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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1203 of 2015

Shatrughan Kalga S/o Shobharam Kalga, Aged About 40 Years R/o Village Bhakurra, P. S. Lailunga, District Raigarh, Chhattisgarh, Chhattisgarh

... Appellant

versus

State Of Chhattisgarh Through The Station House Officer, Police Station Lailunga, Civil And Revenue District- Raigarh, Chhattisgarh, Chhattisgarh

... Respondent

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Manoj Kumar Jaiswal, Advocate
For Respondent/State	:	Mr. Amit Bakshi, Dy. Govt. Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

16.06.2026

1. In compliance of order of this Court, the appellant is present before this Court along with his counsel, his presence is marked.

2. Heard Mr. Manoj Kumar Jaiswal, learned counsel, appearing on behalf of the appellant as well as Mr. Amit Bakshi, learned Deputy Government Advocate, appearing on behalf of the State/respondent.
3. This appeal is directed against the judgment of conviction and order of sentence dated 24.08.2015 passed by the learned Additional Sessions Judge Fast Track Court, Raigarh (C.G.) in Sessions Case No.92/2014, whereby the appellant has been convicted and sentenced as under :-

<u>Conviction</u>	<u>Sentence</u>
Under Section 450 of the Indian Penal Code, 1860	Rigorous imprisonment for 7 years and fine of Rs.500/-, in default of payment of fine, additional RI for three months.
Under Section 376 of the Indian Penal Code, 1860	Rigorous imprisonment for life with fine of Rs.1000/-, in default of payment of fine amount, additional RI for Six months.

(Both the sentences were directed to run concurrently)

4. The prosecution case, in brief, is that the victim (aged 35) resides in the village of Bhakurra. On the evening of 08.12.2013, at approximately 7:00 PM, she had gone out to relieve herself, while she was returning, the accused/appellant began chasing her. Frightened, the victim ran into Palawati's house and latched the door of the outer room, however, the accused broke open the door, entered the house, grabbed the victim, tore her blouse,

squeezed her breasts, and threw her to the ground. He then tore her undergarments and forcibly committed a sexual act upon her. When the victim screamed, Palawati arrived, causing the accused to flee. On 10.12.2013, during a village meeting, the accused appeared and stated that the villagers could do whatever they pleased, but threatened to kill anyone who reported the matter to the Police. A written report to this effect was filed by the victim at the Lailunga Police Station on 16.12.2013, leading to the registration of Crime No. 333/2013 under Sections 450, 376, & 506(B) of the Indian Penal Code (IPC). Following the necessary investigation, a charge sheet was filed against the accused.

5. During the course of investigation, crime details form and spot map were prepared vide Ex.P/5. Clothes of the victim were seized vide Ex.P/4. Consent for medical examination of the victim was taken vide Ex.P/3. Dr. S. Tigga(PW-5) conducted medical examination of the victim and report is Ex.P/7. Statements under Section 161 of the Cr.P.C. of the witnesses were recorded by the police. After completion of investigation, charge-sheet was filed.
6. The trial Court framed charges under Sections 450, 376, and 506(B) of the IPC against the appellant.
7. During trial, the prosecution examined as many as 10 witnesses as PW-1 to PW-10 and exhibited 21 documents Ex. P/1 to Ex.P/21. In order to prove the defence, appellant exhibited 1 document as Ex.D/01 in support of his case.

8. After appreciation of oral as well as documentary evidence produced by the prosecution, the learned trial Court has acquitted the appellant of offence under Section 506(B) of the IPC, however, convicted the appellant and sentenced him as mentioned in the second paragraph of this judgment. Hence this appeal.
9. The counsel for the appellant submits that the testimony of the victim (PW-1) clearly indicates that she has falsely implicated the appellant in the case. It is argued that there was a land dispute between the appellant and the victim, which the victim herself admitted during her cross-examination. The accused is the president of the Kalga community. One day prior to the alleged incident, the victim and her friend Palavati were allegedly engaged in improper activities with three men Jhankaram, Sukhram, and Udayram, the villagers had locked the door of her house from the outside. Since the accused was the President of the Kalga community, he was called to the spot, and it was he who opened the lock. The villagers imposed a fine of Rs.10,000/- upon the three men for the said act. Since then, animosity developed between the victim and the accused, and it is on account of this enmity that the victim has falsely implicated the accused in this case. Furthermore, no internal or external injury was found on the body of the victim during her medical examination. Dr. S. Tigga (P.W.-5), who conducted the medical examination of the victim, has also not given a definite opinion

