

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 173 of 2015**

Tikali Bai D/o Ravindra Miri Cast Satnami, Aged 35 years, R/o village Teemarlaga (Latnala) P.O. Teemerlaga, Tahsil Sarangarh, P.S. Sarangarh, District Raigarha, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Police Station Sariya, District Raigarha Chhattisgarh.
2. Shyamlal Chauhan S/o Darshan Chauhan, Aged 43 years, R/o village Kudhargadhi, Police Station Sariya, District Raigarha Chhattisgarh.

---- Respondent

For Appellant	:	Shri Viprasen Agrawal, Advocate.
For Respondent No. 1/State	:	Shri Neeraj Mehta, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Judgment on Board****Per Navin Sinha, Chief Justice****30/09/2015**

1. The Appellant assails acquittal of Respondent No. 2 in Sessions Trial No. 26 of 2014 dated 31.7.2015 by the Additional Sessions Judge, Sarangarh, District Raigarh from the charge under Section 376 IPC.
2. Learned Counsel for the Appellant submits that the occurrence was on 31.1.2014 at about 9:00 am in the jungle where the Appellant, who is the prosecutrix herself had gone to cut wood. The Respondent No. 2 forced himself upon her against her wishes. She came home and informed her husband immediately. The evidence of a prosecutrix as a victim herself has been held sufficient to sustain conviction and it is not necessary that there must be independent corroborative evidence without which conviction is not sustainable. From the nature of the occurrence itself, most times independent evidence may not be available. It is next submitted that the Respondent No. 2 on medical examination was found competent for sexual intercourse. The prosecutrix had adequately explained in her evidence that she got scared and therefore she did not protest but quietly came home and told her husband. The

fact that presence of semen may not have been found on the clothes cannot lead to any conclusive opinion that the allegations were not true. The prosecutrix was about 35 years of age and would not risk her own reputation in her community by publicly acknowledging that she was a victim of rape unless the allegations were true. Since the offence was committed on her person, the fact that her husband may not have been examined as a witness was an irrelevant consideration for granting acquittal. The Doctor, PW-7 found injury on the right wrist of the prosecutrix, which supports the allegation that Respondent No. 2 had forced himself upon her in the jungle.

3. We have heard Learned Counsel for the State Also.

4. We have considered the submissions on behalf of the parties. Normally speaking, the evidence of a prosecutrix who is a victim of a sexual offence, can in the facts of the case be sufficient evidence to sustain conviction without need for independent corroboration. It was rightly urged that in the nature of the occurrence, independent evidence may not be available at all as such offences are committed in seclusion. But it is not an invariable rule that in all cases where a prosecutrix alleges sexual assault against her, irrespective of all other facts and circumstances, what the prosecutrix states is to be taken as a gospel truth and conviction must necessarily follow. It will therefore primarily depend on the nature of the evidence given by the prosecutrix in a case considered with all surrounding circumstances. If the evidence of the prosecutrix in light of the surrounding circumstances is otherwise found reliable and convincing, conviction can be based on it. But if there are discrepancies between the statement of the prosecutrix and the evidence available from the surrounding circumstances and a plausible defence is taken of false implication which is not adequately answered by the prosecution, the evidence of the prosecutrix alone will not be sufficient to sustain conviction.

5. According to the prosecutrix, Respondent No. 2 forced himself upon her in the jungle on rough ground. In her cross-examination, as noticed by the Trial

Judge, she acknowledged that the ground was rough and uneven and that she was dragged for about 200 meters and that she had put up a tough struggle. The Trial Judge, in our opinion, rightly came to the conclusion that if the prosecutrix was dragged in the jungle on uneven ground for that distance while struggling, surely there would have been some signs of injuries on her person. PW-7, the Doctor, found only one abrasion on the right wrist and opined that it could be self-inflicted also. There were no other injuries on the person of the prosecutrix at all. The brother of the prosecutrix, PW-11, in cross-examination acknowledged that he was only deposing in accordance with what the prosecutrix had told him. According to the prosecutrix, she came home and told her husband. But as observed by the Trial Court, the husband who was therefore a crucial witness has not been examined and no explanation for the same has been put forward by the prosecution.

6. The Respondent No. 2 had taken a specific defence that the prosecutrix had been set up by one Antaryami who was an accused for having misbehaved with the wife of the brother of Respondent No. 2 and for which a police case had been registered. This defence was not met and denied by the prosecution. The present allegations have been made eight months after the case lodged against Antaryami when he was taken into custody by the police.

7. In conclusion, considering the entirety of the matter, nature of the evidence led, we do not consider the present a case where the evidence of the prosecutrix alone was sufficient to sustain conviction. No ground is made out to interfere with the acquittal.

8. The appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE