

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2120 of 1999

- Janakram Verma, S/o. Sukhdev Verma, aged about 32 years, R/o. Civil Lines, Baloda Bazar, Police Station, Baloda Bazar, Raipur (M.P.) (now C.G.)

---- Appellant

Versus

- State of Madhya Pradesh, Through Police Station, Baloda Bazar, Raipur (M.P.) (now C.G.)

---- Respondent

For Appellant	:	Mr. A.D. Kuldeep, Advocate
For Respondent / State	:	Mr. Mahesh Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 03-09-2015

- 1) This appeal is directed against the judgment of conviction and order of sentence dated 06.07.1999 passed by Special Judge under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act,1989'), Raipur in Special Case No. 141/98. By the impugned judgment the appellant has been convicted under Section 354 of the IPC and sentenced to pay fine of Rs.500/-, in default of payment of fine to undergo R.I. for 10 days.
- 2) The facts, briefly stated, are as under :-
 - 2.1) On 23.10.1998 at about 9.00 a.m., when prosecutrix (PW-1) was sweeping in Government Hospital, Baloda Bazar, accused/ appellant, who was posted as ward-boy, was present there, he came from back of the prosecutrix and caught hold of her with bad intention, he dragged her near freeze, threw her on ground, gagged

her mouth and removed her sari and committed forcible sexual intercourse with her. When she shouted then her husband Khamhan (PW-2) came there, on seeing him accused was started wearing his pant and Khamhan (PW-2) assaulted both prosecutrix and accused by broom. Thereafter, she narrated the incident to her husband and reported the incident vide Ex.P-1 in police station, Baloda Bazar. Case was registered under Sections 376(2)(d) of the IPC and under Section 3(1)(xii) of the Act, 1989 and after completion of investigation, challan was filed against the appellant.

2.2.) After completion of trial, learned Special Judge under the Act, 1989, Raipur has passed the judgment of conviction under Section 354 of the IPC and awarded the sentence as aforementioned and acquitted him from the charges of Section 376 (2) (d) of the IPC read with Section 3(2)(v) of the Act, 1989. Hence this appeal.

- 3) Mr. A.D. Kuldeep, learned counsel appearing for the appellant has argued that the evidence of the prosecutrix herself is not reliable and her evidence is shaky. The entire prosecution story is patently false, her husband Khamhan (PW-2) is a supporting witness, thus he is an interested witness, therefore, his evidence cannot be relied upon as conviction based on the said evidence is not safe. He also argued that the prosecution has not proved its case beyond reasonable doubt.

- 4) On the other hand, Mr. Mahesh Mishra, Panel Lawyer for the State has opposed these arguments and supported the judgment passed by the Special Sessions Court.
- 5) I have heard learned counsel for the parties, perused the judgment impugned and record of the Court below.
- 6) In this case it is not disputed that eye-witness Khamhan (PW-2) is husband of the prosecutrix (PW-1). Version of eye-witness cannot be discarded by the Court merely on the ground that such eyewitness appeared to be a relative or friend of the deceased. The concept of interested witness essentially must carry with it the element of unfairness and undue intention to falsely implicate the accused. It is only when these elements are present and statement of the witness is unworthy of credence that the Court would examine the possibility of discarding such statement. But where the presence of the eye witness is proved to be natural and his statement is nothing but truthful, disclosure of actual facts leading to the occurrence itself, it will not be permissible for the Court to discard the statement of such related or friendly witness". (**See Dayal Singh & Ors. Vs. State of Uttar Pradesh, AIR 2012 SC 3046**).
- 7) Relationship is not a factor to affect credibility of a witness. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to

shield the actual culprit and falsely implicate the accused. A witness who is a relative of deceased or victim of the crime cannot be characterized as 'interested'. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive. A close relative cannot be characterized as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole testimony of such witness (see- *Harbans Kaur and another -Vs- State of Haryana, 2005 AIR SCW 2074; Namdeo -Vs- State of Maharashtra, 2007 AIR SCW 1835; Sonelal -Vs- State of M.P., 2008 AIR SCW 7988; and Dharnidhar -Vs- State of Uttar Pradesh and Others & other connected appeals, (2010) 7 SCC 759*).

- 8) Therefore, the evidence of eyewitness Khamhan (PW-2) cannot be thrown away, simply on account of the fact that he is the relative of the complainant. However, his evidence is to be scrutinized with great care and caution to find out whether it is intrinsically reliable, inherently probable and wholly trustworthy and if found so, conviction can be based even on the statement of the complainant and also statement of single eye witness.

- 9) Prosecutrix (PW-1) has stated that on the date of incident at about 8.00 - 8.30 am, while she was sweeping the room of Dr. Tiwari accused / appellant came from her backside, caught hold of her body from backside, she raised alarm then her husband Khamhan (PW-2) came there to whom she narrated the incident. She was cross-examined at length, but nothing material could be brought based on which either her testimony may be discarded or it may be said that she was falsely implicating the appellant in the said incident.
- 10) Khamhan (PW-2), husband of the prosecutrix has corroborated the statement of the prosecutrix. He has stated in his deposition that after hearing sound of her wife, he rushed there and saw the accused standing near her wife, he started wearing his pant, his wife narrated him that accused caught hold of her after coming behind her. He was also cross-examined, but nothing material could be brought based on which either his testimony may be discarded or it may be said that he was falsely implicating the appellant in the said incident.
- 11) Evidence of the prosecutrix (PW-1) is fully supported by the evidence of her husband Khamhan (PW-2) and is also corroborated by the medical evidence. Incident was also supported by FIR (Ex.P-1).
- 12) Considering all the facts and circumstances of the case and on minute scrutiny of the entire evidence, I am of the view that the

learned Special Judge was fully justified in resting conviction of the appellant on the basis of evidence of the prosecutrix (PW-1) duly supported and corroborated by the evidence of her husband Khamhan (PW-2), medical evidence and FIR (Ex.P-1).

- 13) For the foregoing reasons, I do not find any substance in the appeal. Accordingly, the appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

Sd/-
(I.S.Uboweja)
JUDGE