

(2018) 02 CHH CK 0233

Chhattisgarh High Court

Case No: Criminal Appeal No. 2890 Of 1999

Shahabuddin alias Sahab And

Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Feb. 13, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 376, 376(2)(g), 450, 506B
- Code Of Criminal Procedure, 1973 - Section 313

Hon'ble Judges: Arvind Singh Chandel, J

Bench: Single Bench

Advocate: Rakesh Jain, Smita Ghai

Final Decision: Allowed

Judgement

Conviction,Sentence

Under Section 376 of the Indian Penal Code

Under Section 450 of the Indian Penal Code","Rigorous Imprisonment for 10 years and fine of

Rs.1,000/- with default stipulation

Rigorous Imprisonment for 3 years and fine of

Rs.1,000/- with default stipulation

She also found that the prosecutrix was carrying a pregnancy of about 34 months. Patwari Satya Narayan Kaushik (PW2) is the witness who,

prepared spot-map (Ex.P2),.

10. Patiram (PW3), husband of the prosecutrix has stated that on 26.7.1998, one boy Satish came to him and informed that Shahabuddin and Vikram",

had raped her wife. He returned home where the prosecutrix told him that the Appellants, showing her a knife, committed rape with her inside the",

house. This witness has also admitted that her wife did not know the names of the Appellants. He has further stated that boy Satish had told the,

names of the Appellants, but Satish has not been examined by the prosecution.",

11. Rajendra (PW4), who is the witness of seizure of petticoat of the prosecutrix made vide Ex.P4, slide Ex.P5, clothes of the Appellants (Ex.P6 and",

P7), has stated that on 26.7.1998, when he reached Natthu Kirana Store, he found there a crowd. He came to know that the Appellants had",

committed rape with the prosecutrix. He has further stated that the Appellants were caught by the people there, but this fact is not mentioned in his",

case diary statement (Ex.D3).,

12. Raju Singh (PW5) has stated that at about 5:00 p.m., he reached Natthu Kirana Store. At that time, the prosecutrix, weeping, was telling Natthu",

that the Appellants had committed rape with her. He has further stated that he had seen the Appellants running away.,

13. Assistant Sub-Inspector R.M. Yadav (PW6) is the Investigating Officer. He has supported the case of the prosecution,

14. Sub-Inspector L.B. Singh (PW7) is the witness who registered the FIR (Ex.P1). Dr. I.K. Wadhwani (PW8) examined the Appellants. His reports,

are Ex.P12A and P11A in which he found the Appellants capable of performing sexual intercourse.,

15. On a minute examination of the evidence on record, it is clear that the prosecutrix had not seen the Appellants nor did she know their names prior",

to the incident. As per her Court statement, she had come to know about the names of the Appellants from the nearby people of the neighbourhood.",

But, this fact is not mentioned in her FIR (Ex.P1) or in her case diary statement (Ex.D1). She did not know the names of the Appellants nor did she",

identify them prior to the date of incident, therefore, it was essential for the prosecution to conduct a test identification parade of the Appellants, but in",

this case there is nothing on record about conducting of any test identification parade of the Appellants. As per statement of the prosecutrix, she had",

sustained injury on her neck and at the time of incident she was caused to fall down on the floor and thereafter raped by the Appellants, but as per the",

medical examination report, no injury was found on her neck or back. The prosecutrix has not stated that from whom she came to know the names of",

the Appellants. As per the statement of her husband Patiram (PW3), when Satish came to him at that time Satish told him the names of the",

Appellants. But, Satish has not been examined by the prosecution. As per the statement of Patiram (PW3) and Rajendra (PW4), local residents had",

caught the Appellants. But, this fact is not mentioned in their case diary statements (Ex.D2 and D3). Thus, it is clear that they have exaggerated their",

statements in the Court. Though Raju (PW5) has stated that when he reached Natthu Kirana Store, he saw that the prosecutrix, weeping, was telling",

about the incident to Natthu and he had also seen the Appellants running away from there. But, Natthu has also not been examined by the",

prosecution. The evidence adduced by the prosecution only reveals that some witnesses had seen the Appellants running away. Except this, there is",

nothing on record to connect the Appellants with the crime in question. From the evidence adduced by the prosecution, the offence alleged against the",

Appellants is not proved beyond reasonable doubt. The Appellants are, therefore, entitled to get benefit of doubt.",

16. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges",

framed against them.,

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