that recent sexual intercourse was committed with the victim. He further submits that the date of incident is 08.12.2013 and the FIR was lodged after 8 days, i.e., on 16.12.2013, and no plausible explanation has been offered by the prosecution in this regard. In view of the aforesaid, no offence under Section 376 of the IPC is made out against the appellant, and consequently, the offence under Section 450 of the IPC is also not proved at all. Therefore, the appeal may be allowed, the impugned judgment may be set aside, and the accused/appellant may be acquitted.

- 10.** On the other hand, learned State counsel opposes the arguments advanced by learned counsel for the appellant and submits that the findings recorded by the trial Court regarding conviction and sentence of the appellant are based on sufficient and reliable evidence. The learned trial Court was absolutely justified in passing the judgment of conviction and sentence against the appellant, which does not require any interference. Therefore, the contention made by counsel for the appellant is not acceptable, hence, the appeal may be dismissed.
- 11.** We have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.
- 12.** Dr. S. Tigga (PW-5) has stated that he had medically examined the victim on 17/12/2013 and given a report (Exhibit P-7), according to which there were no marks of injury on her body. The hymen was absent. There were no scratches or marks of old

scratches. Two slides of vaginal discharge were prepared and handed over to the constable. The Doctor opined that it was not possible to give a definitive opinion regarding recent sexual intercourse.

- 13.** The argument of the defence is that the appellant has been falsely implicated due to enmity. Since according to the medical report, it is reflected that it was not possible to give a definitive opinion regarding sexual intercourse, in such a situation, keeping in view the argument of the defence, it will have to be seen whether the appellant had committed rape upon the victim as in this case, the vaginal slide of the victim has been prepared but no FSL report is presented by the prosecution.
- 14.** The victim (PW-1) in her Court testimony stated that on the evening of 08.12.2013, at approximately 7:00 PM, she had gone out to relieve herself. While she was returning, the accused/appellant began chasing her. Frightened, the victim ran into Palawati's house and latched the door of the outer room, however, the accused broke down the door, entered the house, grabbed the victim, tore her blouse, squeezed her breasts, and threw her to the ground. He then tore her undergarments and forcibly committed a sexual act upon her. When the victim screamed, Palawati arrived, causing the accused to flee. The above statement of the victim has also been corroborated by her friend Palavati (PW-2) in her Court testimony.
- 15.** In the cross-examination, the victim (PW-1) has admitted that the

villagers had caught Udayram and her together in a room. She also admitted that the villagers, along with Jayram, Bahadur, and others, imposed a fine of ₹10,000 on Jhankaram, Sukhram, and Udayram. She also admitted that there was a land dispute between her and the appellant on the Basmuda Doli land. She also admitted that on the date of the incident, there were houses belonging to many other people between the spot from where the accused had chased her and the house of her friend, Palavati. She also admitted that the place where she had gone to relieve herself was also a location frequented by people.

16. It is noteworthy that as per the statement of the victim herself When the incident was taking place, Palvati arrived at the scene upon hearing the victim's screams, seeing her, the accused fled. Thus, Palvati is not an eyewitness either, and the prosecution's case rests entirely on the victim's statement.
17. The judgment of the Hon'ble Supreme Court in the matter of **Santosh Prasad @ Santosh Kumar v. State of Bihar, (2020) 3 SCC 443**, in which reliance has been placed by the counsel for the appellant, the concept expressed by the Hon'ble Supreme Court regarding the assessment of the credibility of the statement of the sole victim is as follows in paragraphs No.-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 victim? Whether the evidence of the victim inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?”

