of Dhannu, knocked his doors but nobody came out. She also went to the house of some Telgu woman where she was hidden for sometime. Thereafter, she sent written complaint (Ex.P-7) to the police on the basis of which FIR (Ex.P-11) was recorded. The

prosecutrix was sent for medical examination. She was examined by Dr. (Smt.) Sujan Sawant (PW-1) vide Ex.P-1 but she did not notice any injury or symptom to opine commission of recent intercourse with the prosecutrix. Undergarments of the appellant were seized vide Ex.P-4. He was examined by Dr. G.S. Thakur vide Ex.P-5 who found him capable to commit intercourse. Smegma was not found. Undergarments of the prosecutrix were seized vide Ex.P-8. Semen of appellant and undergarments were seized vide Ex.P-9. Vaginal slides were seized vide Ex.P-10. Seized articles were sent for chemical examination to FSL vide Ex.P-13. As per FSL report (Ex.P-14), sperm on petticoat & vaginal slides of the prosecutrix and undergarments of the appellant were not found. Statements of witnesses were recorded under Section 313 of Cr.P.C.

4. After completion of investigation, charge sheet against the appellant was filed before the Judicial Magistrate 1st Class, Durg, who in turn committed the case to the Court of Sessions from where the Additional Sessions Judge has received the case on transfer for trial. In order to prove guilt of the appellant, the prosecution had examined as many as 11 witnesses. Statement of the appellant was recorded under Section 313 of Cr.P.C. where he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication on account of enmity.
5. After providing opportunity of hearing to the parties, the trial Court convicted & sentenced the present appellant as mentioned in Para-1 of this judgment.
6. I have heard learned counsel for the parties, perused the impugned judgment and record of the trial Court.
7. Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of the prosecutrix (PW-10) but her evidence does not inspire confidence. Even otherwise as per her evidence on account of enmity relating to

sell of liquor for which the appellant has compelled the prosecutrix and her husband to leave colony, he has been falsely implicated by the prosecutrix. She further submits that her evidence does not find corroboration from other evidence. Dr. (Smt.) Sugam Sawant (PW-1) has also not noticed any symptom of rape. Undergarments of both the parties were seized on the same day but as per FSL report, sperm was not found in the undergarments which negate the commission of intercourse by the appellant with the prosecutrix. The appellant was examined by Dr. J.S. Thakur (PW-5) on 2.7.1999 i.e. after four days of incident, and he noticed that smegma was missing. Appellant is married person, missing of smegma was not as a result of intercourse with the prosecutrix but may be on account of intercourse by the appellant with his own wife. She further submits that evidence adduced on behalf of the prosecution is not of sterling character and did not find support from other sources, therefore, conviction and sentence of the appellant is not based on cogent and reliable evidence. Atleast the appellant is entitled for benefit of doubt on the ground of previous enmity.

8. On the other hand, learned counsel for the State opposed the appeal and submitted that evidence of the prosecutrix (PW-10) by itself is sufficient to prove guilt of the appellant and on the basis of aforesaid evidence, the Court below has rightly convicted and sentenced the appellant.
9. In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the prosecution.
10. As per evidence of the prosecutrix (PW-10), on 28.6.1999 the appellant has committed forcible intercourse with her and she lodged the report on the same day. As per evidence of Dr. (Smt.) Sugam Sawant (PW-1) and Ex.P-1, the prosecutrix was examined on the same day at 6.30 p.m. i.e. within five hours of the incident. Her petticoat has been seized, slides of vaginal smears were also taken

and the same was sent for chemical examination to the FSL. In the cross-examination the prosecutrix has admitted enmity with the appellant. In para-17 of cross-examination she has also admitted that initially the appellant had lodged report against the prosecutrix and her husband for causing injury to them. In Para-18 she has further admitted that the appellant has made written complaint to the police that they are selling liquor and thereafter they have left G-Cabin. As per her evidence, she was residing at village Kashi, Police Station Patan. As per seizure (Ex.P-18), written complaint (Ex.P-7), FIR (Ex.P-11), address of the prosecutrix is 'G-Cabin, Shandhar Chowk, BMY Charoda'. Her evidence revealed that after the incident she has left 'G-Cabin' i.e. she has left her previous residence on account of complaint made by the appellant against her and her husband. This shows that there was animosity between the parties. Other witnesses have corroborated her evidence. Within five hours of incident, petticoat of the prosecutrix was seized and she was examined by the doctor who has taken slides of vaginal smear and on its examination, the FSL has not affirmed presence of sperm which shows that there was no complete intercourse although as per her evidence the appellant has committed complete intercourse.

11. Evidence of Dr. J.S. Thakur (PW-5), report (Ex.P-5) and seizure (Ex.P-9) whereby semen of the appellant has been seized shows that the appellant was physically competent to commit intercourse and ejaculate his semen. In these circumstances presence of semen or spermatozoa in slides taken and seized from the prosecutrix within five hours of the incident was natural and absence of semen & spermatozoa in such slides is unnatural i.e. medical & chemical evidence also do not corroborate the case of the prosecutrix. As per evidence of the prosecutrix, she was having long enmity with the appellant and the appellant has compelled her and her husband to leave the house.

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12. In the light of aforesaid background of the case, evidence of prosecutrix alone is not sufficient for drawing inference without corroboration from other sources or independent sources, especially in the light of result of chemical examination, and all these circumstances create doubt upon the story of the prosecution. Suspicion howsoever grave cannot take place of legal evidence. Therefore, conviction of the appellant under Section 376 of the IPC is not sustainable under the law.

13. Consequently, the appeal is allowed. Conviction and sentence of the appellant under Section 376 of the IPC are hereby set aside. The appellant is acquitted of that charge. He be set at liberty at once.

Sd/-
T.P. Sharma
Judge

roshan/-