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HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 237 of 2019

State Of Chhattisgarh Through Police Outpost- Jalbandha, Police Station- Khairagarh, District- Rajnandgaon, Chhattisgarh.

... Appellant

versus

Omprakash Verma S/o Ramesh Verma Aged About 26 Years R/o Village - Bhothi, Police Outpost- Jalbandha, Police Station- Khairagarh, District- Rajandgaon, Chhattisgarh.

... Respondent

For Appellant/State : Mr. Amit Buxy, Dy. Govt. Advocate

For Respondent : Ms. Nishtha Sharma, Advocate, on behalf
of Mr. Dashrath Prajapati, Advocate.

(Division Bench)

Hon'ble Shri Justice Sanjay K. Agrawal

Hon'ble Shri Justice Sanjay Kumar Jaiswal

Judgment On Board

(25.08.2026)

Sanjay Kumar Jaiswal, J.

1. This appeal under Section 378(1) of Cr.P.C. has been preferred calling in question the legality, validity and correctness of the judgment of acquittal dated 25.08.2018, passed by learned

Additional Sessions Judge, Khairagarh, District Rajnandgaon, Chhattisgarh in Sessions Trial No.03/2017, whereby the respondent has been acquitted of the charges under Sections 450, 376, 323 & 506-B of IPC.

- 2.** The case of prosecution, in brief, is that on 12.01.2017 at about 8-9 p.m., after collecting vegetables from the house of her neighbour, namely, Fulmat Bai, the prosecutrix was returning to her house. At that time, the respondent—Om Prakash Verma, who was also her neighbour, followed her to her house. He was carrying a bottle of liquor and, after entering her house, sat in the kitchen and consumed the liquor. After taking her meal, the prosecutrix asked the respondent to return to his house and thereafter went to her room to sleep. While the prosecutrix was sleeping on a cot, the respondent entered her room and forcibly subjected her to sexual intercourse against her will. Thereafter, he threatened to kill her and warned her not to disclose the incident to anyone. He also assaulted her, causing injuries, as a result of which she became unconscious. Upon regaining consciousness in the morning, the prosecutrix called out to her brother-in-law, Benlal. Hearing her cries, Bina and Fulmat Bai came and gave her water. They thereafter informed her sons and daughters about the incident. Upon their arrival, they took the prosecutrix with them to Police

Outpost Jaalbanda, where she lodged a report regarding the incident. After completion of the investigation, the respondent/accused was charge-sheeted for the aforesaid offence.

- 3.** During the course of trial, in order to bring home the offence, prosecution examined as many as 12 witnesses and exhibited 18 documents in support of its case. The statement of respondent / accused was recorded under Section 313 of the CrPC in which he denied the circumstances appearing against him in the evidence brought on record by the prosecution, pleaded innocence and false implication. However, the respondent/accused in support of his defence has exhibited 4 documents.
- 4.** Learned trial Court, after appreciating the oral and documentary evidence available on record, vide impugned judgment acquitted the respondent/accused of the charge under Sections 450, 376, 323 & 506-B of IPC, against which this appeal has been preferred by the State questioning the impugned judgment of acquittal.
- 5.** Learned counsel for the appellant/State submits that the prosecutrix (PW-1) has fully supported the case of the prosecution and that her testimony also finds corroboration from the other evidence available on record. The medical

evidence further lends support to the prosecution case. The acquittal has resulted from mis-appreciation of material evidence and incorrect application of legal principles. Such a perverse and unjust acquittal calls for interference by the appellate Court in exercise of its powers under law. The order of acquittal, therefore, deserves to be set aside, and the accused/respondent be convicted and punished under the offence for which he was charged.

6. Learned counsel for the respondent supports the impugned judgment and submits that learned Trial Court has passed the judgment after duly appreciating the oral as well as documentary evidence available on record, and that the findings recorded therein do not call for any interference by this Court. She further submits that the injuries sustained by the prosecutrix were caused when, under the influence of liquor, she accidentally struck her head against the doorframe of the house.
7. We have heard learned counsel for the parties, considered their rival submissions made herein-above and gone through the records with utmost circumspection.
8. In **Mallappa and Others v. State of Karnataka, (2024) 3 SCC 544**, the Hon'ble Supreme Court has reiterated the principles governing an appeal against acquittal. The

Supreme Court has emphasized that the evidence on record has to be assessed in its entirety; where two views are reasonably possible, the view favourable to the accused is required to be adopted; and interference with an order of acquittal is warranted only where the findings recorded by the Trial Court are shown to be illegal, perverse, or suffering from an error of law or fact.

