
(2018) 09 CHH CK 0391

Chhattisgarh High Court

Case No: Criminal Appeal No. 2605 Of 1999

Satruhan

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision: Sept. 25, 2018

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 313, 374, 437A
- Indian Penal Code, 1860 - Section 376, 506B

Hon'ble Judges: Vimla Singh Kapoor, J

Bench: Single Bench

Advocate: Rajendra Tripathi

Final Decision: Allowed

Judgement

Vimla Singh Kapoor, J

1. This appeal has been preferred under Section 374 of the Code of Criminal Procedure against the judgment and order dated 31.03.1999 passed in ST

No. 265/1998 by the Additional Sessions Judge, Durg District Durg, convicting the accused/appellant under Sections 376 and 506 B of the Indian

Penal Code and sentenced to undergo RI for seven years with fine of Rs. 500/- and RI for 6 months with fine of Rs. 200/-, respectively with default

stipulations.

2. Case of the prosecution, in brief, is that the prosecutrix (PW-4) was residing in her maternal uncle's home at Ghota. On the date of incident, i.e. on

02.05.1998 at about 2.30 pm, the prosecutrix (PW-4) went to nature call in the field adjoining the rest house of village Ghota. At that time, the

appellant came there and caught hold the hands of the prosecutrix (PW-4) and pushed her on the ground and shuffled his sando baniyan in her mouth

and committed forceful sexual intercourse with her, thereafter the appellant threatened the prosecutrix (PW-4) that if she disclosed the incident to

anyone then he will kill her and fled away from there. On the way, the prosecutrix (PW-4) disclosed the incident to Shanti Bai (PW-6) and Chameli

Bai (PW-1), thereafter she reached the house and narrated the incident to her relative. The prosecutrix (PW-4) lodged the First information Report

(Ex. P-4) in Police Station Dhamdha. After recording of FIR (Ex.P-4), the prosecutrix (PW-4) was examined by Dr. Madhu Shrivastava (PW-3) and

submitted her report vide Ex.P-3. The accused/Appellant was also examined.

3. After completion of the investigation, charge-sheet was filed before the trial Court wherein the trial Court framed charges as mentioned above to

which the appellant did not plead guilty. The trial Court conducted the trial and after completion of evidence of the prosecution side, statement of the

appellant under Section 313 of the Cr.P.C. were recorded and after completion of trial, the trial Judge considering the material available on record by

the impugned judgement convicted and sentenced the appellant as mentioned above.

4. To hold the appellant guilty, the prosecution examined Chameli (PW-1), Sudanlal (PW-2) maternal uncle of the prosecutrix, Dr. Madhu Shrivastava

(PW-3), Prosecutrix (PW-4) Munna lal (PW-5), Shanti Bai (PW-6), Dr. D. K. Gupta (PW-7) and Assistant Sub Inspector K.L. Sinha (PW-8). The

appellant did not examine any witnesses in his support.

5. Perused the record and the documents available on record.

6. Prosecutrix (PW-4) and Sudanlal (PW-2) could not tell regarding the date of birth of the prosecutrix (PW-4). Radiological examination of the

prosecutrix (PW-4) for confirmation of her age was not done and Kotwari register was also not produced before the Court below. The prosecution

has failed to prove that the prosecutrix (PW-4) was less than 16 years of the age at the time of occurrence.

7. Prosecutrix (PW-4) is the sole witness in this case. The touchstone for recording a conviction in a rape case is that the testimony of the prosecutrix

must be reliable and inspires confidence and should be worthy of credit. It should not render it unworthy of credence. Prosecutrix (PW-4) stated that

she has informed the incident to Shanti Bai (PW-6) but Shanti Bai (PW-6) has not supported the case of the prosecution and turned hostile.

8. Prosecutrix (PW-4) stated that the appellant raped her for half an hour to one hour and she sustained injuries on her back. Shanti Bai (PW-6) and

Chameli (PW-1) have not supported the case of the prosecution. Dr. Madhju Shrivastava (PW-3) who has examined the prosecutrix (PW-4) deposed

that she has not found any internal or external injury in the body of the prosecutrix (PW-4). The medical evidence and Investigating officer (PW-8)

have also not supported the case of the prosecution.

9. After minute and careful examination of the evidence of the prosecutrix (PW-4), Shanti Bai (PW-6) and Chameli Bai (PW-1) it reveals that the

prosecutrix (PW-4) was a consenting party to the commission of sexual intercourse and the medical evidence has also not supported the case of the

prosecution. Therefore, the conviction of the appellant cannot be based on the evidence of the prosecutrix (PW-4).

10. On the basis of the aforesaid discussion, I am of the considered view that the learned trial Court has committed an error in convicting the appellant

for the offence punishable under Sections 376 and 506(B) of the IPC. Hence, the impugned judgment of conviction and sentence is not sustainable.

11. In the result, the appeal is allowed. The impugned judgment convicting and sentencing the appellant for the offence under section 376 and 506 (B)

of the IPC is set aside. The appellant is acquitted of the charge framed against him.

12. It is reported that the appellant is on bail. His bail bonds are not discharged at this stage and the same shall remain operative for a further period of

six months from today in terms of Section 437-A of the Cr.P.C.