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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.583 of 2001

Ravishankar Kanwar S/o Bharat Singh, age 30 years, R/o village Motipur, PS Darima, Teh. Ambikapur, Distt. Surguja (CG).

---- Appellant

Versus

The State of Chhattisgarh, through the Police Station, Darima, District Surguja (CG).

---- Respondent

For Appellant
For respondent/State

Shri AK Prasad, Advocate.
Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

09/12/2016

1. The appellant stands convicted for the offence under Section 376(1) IPC and have been sentenced to undergo RI for 7 years with fine of Rs.1000/- with default stipulation vide judgment dated 19.06.2001 passed by the Additional Sessions Judge, Ambikapur, in Sessions Trial No.135/2000.
2. The case of the prosecution in brief is that, an FIR was lodged on 17.03.2000 at around 5 AM in the morning at the behest of PW-1, alleging that the appellant is said to have at around 2AM in the (intervening) night when the prosecutrix had gone out for relieving herself, came from behind, caught hold her and took her to the back side of the house of Tuman Singh and is said to have committed rape with her. Immediately, when she returned back to her home, her

husband who woke up at that time, asked where she had gone and thereafter she narrated the entire incident. Thereafter, an investigation was conducted and based on the investigation, the case was registered against the appellant and he was subjected to trial before the court below for the offence under Section 376(1) IPC.

3. The prosecution, in all, has examined as many as 9 witnesses and on behalf of defence, two witnesses were examined.
4. After conclusion of trial, the court below finally found the appellant to be guilty of having committed an offence under Section 376 (1) IPC and sentenced him for the period as enumerated in the first paragraph of this judgment leading to filing of this appeal.
5. Learned counsel appearing for the appellant assailing the judgment submits that the entire judgment of court below is totally bad in law for the reason that the court below has not appreciated the evidence in its proper perspective. It is a case where the appellant has been falsely implicated in the case and that the prosecution has not been able to establish its case beyond all reasonable doubts. It is also contended that the case of the prosecution is highly improbable. If the entire records is perused, what clearly reflects is that there are so many contradictions and omissions on the part of the witness who have been examined before the court below so far as firstly; who the accused was, secondly; the incident itself having occurred or not; and thirdly the fact that material witnesses relevant for the proper adjudication of the case have been deliberately given up by the prosecution. Thus, the impugned judgment of conviction cannot be sustained and the same

deserves to be set aside/quashed.

6. Counsel for the appellant referring to statements of prosecutrix PW-1, PW-6, Ravi Prasad Kushwaha, the Investigating Officer, and also statement of one Shiv Prasad recorded during the course of investigation under Section 161 submitted that it is a case where infact there is sufficient material on record to show that the alleged act could have been committed by one Peelu Ram and not the present appellant. So far as involvement of Peelu Ram is concerned, there is no proper investigation to reach to the conclusion that he could have been the offender in committing the offence.
7. It was next submitted that it is a case where the husband of the prosecutrix has also created great element of doubt in his version and the benefit of which should go in favour of the appellant. The statement of prosecutrix itself would reveal that it was highly improbable story which has been made by the prosecution. The averment made in the said deposition are hard to believe and gives great element of doubt suspecting the case of the prosecution. There is also great element of doubt created on the version of PW-2, Agam Das, the Husband of the prosecutrix, inasmuch as both, the prosecutrix and her husband have stated that after the prosecutrix had gone to relieve herself at around 2 AM, the Husband woke up and after a while the prosecutrix came. It was the husband of the prosecutrix who had first enquired as to where she had gone and he scolded his wife also as to where she has gone. It is then that the prosecutrix had narrated the entire incident to her Husband. This, according to the appellant is a very unnatural conduct

on the part of a lady who has been subjected to rape at around 2 AM in the night at the hands of unknown person and yet she reached home in a normal condition without creating hue and cry in respect of the incident and it is only when the husband had scolded her and enquired where she had gone, she implicates the present appellant of having committed the offence.

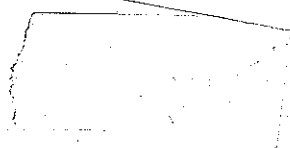
8. It was also contended that the prosecutrix as well as her husband, PW-2, both have admitted the fact that immediately after the prosecutrix had disclosed the fact to the husband, he had rushed to the house of one Shiv Prasad and there he is said to have told Shiv Prasad of his wife (prosecutrix) informing him that Peelu Ram had committed sexual intercourse with her. Surprisingly, the said Shiv Prasad has not been examined for reasons best known. Therefore, it all the more creates a great element of doubt on the story of prosecution. It was further submitted that even PW-6, the Investigating Officer, also in his deposition has accepted the fact that Peelu Ram had also been called to the police station for the purpose of investigation which also gives rise to doubt of the fact that the said act of rape could have been done by Peelu Ram.

9. It is also submitted that it is a case where the defence has also examined two witnesses and both the witnesses DW-1, Alman Singh and DW-2, Bhishma Singh have come up with a stand that the appellant was all along with them in the field protecting crops on the fateful night. DW-1 states that when the police has brought Peelu Ram to the place of incident, he was also present there and Peelu Ram is said to have



again confessed before the police authorities that this was the place where he was standing in the night when the prosecutrix came out for relieving herself and from where he had caught hold of her hand and had taken the prosecutrix to the back side of the house of Tuman Singh and had ravished her.

10. It was also contended that medical evidence which have been adduced by the prosecution also does not support the case of the prosecution inasmuch as the prosecution has not brought any material by which it can be suggested that the appellant is said to have committed rape with the prosecutrix. Further, the medical evidence is also not reliable for the reason that the articles seized during the course of investigation have been sent for chemical examination, but report of the same has not been received. In the absence of any chemical report, it cannot be established as to whether the appellant did commit the offence or not.
11. It was lastly contended that the appellant has been falsely implicated in the case on account of political chemistry which was there in the village inasmuch as, PW-3, Hari Shankar Singh, the brother of the prosecutrix had an inimical terms with the present appellant as the present appellant was not supporting the sister in law (Bhabhi) of PW-3 who was contesting the election of Sarpanch and also stood elected. Thus, with an intention to falsely implicate, the appellant has been made an accused instead of Peelu Ram who is the real culprit.
12. All these facts depict a lot of contradiction and omissions in the prosecution story and the benefit of which should have been given to the appellant. Therefore, the impugned judgment of conviction deserves



to be set aside and the appellant be acquitted of the charges.

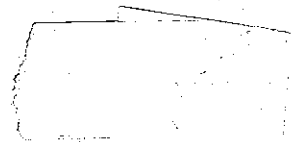
13. On the other hand, learned counsel appearing for the State opposes the appeal on the ground that there is no reason to disbelieve the prosecutrix. It is settled position of law that in case of rape, it is the statement of prosecutrix which has paramount importance and in the instant case the prosecution witnesses have supported the case of the prosecution so far as commission of offence by the appellant is concerned. The defence also has not been able to extract much from the cross examination of the prosecution witnesses creating doubt on the prosecution story.
14. It was also submitted by the State that it is a case where there is prompt lodging of FIR which all the more inspires confidence on the prosecution story for the reason that the incident is alleged to have been taken place at about 2 AM in the night and the FIR was lodged immediately at around 5 AM in the morning i.e. just after a couple of hours, which all the more is a reason not to doubt the case of prosecution. Thus, the case of the prosecution has been proved beyond all reasonable doubts and the judgment of conviction of the appellant does not call for any interference and prayed for rejection of the appeal.
15. Having considered the rival contentions put forth on either side and on perusal of record, at the outset what would be relevant to take note of is the statement of PW-1, the prosecutrix, before the court wherein she admits the fact that Peelu Ram was also called to the police station along with the present appellant where the Peelu Ram is said to have accepted the fact that it was he (Peelu Ram) who had committed rape



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with the prosecutrix. Likewise, the statement of prosecutrix further stands corroborated from the statement of PW-6, the Investigating Officer, who accepts the fact that Peelu Ram was also called upon by the police during the course of investigation. Another surprising factor in the present case is that though the FIR was lodged in the name of present appellant, the appellant and Peelu Ram both having been summoned by the same police to the police station on the same day, yet no arrest was made in respect of Peelu Ram which itself gives rise to great element of doubt. The appellant in the instant case was arrested only after 13 days i.e. on 30.03.2000.

