

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 464 of 2010

1. Smt. Dropti Ahirwar, W/o Heera Lal Ahirwar, aged about 30 years, r/o village Amradandi, Police Station Janakpur, District Koriya (CG)

---- Appellant

Versus

1. Basant Lal Ahairwar, S/o Nakul Ahirwar, aged about 19 years, r/o village Amradandi, Police Station Janakpur, District Koriya (CG)
2. State of Chhattisgarh, through Police Station Janakpur, District Koriya (CG)

---- Non-applicants

For appellant:
For Respondent No.2.

Shri Ramakant Pandey, Advocate.
Shri Ajit Singh, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment on Board

Per P. Diwaker, J

07/08/2015

1. Heard on admission.
2. In this acquittal appeal the appellant prosecutrix has assailed the judgment of acquittal dated 28.4.2010 passed by the Additional Sessions Judge, Manendragarh, District Koriya (CG) in Sessions Trial No.02/2010 acquitting respondent No.1 of the charges under Sections 450, 506 (B) & 376 of the Indian Penal Code (for short 'the IPC').
3. As per prosecution case, on 22.5.2009 the appellant lodged a written complaint (Ex.P-1) to the effect that on 11.5.2009 her husband had gone to her parents home and she along with her children was sleeping in the verandah of house. At about 9.00 p.m. in the night, respondent No.1

came there, sat on the cot near her head, caught hold her right hand, gagged her mouth and threatened her that if she would raise cries, he will kill her. The accused inserted a handkerchief in her mouth and thereafter forcibly committed sexual intercourse with her after removing her saree. She has further stated that as soon as she got rid of the accused, she raised alarm and on hearing her cries, her father-in-law Babulal (PW-2) came on the spot and saw the accused fleeing from the spot. She has further stated that on the next morning her father-in-law had called the villagers and narrated them the entire incident. However, she is lodging the report after return of her husband. Based on her complaint, FIR (Ex.P-2) was registered on 22.5.2009 against the accused under Sections 376 & 506 Part-II of the IPC. The appellant prosecutrix was medically examined on 23.5.2009 vide Ex.P-4 and the doctor did not notice any external or internal injury on her body. As per opinion of the doctor, though the prosecutrix was habitual to sexual intercourse but no sign of recent intercourse was noticed.

4. On completion of investigation, charge sheet was filed against the accused for the offence punishable under Sections 450, 506 (B) & 376 of the IPC followed by framing of charges by the Court below under above sections.
5. The prosecution in order to bring home the charges levelled against the accused examined as many as eight witnesses. Statement of the accused/respondent No.1 was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded false implication.
6. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, acquitted accused/respondent No.1 of the charges levelled against him. Hence

this acquittal appeal by the prosecutrix.

7. Learned counsel for the appellant submits that;

i. the trial Court has erred in law in acquitting the accused/respondent No.1.

ii. though there is delay in lodging the report but the same has been satisfactorily explained by the prosecutrix stating that the report could not be lodged promptly as at the relevant time her husband was not in the village;

iii. statement of the prosecutrix finds support from the statements of Babulal (PW-2), father-in-law of prosecutrix, and Jeevanlal (PW-3) and therefore there is no reason to disbelieve her statement.

8. On the other hand, the State counsel has duly assisted the Court.

9. We have heard learned counsel for the parties and perused the material available on record.

10. The appellant (PW-1) in her Court statement has stated that on the date of incident she along with her child was sleeping on the cot in the verandah. Her husband had gone to her parental home. In the night at about 9.00 p.m. the accused came to her house, mounted on her and robbed her chastity. She has further stated that when she tried to raise alarm, the accused inserted cloth in her mouth and threatened her that if she raised alarm, he would kill her. On hearing her cries, her in-laws came and on seeing them, the accused fled from her room. She has further stated that her father-in-law had called the villagers and narrated the entire incident to them. She has further stated that the report could be lodged only after arrival of her husband. She has stated in her cross-examination that the accused had committed rape with her on the cot where she was sleeping along with her four years old child and her other

children were sleeping nearby. She has further stated that she received abrasions in both her thighs.

11. Babulal (PW-2) has stated that on hearing cries of her daughter-in-law, he reached to the spot and saw the accused fleeing from the spot. The prosecutrix told him that the accused had committed rape with her. He has further stated that he narrated the entire incident to the villagers and after arrival of his son, the report was lodged.
12. Jeevanlal (PW-3), Heeralal (PW-4) & Mohanlal (PW-5) are the independent witnesses to whom incident was narrated by Babulal (PW-2) but they have not supported the prosecution case. Parsadi (PW-6) & Hanuman (PW-7) have been declared hostile by the prosecution. Budheshwar Paikra (PW-8) is the investigating officer who conducted investigation in the matter.
13. Though the prosecution has tried to make out a case of rape against the accused/respondent No.1, the evidence of prosecutrix, who has been the victim of incident itself, does not appeal to the conscience of this Court. The circumstances in which she is said to have been subjected to rape by accused/respondent No.1 appears to be quite unnatural as according to her own statement at the relevant time she was sleeping in a cot lying in the verandah of house along with her four years old child apart from other children sleeping nearby. In such a situation, it could not have been possible for the accused to succeed in his pursuit of commission of rape. Statement of the prosecutrix that she protested the advancement of accused/respondent No.1 and on account of which she even sustained injuries also gets falsified because the same does not get corroboration from the medical evidence. Most importantly, there is inordinate delay of 11 days in lodging FIR after the incident which has

not been satisfactorily explained by the prosecution. The prosecution thus utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. Even otherwise, the settled position in case of an appeal against acquittal is that if two views are possible on the basis of evidence led by the prosecution, the one which favours the accused has to be taken into consideration and this is what is being done in this case.

14. Accordingly, the acquittal appeal preferred by the appellant prosecutrix is bereft of any substance, the same is liable to and is hereby dismissed at the admission stage itself.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-