



(24)

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 2214 of 1999**

1. Pardeshi, S/o Ratan Lal Sahu, aged about 35 years, resident of village Saraibhadra (Chatamuda) Police Station Raigarh, Distt. Raigarh

**---- Appellant  
(In Jail)**

**Versus**

1. State Of Madhya Pradesh (Now Chhattisgarh) through S.O. City Kotwali, Raigarh.

**---- Respondent**

For Appellant:

Shri Awadh Tripathi, Advocate with  
Shri Sunil Sahu, Advocate.

For Respondent:

Shri S.K. Mishra, Panel Lawyer.

For Complainant:

Shri Ashish Gupta, Advocate

---

**Hon'ble Shri Justice Pritinker Diwaker**

**Judgement**

**21/08/2015**

1. This appeal arises out of the judgment of conviction and order of sentence dated 10.08.1999 passed by the 1<sup>st</sup> Additional Sessions Judge, Raigarh in S.T. No.144/98 convicting the accused/appellant under Section 376 (1) of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for 07 years.
2. As per prosecution case, on 1.6.1998 the prosecutrix, a married lady aged about 22 years, lodged FIR (Ex.P-12) stating that her marriage was solemnized with Panuram (PW-3) about four years back. Her husband is mentally weak. On 31.5.1998 her husband was sleeping inside the house, whereas she was sleeping in the courtyard in the cot along with Laxmibai, daughter of her sister-in-law. Light of the courtyard was on. She has further stated that at about 11 p.m. in the night, her brother-in-law (जेठ) came near her cot, pressed her mouth with his hands and committed rape



205

upon her. She has further stated that as her mouth was gagged by accused/appellant, she could not raise cries. However, she has narrated the entire incident to her husband, Boondkunwar (PW-5) and Ramkunwar (PW-6). She has further stated that earlier on 17.5.1998 also when her husband had gone out, the accused/appellant had committed rape upon her but for fear of being defamed, she did not lodge report. She has further stated that after committing offence, the accused/appellant had promised to perform chudi marriage with her. She has further stated that she had also beaten accused/appellant by club as a result of which he sustained injuries on his forehead. On arrival of her father Gopinath (PW-1), she narrated the entire incident to him and then the report was lodged. On the basis of this report, the offence under Section 376 (1) of the IPC was registered against accused/appellant. The prosecutrix was medically examined by Dr. Madhu Dubey (PW-8) vide Ex.P-8. The doctor has not noticed any injury on the person of the prosecutrix. As per opinion of the doctor, the prosecutrix was habitual to sexual intercourse and no definite opinion regarding rape & duration of rape can be given. Accused/appellant was also medically examined by Dr. Iqbal Singh (PW-12) who opined that accused/appellant is capable of performing sexual intercourse. After completion of investigation, charge sheet was filed against the accused/appellant for the offence punishable under Section 376 (1) of the IPC and accordingly the charge was framed against him.

3. In order to convict the accused/appellant, the prosecution examined 12 witnesses in all. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication. He has taken a defence that he is impotent. Further, by examining two defence witnesses namely Firtoram (DW-1) & Babulal

Mahant (DW-2), the appellant has also tried to take defence of alibi.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as described above.

5. Learned counsel for the accused/appellant submits that:

- (i) a very improbable story has been put forth by the prosecutrix as according to her statement she was sleeping in the cot along with eleven years old girl and in this situation it is literally impossible for the accused/appellant to commit rape upon the prosecutrix.
- (ii) it is not the case where the prosecutrix was tied by accused/appellant or her mouth was gagged by inserting a piece of cloth and therefore she could have offered resistance or raised alarm for help.
- (iii) statement of the prosecutrix makes it clear that she had bitten the accused/appellant as a result he sustained injuries but medical report does not support this version of the prosecutrix as no injury whatsoever has been noticed on the person of the accused/appellant.
- (iv) as the request of prosecutrix to live in her parental home was turned down by her husband Panuram (PW-3), therefore she has implicated accused/appellant in a false case to teach lesson.
- (v) as alleged by the prosecutrix, earlier also she was subjected to rape by the accused/appellant but report of that incident was not lodged by her which creates doubt as to whether subsequent story of the prosecutrix is correct or not?
- (vi) though as per FSL report, spermatozoa has been found on the seized articles i.e. peticoat, vaginal slides of the prosecutrix and underwear of accused/appellant, but in absence of serological report, the accused/appellant cannot be held guilty of the offence

punishable under Section 376 (1) of the IPC.