- 9.** The prosecutrix (PW-1) is a 50-year-old woman. Her husband (PW-4), sons (PW-2) and (PW-3) and daughter (PW-5) are residing at Bhilai, whereas the prosecutrix herself had come to the appellant's house situated at Village Bhothi, Police Outpost Jhalabanda, on the date of incident, i.e., 12.01.2017. In her deposition before the Court, the prosecutrix has supported the allegation that the respondent assaulted and abused her and also strangled her. However, Dr. Leela Ramteke (PW-10), who examined the prosecutrix and proved her medical examination report (Ex.P-7) has stated that certain injuries were found on her head and forehead. She, however, did not give any definite opinion regarding commission of rape and stated that no signs suggestive of rape were found. Likewise, as per the chemical examination report (Ex. P-17), neither the slides prepared during the medical examination nor the clothes of the prosecutrix were found to contain semen stains or human sperm.

10. In the case of **Ganesan v. State**, reported in **(2020) 10 SCC**

573, the Supreme Court observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality.

11. Further in **Santosh Prasad @ Santosh Kumar v. State of**

Bihar, (2020) 3 SCC 443, the concept expressed by the Hon'ble Supreme Court regarding the assessment of the credibility of the statement of the sole prosecutrix is as follows (paragraphs - 5.5 & 6):-

“5.5 With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?”

“6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 O'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4:00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW1 and others. However, Shanti Devi has not supported the

case of the prosecution. Therefore, when we tested the version of PW5-prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of “sterling witness”. There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix-PW5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and accused is to be given the benefit of doubt.”

12. Apart from the prosecutrix (PW-1), there is no eyewitness to the alleged occurrence. Her husband and children have merely deposed about what was narrated to them by the prosecutrix and, therefore, their evidence is in the nature of hearsay evidence. On the other hand, Sadaram Yadav (PW-7), a neighbour, has stated that on the date of incident, the father of the appellant had been sitting with the prosecutrix and consuming liquor. Firanta Verma (PW-12) has stated that the prosecutrix had sustained injury on her head upon striking against the doorframe and this version is also corroborated by Mithilesh Singh Vishwakarma (PW-8). The husband of the prosecutrix (PW-4) has further admitted that when the police officials came to their house during investigation, two bottles of country-made plain liquor were seized from the house. Significantly, during her cross-examination, the prosecutrix herself admitted that she did

not know whether or not the respondent had assaulted her, as she had become unconscious after being strangled by him. She further admitted that she used to consume liquor earlier and that Ramesh Verma, the father of the respondent/accused, is her *Devar (brother-in-law)*. She also admitted that, at the relevant time, she had gone to the house of Ramesh to ask for coriander, chillies and tomatoes for preparing chutney. She, however, clarified that Ramesh Verma, the father of the respondent, is not her real *Devar*. The prosecutrix has further admitted that, at the time of the alleged incident, she had neither raised an alarm nor called out to anyone and stated that had she raised an alarm, the incident would not have occurred. She also stated that had she not sustained the injury on her head, she would not have lodged the report. Further, according to her own deposition, on the following day, after her husband and children arrived, money was demanded from the respondent for her treatment and, upon his refusal to pay the same, the report was lodged.

- 13.** Upon an overall and careful appreciation of the evidence available on record, we find that the testimony of the prosecutrix is not found to be reliable beyond doubt and does not inspire such confidence as would warrant interference with the order of acquittal. Her evidence, particularly in the light of the material admissions made by her in cross-

examination, the absence of any eyewitness, the medical evidence not disclosing any definite sign of rape, the chemical examination report not detecting semen or human sperm, and the evidence regarding the injury having been caused by striking against the doorframe, gives rise to a reasonable doubt regarding the prosecution case.

14. In an appeal against acquittal, the appellate Court would not be justified in substituting its view merely because another view is possible. In the present case, the view taken by the learned Trial Court cannot be said to be illegal, perverse or contrary to the evidence on record so as to warrant appellate interference. The impugned judgment, therefore, does not call for any interference.

15. Consequently, the appeal, being devoid of merit, is hereby **dismissed**.

16. Let a certified copy of this judgment along with the original record be transmitted forthwith to the concerned trial Court for necessary information & action, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay Kumar Jaiswal)
Judge