
(2018) 06 CHH CK 0216

Chhattisgarh High Court

Case No: Criminal Appeal No. 3020 Of 1999

Chandulal

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: June 29, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 436, 450
- Code Of Criminal Procedure, 1973 - Section 161, 313

Hon'ble Judges: Arvind Singh Chandel, J

Bench: Single Bench

Advocate: Smriti Shrivastava, Sameer Behar

Final Decision: Allowed

Judgement

Conviction,Sentence

Under Section 450 of the Indian Penal Code,"Rigorous Imprisonment for 7 years and fine of

Rs.2,000/- with default stipulation

Under Section 376(1) of the Indian Penal Code,"Rigorous Imprisonment for 7 years and fine of

Rs.5,000/- with default stipulation

got up. Then she wiped out her private part and thereafter switched on the light of her room and saw that it was the Appellant. The Appellant went,

out covering his body with a blanket.,

9. Negiram (PW2), father-in-law of the prosecutrix has stated that in the night, he had gone out to attend a village meeting. At about 3:00 a.m, he",

returned home. In the morning, his wife told him that their daughter-in-law (the prosecutrix) had been raped by the Appellant. He has further stated",

that a village meeting took place in this regard in which the Appellant admitted his guilt. The Appellant also admitted that whatever fine would be,

imposed upon him by the panchayat, he will pay the same.",

10. Urmilabai (PW3), mother-in-law of the prosecutrix has stated that she was sleeping in the house of her elder son Ramsharan. In the night, at about",

3:00 a.m., her daughter Rukmani (PW4) came to her and made her wake up. Then her daughter-in-law (the prosecutrix) told her that the Appellant",

had committed rape with her. Next day, she told about the incident to her husband Negiram (PW2).",

11. Rukmani (PW4), sister-in-law of the prosecutrix has stated that at about 2:30 - 3:00 a.m., the Appellant had come and gone after committing rape.",

Then she called her mother Urmilabai (PW3).,

12. Ratiram (PW5) has stated that in the village meeting, on being asked, the Appellant had admitted his guilt. In paragraph 3 of his cross-examination,",

he has stated that the Appellant had admitted in the panchayat meeting that he was responsible for the act done by him with the prosecutrix, but the",

panchayat did not decide the matter.,

13. Dr. Nirmila Ghatge (PW6) is the witness who examined the prosecutrix. She has stated that her report is Ex.P3. She has further stated that she,

did not find any injury over the private part of the prosecutrix. She has further stated that no definite opinion regarding rape with the prosecutrix could,

be given by her as the prosecutrix was a married lady and was habitual to sexual intercourse.,

14. Dr. P.K. Tiwari (PW7) examined the Appellant. He has stated that he gave his report (Ex.P6) in which he found the Appellant to be capable of,

performing sexual intercourse.,

15. Inspector Hemant Khare (PW9) was the Investigating Officer of the case. He has stated that he recorded the First Information Report (Ex.P1).,

He seized the petticoat of the prosecutrix vide Ex.P2. He sent the seized articles for chemical examination vide Ex.P10. He also recorded statements,

of witnesses under Section 161 of the Cr.P.C.,

16. On minute examination of the above witnesses of the prosecution, it is clear that on the date of incident, the prosecutrix (PW1) and her two",

sisters-in-law and one brother-in-law were present in the house. As per the statement of the prosecutrix, at about 2:30 a.m., the Appellant entered her",

room and after gagging her mouth with a piece of cloth, committed forcible sexual intercourse with her. As per her statement, after the incident, when",

the Appellant was about to go out, she switched on the light of her room and identified him that it was the Appellant. As per the prosecution story,"

other doors of the house were closed and the Appellant had entered the room of the prosecutrix through the door of the kitchen which was open.,

Three more persons, i.e., two sisters-in-law and one brother-in-law were present in the house. In this situation, knowing this fact, the Appellant would",

have entered the room of the prosecutrix does not appear to be natural. As per the statement of the prosecutrix, when the Appellant was committing",

sexual intercourse with the prosecutrix, she had come to know that he was not her husband. But, even after coming to know this fact, she did not raise",

any alarm nor did she shout for any help at that point of time. She has also stated that prior to this, while her sleeping, when her hand was caught by",

someone, at that time, she, thinking that the said person would be her husband, had called her sister-in-law. But, her sister-in-law Rukmani (PW4) has",

not stated anything in this regard. As per the statement of the prosecutrix, after switching on the light of her room, she had identified the said person to",

be the Appellant. From her statement, it is clear that after commission of the sexual intercourse with her, she first wiped out her private part with her",

petticoat and thereafter she switched on the light of her room. When she came to know while commission of sexual intercourse with her that the,

person committing sexual intercourse was not her husband and forcible sexual intercourse was being committed with her by the said stranger then she,

would have first switched on the light of her room and shouted for help, but she did not do so.",

17. Though Negiram (PW2) and Ratiram (PW5) have stated that in the village meeting, the Appellant had admitted his guilt, but as per paragraph 3 of",

the statement of Ratiram (PW5), the Appellant had admitted that whatever wrong act was done by him, he was responsible for the same. From the",

above, it is also clear that any rape was committed by the Appellant with the prosecutrix has not been admitted by him.",

18. In the light of above discussion, it is clear that though the prosecutrix has made statement against the Appellant, but her statement and her conduct",

at the relevant point of time of the alleged incident and the time of the alleged incident are not natural. In these circumstances, it appears that no rape",

was committed by the Appellant with the prosecutrix and if any incident of commission of sexual intercourse with the prosecutrix had taken place, she",

was a consenting party to the same.,

19. In the result, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges",

framed against him. He is reported to be in jail. He be set at liberty forthwith.,

20. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.,