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**(2019) 10 CHH CK 0021**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal No. 2627 Of 1999

Mehataru

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Oct. 3, 2019

**Acts Referred:**

- Indian Penal Code, 1860 - Section 376, 450
- Code Of Criminal Procedure, 1973 - Section 161

**Hon'ble Judges:** Vimla Singh Kapoor, J

**Bench:** Single Bench

**Advocate:** Qamrul Aziz, Ishan Verma

**Final Decision:** Dismissed

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### **Judgement**

Vimla Singh Kapoor, J

1. This appeal is preferred against the judgment of conviction and order of sentence dated 30.10.1998 passed by Additional Sessions Judge Durg

District Durg in Sessions Case No. 90/1998, wherein the trial Court convicted the accused/appellant under Sections 450 and 376 IPC and sentenced

him to undergo rigorous imprisonment for 7 years and to pay fine of Rs. 5,00/- under Section 376 IPC, Rigorous imprisonment for 5 years and to pay

fine of Rs. 500/- under Section 450 IPC plus default stipulations. Both the jail sentences have been directed to run concurrently.

2. Before the trial court, the deaf and dumb victim who is alleged to have been subjected to rape by the accused/appellant was examined as PW-1.

FIR (EX.P-2) was lodged by her husband namely Lokpal Jangade (PW-2) as was disclosed to him by her through gestures. It is apparent from her

evidence that on 19.09.1997 at about 7.00 AM she was all alone in her house and while cooking food, the appellant came there and asked for fire to light bidi. It is alleged that after smoking bidi, he caught hold of her hands, threw her down on the ground, upturned her clothes, committed forcible sexual intercourse with her and ran away. After arrival of her husband (PW-2) she narrated the entire incident to him through gestures and on coming to know the same, he along with the prosecutrix (PW-1) went to the Police Station and the report was lodged. After recording her statement under Section 161 CrPC through the interpreter marked as Ex.P-1 she was sent for medical examination. After completion of investigation charge-sheet was filed against the appellant under Sections 450 and 376 IPC followed by charge being framed accordingly.

3. Counsel for the accused/appellant submits that the prosecutrix being deaf and dumb, her testimony cannot be made basis for conviction of the accused/appellant under Sections 450 and 376 IPC, particularly when the medical evidence does not corroborate her version. Absence of any external injury on her body goes to show that she did not offer resistance to the act of the accused/appellant and therefore, the inference can be drawn that the act between the two was consensual. It is submitted that there is no evidence to show that the people of neighbourhood heard any hue and cry which is supposed to have been made by a rape victim as the incident had taken place in the early morning.

4. On the other hand conviction and sentence imposed on the appellant is held to be just and proper by the State counsel and no interference can be made with the judgment impugned passed on due appreciation of the witnesses examined by the prosecution.

5. Having analyzed the entire material on record in particular the evidence of the prosecutrix (PW-1), a deaf and dumb married lady, whose deposition was recorded through the interpreter, goes to show that on the date of incident at about 7.00 AM when she was all alone in her house, the accused/appellant came there and asked her for fire to light bidi and thereafter taking advantage of her loneliness and helplessness, the appellant subjected her to rape, in spite of resistance offered by her. Thereafter, when her husband came back to the house from outside, she narrated the

entire incident to him by gesticulation and then the report Ex.P-2 came to be lodged. Evidence of the prosecutrix (PW-1) recorded with the help of

interpreter goes to show the involvement of the accused/appellant in ravishing the prosecutrix (PW-1). Since, the prosecutrix (PW-1) is deaf and

dumb, to strengthen the case of the prosecution, test identification was also conducted in presence of two witnesses, the accused was mixed in a

group of 5-6 persons of similar stature and complexion where the prosecutrix by raising her finger at the accused/appellant has clearly identified him to

be the person who on the date of incident came to her house and subjected her to sexual exploitation. FSL report (Ex.P-11) also supports the case of

the prosecution, stating that the petticoat of the prosecutrix sent for chemical examination was found spotted with human spermatozoa. The husband

of the prosecutrix (PW-1) has also stated that after he returned home, his wife narrated the entire incident to him by gesticulation that she was

subjected to rape by the appellant. Though the Doctor (PW-5), who medically examined the prosecutrix (PW-1) did not find any injuries as the

prosecutrix (PW-1) was a married lady, but she has not set at naught the possibility of rape over the prosecutrix (PW-1). Doctor PW-8 who medically

examined the accused/appellant has clearly stated him to be fully capable of having sex. Being so, this Court has no hesitation to say that the

statement of the prosecutrix (PW-

1) to the effect that she was subjected to rape by the accused/appellant is very specific and finds support from the FSL report Ex.P-11 and also from

the test identification report Ex.P-7 much less the medical evidence as well. No reason has been assigned by the defence as to why the prosecutrix

(PW-1) would implicate him in a false case. Hence, the conviction and sentence of the accused/applicant are hereby maintained. The appeal being

devoid of merit deserves to be and is hereby dismissed.

6. The appellant is reported to be on bail and therefore, he is directed to be arrested forthwith and send to jail for completing the sentence imposed on

him.