

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 63 of 2002**

- Barat Singh Gond, Son of Radhey Gond, aged about 22 years, R/o Village Suvadera, Police Station and Tahsil Sakti, District Janjgir Champa (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through : P.S. Sakti, Dist. Janjgir Champa

---- Respondent

For Appellant	:	Mr. Sushil Dubey, Advocate.
For Respondent/State	:	Mr. Suryakant Mishra, P.L.

Hon'ble Shri Justice Inder Singh Uboweja**C A V Judgment**
(Delivered on 01.09.2015)

Challenge in this appeal is to the judgment of conviction and order of sentence dated 20th November, 2001 passed by the Additional Sessions Judge, Sakti, Sessions Division Bilaspur (C.G.) in Sessions Trial No. 89/2001 whereby and whereunder the appellant was convicted under Section 376 (1) of the I.P.C. and sentenced to RI for 7 years with fine of Rs.1000/- and in default to payment of fine, to further undergo RI for 6 months.

2. As per case of prosecution, on 13.11.2000 at about 9.00 am, P.W.1 prosecutrix (name not mentionable) went to accused/appellant's house, which is very near to her house, for taking tobacco tooth powder (*Gudakhu*). To know who is inside the house, she called in a loud voice and went inside the house, at that time, appellant/accused came out from house and caught hold the prosecutrix and dragged in a room with a saying that he will commit a wrong-doing with her. Thereafter, he threw her on a cot and after undressed her committed rape on her. At this juncture, prosecutrix husband, namely, Dhaneshwar (P.W.2) came there in an anger mood and on seeing him the

accused/appellant fled away from the spot.

3. First information report (Ex.P.1) was lodged by the prosecutrix in the Police Station, Sakti, Dist. Janjgir-Champa where offence punishable under Section 376 (1) of the I.P.C. has been lodged by the Police against the accused/appellant. Prosecutrix was sent for medical examination to Government Hospital, Sakti, where Dr. (Smt.) R.L. Rajnala (P.W.6) examined the prosecutrix and did neither find any injury on her private part nor did she find any external injury on her body. She did not give her definite opinion regarding recent commission of sexual intercourse. Her examination report is Ex.P.3. Doctor prepared slide of vaginal swab and handed over the same to the concerned constable, which was seized vide Ex.P.

4. Patwari prepared spot map vide Ex.P.7. Accused/appellant was arrested and sent for medical examination to Government Hospital, Sakti, where Dr. D.D. Mishra (P.W.3) examined the appellant vide Ex.P.8 and opined that the accused was capable to perform sexual intercourse. Petticoat of the prosecutrix was seized vide Ex.P.4. One underwear of the accused/appellant was seized vide Ex.P.11. Seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur and report of which was received vide Ex.P.19.

5. During the course of investigation, statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge sheet under Section 376 of the I.P.C. was filed before the Court of Additional Chief Judicial Magistrate, Sakti, who in turn committed the case to the Court of Sessions, Bilaspur. The Additional Sessions Judge, Sakti received the case on transfer for its trial.

6. So as to hold the accused / appellant guilty, prosecution has examined seven witnesses in support of its case. Statement of the accused / appellant was also recorded under Section 313 of the Code in which he denied the charges leveled against him and pleaded his innocence and false implication in the case.

7. After providing an opportunity of hearing to the parties, the trial Court has

convicted and sentenced the accused / appellant as mentioned above.

8. I have heard learned counsel for the parties and perused the material available on record including the judgment impugned.

9. At the outset, learned counsel appearing for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of the prosecutrix (P.W.1) and her husband Dhaneshwar (P.W.2), but, their evidence does not inspire confidence and trustworthy because the contents of Police report, diary statements and court statements are not corresponding to each other. There are material and major contradictions and omissions in the statements of above witnesses and did not find support the medical report. Therefore, in absence of cogent and clinching evidence, conviction and sentence of the appellant is not sustainable under the law. He further submits that considering all the facts and circumstances of the case, the instant appeal deserves to be allowed, the judgment of the trial Court be set aside and the appellant be acquitted of the charge.

10. *Per contra*, learned counsel appearing for the respondent/State arguing the case in support of the impugned judgment of the trial Court submits that there was no infirmity warranting any interference in appeal.

11. I have heard learned counsel for the parties and perused the record of trial Court including impugned judgment.

12. As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of the prosecutrix and her husband, P.W.1 & P.W.2 respectively. Prosecutrix (P.W.1) stated in her evidence that she went to house of the accused for demanding tobacco tooth powder (*Gudakhu*); nobody was present there except the accused/appellant; she demanded the *Gudakhu* from him, whereupon he replied that he did not have the same and thereafter caught hold her hands and legs and dragged her inside the room; he overthrown her on the cot and committed sexual intercourse upon her. On this she started making hue and cry whereupon her husband Dhaneshwar (P.W.2) rushed there and on seeing him the

accused fled away from the spot. In cross-examination, she admitted that there are many houses near the incident place. She stated in her cross-examination that when accused caught hold her hand in the courtyard of his house, she raised cries but accused forcibly dragged her inside the room whereas in Ex.D.1, which is the diary statement, the aforesaid evidence adduced by her in the cross-examination, is not stated by her meaning thereby that this witness disclosed those facts for the first time in Court. Therefore, her evidence adduced in Court is not reliable. She also stated that when she was protesting herself, her neck was injured by bangles but medical report shows that she has given false statement because no broken pieces of bangles were seized by the Police. She further stated that accused was threatened her that he will press her neck whereas this fact did not find anywhere in the Police Report (Ex.P.1) nor did find place in the Police statement (Ex.D.1). If the above evidence is taken into consideration, then it reveals that she adduced false evidence before the Court. She has also narrated that when accused was doing sexual intercourse, then her hands were free but she did not try to protect herself nor did try to counter attack on accused, which shows the conduct of the prosecutrix that she was not aggrieved party but totally consenting party. As the testimony of the prosecutrix itself was not reliable and the same is also not supported by the medical evidence, it cannot be said that this is a case forcible intercourse on her.

13. Dhaneshwar (P.W.2), husband of the prosecutrix, stated in his evidence that after hearing sounds of 'help', he rushed the accused house and saw that accused was committing rape upon the prosecutrix whereas this fact was never stated by the prosecutrix that during the course of rape, she cried for help. Her police statement (Ex.D.1) reveals that she was trying to scream but she never narrated in the Police report that when the appellant was committing rape on her she was trying to cry for help at that time. In the police statement of P.W.2 Dhaneshwar (Ex.D.2) also this witness has not given the statement that he heard the sounds of 'help' made by her wife. Therefore, this witness is also not reliable witness.

14. Thus, looking to the entire material made available before this Court and overall

conduct of the prosecutrix as has been discussed above, the prosecution failed to prove the fact that the accused has forcibly committed the sexual intercourse against the will of the prosecutrix.

15. Taking into consideration all the facts and circumstances of the case, especially, the conduct of the prosecutrix, I am of the opinion that the trial Court while convicting and sentencing the appellant under Section 376 (1) of the I.P.C. has not considered the relevant aspects of the matter and thereby committed the illegality.

16. In the result, the appeal is allowed. The impugned judgment is set aside. Accused/appellant is acquitted of the charge levelled against him. He shall be set at liberty forthwith, if not required in any other case. The appellant is on bail. His bail bonds shall stand discharged. The amount of fine, if deposited, be refunded to him.

Sd/-
(I.S.Uboweja)
Judge

Anjani