(vii) during the pendency of case, compromise has been entered into between the accused & the prosecutrix and applications under Sections 320 (2) & 302 (5) of the Cr.P.C. duly supported by affidavit of the prosecutrix have also been filed. Effect of the compromise may be taken into consideration.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

7. I have heard learned counsel for the parties and perused the material available on record.

8. The prosecutrix (PW-2), a married lady aged about 22 years, has stated in her court statement that the accused/appellant is her brother-in-law (ਜੇਠ). On one Sunday at about 11.00 p.m. in the night, when her husband had gone to another village and her mother-in-law was in the house, the accused/appellant had committed forcible sexual intercourse with her. She has further stated that when she tried to raise alarm, her mouth was gagged by the accused. On Monday when her husband returned, she informed him about the incident. She has also informed two other persons about the incident. On disclosure of incident to her elder mother-in-law & father-in-law, they told her that they would make the accused/appellant understand. Accused/appellant has also stated that he will offer her chudi (a kind of customary marriage). She has further stated that another day also when her husband was in the house and she was sleeping outside along with a girl, the accused/appellant committed rape on her. On the next morning when she enquired from her husband, he told that as he was suffering from fever, he did not come and asleep inside. She has further

stated that on the second day her father came and she narrated the entire incident to him and then accused/appellant said that he will perform chudi marriage with her, on which she slapped him. Thereafter she went to the police station along with her father and lodged the report (Ex.P-2). In the cross-examination she has stated that in our society the daughter-in-law does not talk to her brother-in-law (जेठ) and it is also true that daughter-in-law used to observe parda with him. Though the accused has his wife but he is issueless. She did not lodge report of first incident. She has stated that while being subjected to rape she had offered protest and even beat accused/appellant. This witness has admitted that at the time of incident the people of vicinity were watching video beside her house, but she did not inform about the incident to anyone. She has further stated that though she had raised cries but the girl sleeping along with her did not wake-up. She has further stated that in the courtyard where she was subjected to rape there was no door and anybody can come there. She has further stated that light was on in the courtyard. Being confronted with FIR and her diary statement, she has stated that she did not inform the police that she beat the accused by a club and that her husband is mentally weak and if all these things are recorded in her statement then she cannot explain. She has further stated that her husband & mother-in-law were also sleeping nearby. She has admitted that as she is daughter-in-law of appellant and he used to keep distance with her. She has denied the suggestion that she wants to keep her husband in her father's house. She has stated that for the last 8-10 months she is living in her father's house as she has been ousted by her in-laws. She has stated that though her father had obtained money from her father-in-law but the same was returned in presence of various persons and documents prepared in this regard has been burnt.



9. Gopinath (PW-1) is the father of the prosecutrix. This witness has stated that when he came to meet the prosecutrix, he was informed by her that accused/appellant is saying that he will perform chudi marriage with her, whereupon he asked the accused/appellant as to why he is saying so, then he misbehaved with him due to which the prosecutrix slapped him. The prosecutrix informed him that the accused/appellant has committed rape with her in the previous night. Thereafter they came to the police station where the prosecutrix lodged the report. In the cross-examination this witness has admitted that any meeting of panchayat in connection with incident in question was not convened. The prosecutrix had beaten the accused/appellant in his presence. He has clarified that his daughter is not mentally weak but admitted that the daughters-in-law do not come before their brother-in-law (जेठ). He has admitted that he has taken money from the father-in-law of her daughter. He has admitted document of Ex.D-1 which is an acknowledgement of acceptance of money by this witness from the father-in-law of her daughter. However, he has clarified that said amount was returned and original document was destroyed. He has admitted that though he wanted that husband of the prosecutrix should live with them as the prosecutrix was subjected to rape by accused/appellant, but he was not ready to live with him.
10. Panuram (PW-3) is the husband of the prosecutrix. He has not supported the prosecution case and has been declared hostile. Bhimdhar (PW-5) is the seizure witness. This witness has also not supported the prosecution case and has been declared hostile. Boondkunwar (PW-5) & Ramkunwar (PW-6) appears to be neighbours of the accused/appellant and they have stated that they were informed by the prosecutrix that she was subjected to rape by accused/appellant. However, there are material contradictions in the Court statements of these witnesses from that of their diary statements.

