

(2018) 08 CHH CK 0235

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 2538 Of 1999

Manoj Kumar

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision: Aug. 23, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 323, 376, 376(1)
- Code Of Criminal Procedure, 1973 - Section 313, 437A

Hon'ble Judges: Gautam Chourdiya, J

Bench: Single Bench

Advocate: Saveeta Tiwari, Adhiraj Surana

Final Decision: Partly Allowed

Judgement

Conviction,Sentence

Under Section 323 of Indian Penal Code,One year R.I.

Under Section 376(1) of Indian Penal Code,"7 years R.I. and fine of Rs.1000/-, in default of 2

months Additional R.I.

appellant/accused closed the door from inside which was opened by his wife. At the time of the incident, the appellant, his wife, prosecutrix and",

Patikuwar were present. She further stated that it is correct that at the instance of Patikuwar she went to the house of the accused/appellant where,

the appellant/accused was preparing omlet. He offered the omlet to the prosecutrix which she refused. She further stated that when she reached the,

house of the appellant/accused, at that time there was no quarrel between the accused/appellant and his wife. The prosecutrix also stated that on the",

request of wife of the accused she went to the house of the accused/appellant. She also stated that she asked the accused/appellant as to why he is, beating his wife. On the date of the incident she returned to her home at 12:00 mid night.,

11. Patikuwar PW-5 has stated in cross-examination that she did not accompany the prosecutrix to the police station for lodging the report. In para-6, of her cross-examination she stated that she and the accused/appellant are neighbours and on the date of the incident she did not hear anything, regarding the rape committed by the appellant/accused. Earlier the prosecutrix had borrowed some money from the accused which the accused was, demanding. The prosecutrix informed this witness that the appellant and his family members are asking to return the money. The prosecutrix told her, that how she could pay the money. She also said that she would falsely implicate the appellant and lodge the report in the police station. This witness, further says that she does not have inimical relation with the prosecutrix.,

12. On closed scrutiny of the evidence, it appears that the rape was committed at 11:00 pm and prosecutrix left the home of accused after 12:00 pm.",

It is very unnatural conduct of the prosecutrix that she remained in home of accused from 9 pm to 12 mid night and rape was committed at 11 pm in,

the presence of wife of accused and PW-5 Patikuwar, but PW-5 Patikuwar in her cross- examination admitted that there is no dispute between",

accused and his wife. Accused/appellant did not beat his wife in presence of Patikuwar. Patikuwar PW-5 has not corroborated the evidence of,

prosecutrix. She never asked the prosecutrix to go with the appellant/accused and never stated that the wife of appellant/accused was calling her.,

PW-5 Patikuwar was declared CRA No.2538/1999 hostile, as in para 6 she stated that she never heard about any rape committed by",

accused/appellant with the prosecutrix and never heard about the assault made by the accused/appellant to the prosecutrix. The dispute was persisting,

as the prosecutrix borrowed the money from the accused/appellant. The accused and his family members were asking the prosecutrix to return the,

amount because of which the prosecutrix was disturbed. The prosecutrix wanted to implicate the appellant/accused in a false case and therefore she,

lodged a report against accused/appellant. PW-5 Patikuwar the only eyewitness to the incident turned hostile. DW-1 Smt. Nalini Rai, who also reside",

near the house of the accused, did not hear anything on the date of the incident.",

13. In case of rape it is the duty of Court to appreciate the evidence of prosecutrix with sensitivity and only the conviction can be upheld on the basis,

of the statement of prosecutrix but in this particular case, none of the prosecution witnesses have supported the case of the prosecution regarding rape",

so appreciation is required with great care and caution in this particular case. As per the medical report submitted by Dr. S.P. Jaiswal, (PW-2) injury",

was found on the lip and head of the prosecutrix only. There was no sign of rape with the prosecutrix. Prosecutrix is aged about 36 years old grown,

up lady and being a married woman, habitual to intercourse. No semen or spermatozoa was found on the clothes of the prosecutrix. The CRA",

No.2538/1999 FSL report also indicated that no semen or spermatozoa was found on the clothes of the prosecutrix.,

14. Story of prosecution regarding the origin of dispute was also not proved. In the present case the place of the incident is highly populated area,

where accused/appellant was also residing with his wife and nobody heard anything about the crime committed by the appellant. Even the friend of,

prosecutrix PW-5 Patikuwar admitted the fact that the prosecutrix had borrowed some money from the accused which she was not returning and his,

family members were time and again asking the prosecutrix to return the amount because of which the prosecutrix was disturbed and the prosecutrix,

told PW-5 Patikuwar that she would implicate the appellant in a false case.,

15. On the basis of above discussion, this Court is of the opinion that the conviction imposed on the appellant under Section 376 (1) of the IPC is not",

sustainable and the same deserves to be set aside. Regarding the charge of under Section 323 of IPC, injury was found on the lip and head of the",

prosecutrix because of quarrel between prosecutrix and accused. Prosecutrix herself admitted in para-7 of her statement that she borrowed Rs.200/-,

from the wife of appellant and Rs.150/- from the appellant/accused. Because of this dispute appellant/accused may be assaulted prosecutrix in the,

home but there is no other evidence regarding rape committed by the appellant/accused was proved. So, conviction imposed on the appellant/accused",

CRA No.2538/1999 under Section 323 of the IPC is maintained.,

16. In the result, the appeal is partly allowed. Conviction and sentence imposed on the appellant under Section 376 (1) of the IPC are set aside and he",

is acquitted of the said charge. However, conviction imposed on the appellant under Section 323 of the IPC is maintained. The appellant has been in",

jail since 08.03.1996 till 19.07.2000 when he was granted bail by the High Court. Thus, the appellant has undergone the sentence imposed upon him",

under Section 323 of the IPC.,

17. The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six,

months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.,