“6. Having gone through and considered the deposition of the victim, 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 victim is not believable. In the examination-in-chief, the victim 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 victim 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-victim, 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 victim-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.”

- 18.** Reverting to the case in hand, it is an admitted position that there is an enmical relationship between the appellant and the victim. The victim was caught in company of another person by the villagers for which the victim had to face humiliation before the

villagers. The appellant being the president of Kalga community imposed a heavy penalty of Rs.10,000/- upon the three men who were caught with the victim and it is also an admitted position that there was an old dispute between the applicant and the victim in respect of some land. Conduct of the victim itself is suspicious as 8 days after the incident, the FIR was lodged for which no plausible explanation has been offered. The victim is a major lady aged about 35 years and she was not in captivity/custody of the appellant which could restrain her from lodging the complaint/FIR before the Police. Had it been the case that the victim was forcefully subjected to sexual intercourse, she would have lodged the report promptly after the incident which is not the case herein.

- 19.** Though the vaginal slides were prepared by the doctor and were also handed over to the constable for further chemical examination, there is no such report on record which could have thrown some light with respect to the issue involved in this case.
- 20.** The law is well settled that in case of rape, conviction can be maintained even on the basis of sole testimony of the victim. However, there is an important caveat which is that the testimony of the victim must inspire confidence. Even though the testimony of the victim is not required to be corroborated, if her statement is not believable, then the accused cannot be convicted. The prosecution has to bring home the charges leveled against the

appellant beyond reasonable doubt, which the prosecution has failed to do so in the instant case.

- 21.** The conduct of the victim, as revealed from the evidence on record, also appears to be unnatural and inconsistent with the normal behavior expected of a person subjected to such an incident. Her own admissions during deposition show that she had animosity with the appellant as the appellant along with other villagers caught her in her friend's house along with three men. She had also an old land dispute with him. Such animosity casts serious doubt on the veracity of her allegations and weakens the prosecution case substantially.
- 22.** In view of these circumstances, her version cannot be relied upon to conclusively hold that the appellant was the perpetrator of the alleged offence. The prosecution has also failed to produce any cogent, credible, and clinching evidence to establish beyond reasonable doubt that the appellant is the author of the crime in question. The medical and documentary evidence on record do not corroborate the essential ingredients of offence under Section 376 of IPC.
- 23.** Having carefully examined the entire evidence on record, this Court finds that the prosecution has failed to establish the charge against the appellant beyond reasonable doubt. The version of the victim, when read as a whole, does not inspire confidence. Her own admissions clearly indicate that she had animosity with

the appellant that raises a serious doubt regarding the truthfulness of the prosecution story.

- 24.** The medical evidence also does not support the case of the prosecution. The medical officer Dr. S. Tigga (PW-5) categorically stated that no external or internal injuries were found on the victim, The hymen was absent. There were no scratches or marks of old scratches. Two slides of vaginal discharge were prepared and handed over to the constable. The Doctor opined that it was not possible to give a definitive opinion regarding sexual intercourse.
- 25.** In view of the foregoing discussion, this Court is of the considered opinion that no offence under Section 376 of IPC can be made out against the appellant. Palavati (PW-2) is a friend of the victim (PW-1) who appears to be an interested witness and except this witness there is no other witness who had seen the appellant either chasing the victim or committing the rape upon her on entering the house of Palavati (PW-2). As such it cannot be conclusively be held that any offence under Section 450 of IPC is made out.
- 26.** In view of above, the prosecution has not been able to prove its case beyond reasonable doubt. The evidence brought on record is insufficient, unreliable, and inconsistent to sustain the conviction. The benefit of doubt must, therefore, enure to the appellant.

- 27.** Consequently, the criminal appeal is **allowed**. The impugned judgment of conviction and order of sentence dated 24.08.2015 is hereby set aside. The appellant is acquitted from all the charges leveled against him. The appellant is stated to be on bail. He is not required to surrender. However, his bail bonds shall remain operative for a period of 6 months from today in view of provisions of Section 437-A Cr.P.C.
- 28.** The trial Court record along with the copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice