

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 812 of 2013

- Mukku @ Mukesh Yadav, S/o Shankar Lal Yadav, Aged About 29 Years, R/o. Lodhipara, Sarkanda, Near Gate of Agriculture Form, P.S. Sarkanda, Tah.Civil And Rev. Distt. Bilaspur, C.G.

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station A.J.K., Bilaspur, C.G.

---- Respondent

For Appellant : Shri Ravindra Sharma, Advocate.

For State/Respondent : Shri Ghanshyam Patel, G.A.

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

09/06/2021

1. This appeal has been preferred against the impugned judgment dated 21.8.2013 passed in Special S.T. No.33/2012 by the Special Sessions Judge, Bilaspur, District Bilaspur, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 376 of the I.P.C.	R.I. for 10 years and fine of Rs.2,000/- with default stipulations
U/s 450 of the I.P.C.	R.I. for 5 years and fine of Rs.2,000/- with default stipulations
Both sentences to run concurrently.	

2. In the present case, prosecutrix (PW-1) is a major lady having two children. Appellant herein is also a married person having two children. According to the case of the prosecution, on 26.08.2012 at around 9:30 PM, when prosecutrix was sleeping in her house with her 8 years old child, at that time appellant knocked the door of her house. When she opened the door, appellant forcefully entered in her house and committed sexual intercourse with her. Immediately, after the incident, she narrated the entire story to Rahin Kaiwart (PW-2), Savita Kenwat and Gautam. When husband of the prosecutrix came to the house, she narrated the whole incident to him also. Thereafter, in the night itself, prosecutrix lodged a report vide Ex.P-1 in the police station. Prosecutrix was medically examined by Dr. (Smt.) Neelima Sharma (PW-5). Her report is Ex.P-7. Statement of the prosecutrix and other witnesses were recorded under Section 161 of the 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. One defence witness namely Rajkumar Kashyap (DW-1) has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein accused/appellant has pleaded his innocence and false implication in the matter.
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 appellant is innocent and is falsely implicated in the present case. He further submits that trial Court has wrongly convicted the appellant

without there being sufficient and clinching evidence against him. He further argued that learned trial Trial Court has failed to consider the statement of defence witness namely Rajkumar Kashyap (DW-1) where he has categorically stated that for the last 6-7 years, there was love affair between prosecutrix and appellant. Learned trial Court also failed to see the circumstances which clearly show that prosecutrix was the consenting party. Therefore, conviction of the appellant is not in accordance with the evidence available on record.

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 record and statements of the witnesses minutely.
7. Prosecutrix (PW-1) in her Court Statement has categorically deposed that on the date of incident, she was sleeping in her house with her 8 years old child, at that time, appellant knocked the door and when she opened the door, appellant forcefully entered inside the house and committed forcible sexual intercourse with her. According to this witness, immediately after the incident, she narrated the entire incident to her neighbours namely Savita, Gautam and Rahinbai. When her husband namely Puroshottam Singh (PW-3) reached home, then she narrated the entire incident to him also. Smt. Rahin Kaiwart (PW-2) and Puroshottam Singh (PW-3) has supported the above statement of the prosecutrix. Smt. Rahin Kaiwart (PW-2) has categorically stated that just after the alleged incident, prosecutrix came to her and narrated the entire story to her. At that time prosecutrix was weeping.

Puroshottam Singh (PW-3) also stated that when he reached house, his wife (prosecutrix) narrated the entire incident to him. In paragraph 11 and 12 of cross-examination of the prosecutrix, appellant has admitted that he entered to the house of the prosecutrix and made physical relationship with the prosecutrix. Though, it was the defence of appellant that there was love relationship between him and prosecutrix and he made physical relationship with prosecutrix with her consent. But prosecutrix denied the submissions made by the appellant in this regard during her cross-examination. Immediately, after the the alleged incident, prosecutrix narrated the incident to Rahin Kaiwart (PW-2). If prosecutrix would have been consenting party, then she would not have made complaint to Rahin Kaiwart (PW-2) in weeping state. There is also no such fact available in this case which shows that husband of the prosecutrix or any other person has seen her in a compromising position, then only she had made complaint. Therefore, no such substance is available in the statement of the appellant where he has stated that they were having love relationship and prosecutrix was the consenting party in the alleged act.

8. On a minute examination of the evidence on record, it is clear that there is sufficient evidence against the appellant to hold him guilty. In my considered view, the trial Court has rightly convicted the appellant.
9. With regard to the sentence of the appellant in the present case, appellant is in custody since 27.08.2012 i.e. he has completed about more than 9 years in jail. Appellant is also a married person having two children. Further considering the family condition and detention period of the appellant, and the fact that he is facing the *lis* since 2013, I am

of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentenced awarded to him is reduced to the period already undergone by him.

10. Consequently, the appeal is partly allowed. The conviction of the Appellant under the aforementioned Section is affirmed and he is sentenced to the period already undergone by him. The fine sentence is affirmed.
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**