11. Dr. Madhu Dubey (PW-7) had medically examined the prosecutrix vide Ex.P-8. She has stated that no external or internal injury has been noticed on the person of the prosecutrix. The prosecutrix was habitual to sexual intercourse and her vagina easily admits two fingers. Her hymen was old torn. She has prepared vaginal slides of the prosecutrix and handed over the same to the constable for chemical examination. She has opined that no definite opinion regarding rape can be given.
12. Manharan Lal Dewangan (PW-8) is the Patwari who prepared the spot map (Ex.P-9), panchnama (Ex.P-10) and revenue records (Ex.P-11 & P-12). Ajay Kumar (PW-9) & Sheetal Prasad (PW-10) are the seizure witnesses and they have not supported the prosecution and turned hostile.
13. N.P. Porte (PW-11) is the investigating officer and has duly supported the prosecution case.
14. Firtoram (DW-1) has stated that on the date of incident the appellant was watching video along with other villagers throughout the night. He has further stated that the prosecutrix is quarrelsome lady. Similar is the statement of Babulal Mahant (DW-2).
15. Close scrutiny of the evidence makes it clear that though allegation has been levelled by the prosecutrix that she was subjected to rape by the accused/appellant, but the story putforth by her does not appeal to the conscience of this Court. The circumstances in which she is said to have been subjected to rape by accused/appellant appears to be quite unnatural as according to her own statement at the relevant time she was sleeping in a cot lying in the courtyard of house along with eleven years old girl. In such a situation, it could not have been possible for the accused to succeed in his pursuit of commission of rape. Even the prosecutrix did not stick to her version as at one place she has stated that she was sleeping in the verandah and at the other stated that she was sleeping in her room. It has

come in evidence that the accused/appellant did not tie hands or legs of the prosecutrix even then while being subjected to sexual intercourse she has not made any attempt to come out from the clutches of accused/appellant. It is also surprising that she did not raise cries though had the opportunity as her mouth was not gagged by any means. Statement of the prosecutrix that while being subjected to sexual intercourse by accused/appellant she had bitten in his hand does not get corroboration from the medical evidence as the doctor has not noticed any injury whatsoever on his body. Though the prosecutrix had alleged that at an earlier occasion also the accused/appellant had committed forcible intercourse with her, but she did not offer any plausible explanation for not lodging the report of said incident.

Mere presence of spermatozoa in the undergarments of the prosecutrix and the accused/appellant is not sufficient to convict him for commission of rape, especially in absence of serological report on record. Even it is admitted fact that the accused/appellant and the prosecutrix both are married and living with their respective spouses.

This apart, there is evidence on record that the prosecutrix wanted that her husband should live in her parental home with her but the same was refused by her husband and that father of the prosecutrix had taken some money from the father of accused/appellant which was repaid after making persistent demands. In these circumstances, possibility of the prosecutrix making out a false case of rape against the accused/appellant with intent to teach lesson to her husband and his family members cannot be ruled out.

16. Thus the overall material collected by the prosecution, including the evidence of the prosecutrix, leads this Court to the only irresistible conclusion that evidence of the prosecutrix does not inspire confidence of this Court and therefore the accused/appellant is entitled for acquittal of the charge by giving him benefit of doubt.

32

17. In the result, the appeal succeeds and the impugned judgment of conviction and order of sentence is set aside. The appellant is acquitted of the charge levelled against him by extending him benefit of doubt. Since the appellant is on bail, no further order is necessary.

Sd/-  
Pritinker Diwaker  
Judge

roshan/-