16. PW-2, Agam Das, husband of prosecutrix, in his deposition has stated that immediately after his wife narrated the incident, he had gone to the house of Shiv Prasad and have informed him about the incident. Statement of Shiv Prasad has been recorded during the course of investigation and in his statement under Section 161 CrPC, Shiv Prasad has accepted the version of the Husband informing him that Peelu Ram has committed sexual intercourse with the prosecutrix. However, the said Shiv Prasad has not been examined.
17. In addition, another factor which needs appreciation is the contentions raised by Shiv Prasad which cannot be brushed aside for the reason that in case if the prosecutrix who had gone for relieving herself at 2 AM in the night and in that odd hours in case she has been subjected to rape, her reaction would have been entirely different. As per statement of PW-2, Agam Das, Husband of the prosecutrix, he had woke up by that time and when she came back, he scolded her as to where she had



gone and inquired about her whereabouts at the odd hours and it is only thereafter she is said to have informed her husband about the incident, which in the opinion of this court is suspicious. The prosecutrix being subjected to rape at odd hours would have rushed to her house and she ought to have made hue and cry of the incident which having not done, the conduct of the prosecutrix becomes slightly doubtful and the benefit of doubt in any manner has to go in favour of the appellant.

18. At this juncture, it would also be relevant to take note of the judicial pronouncements in this regard. The Supreme Court in case of Narender Kumar Vs. State (NCT of Dehil), reported in 2012 (7) SCC 171, while dealing with the case of rape has held in paragraphs 22, 29 and 30 as under :

"22. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, the prosecutrix making deliberate improvement on material point with a view of rule out consent on her part and there being no inquiry on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Vide Suresh N. Bhusare Vs. State of Maharashtra).

29. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to be benefit of every reasonable doubt. (Vide Tukaram Vs. State of Maharashtra and Uday Vs. State of Karnataka).

30. The prosecution has to prove its case beyond doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. The conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix's case becomes liable to be rejected."

19. Reiterating the same principle, the Supreme Court again in case of Manohar Lal Vs. State of Madhya Pradesh, reported in 2014 (15) SCC 587, has held in para-9 as under:

"9. Having found it difficult to accept her testimony on its face value; we searched for support from other material but find complete lack of corroboration on material particulars. Firstly the medical examination of the victim did not result in any definite opinion that she was subjected to rape. Secondly; Riyaz who was like a brother to the victim and thus a close confidant, has not supported the case of the prosecution and has completely denied having met her when she allegedly narrated the incident to him. Thirdly, the person who was suffering from fever and to whose house she was first taken by the appellant was not examined at all. Fourthly, the policeman who the victim met during the night was also not examined. Fifthly, neither the brother nor any of the parents of the victim were examined to corroborate the version that she had come from the village of her brother and alighted around 10.00 pm at Bajna Bus Stand. Lastly, the sequence of events as narrated would show that she had allegedly accompanied the appellant to various places. In the circumstances, we find extreme difficulty in relying upon the version of the victim alone to bring home the charge against the appellant. We are inclined to give benefit of doubt to the appellant."

20. In view of aforesaid authoritative decision of Supreme Court and also taking into consideration the peculiar facts and circumstances of the case, this court is of the opinion that a lot of doubt is created in the mind of the court so far as the conduct of the prosecutrix as also the fact that

there are more than one witnesses who have referred the act to have been committed by Peelu Ram and not by the present appellant. In addition, the defence witness have also tried to establish the fact that firstly the appellant was all along present in the field for protecting the crop. The other defence witness have stated of having witnessing the police authorities taking Peelu Ram to the place of occurrence where he is said to have admitted of having committed rape. Both these defence witnesses have not been effectively cross examined to the extent by which it can be said that their statements become doubtful or unreliable.

21. Under the aforesaid facts and circumstances of the case, this court is of the opinion that benefit of doubt created in the mind of the court would go in favour of the appellant. Hence the impugned judgment of conviction so far as the appellant is concerned, the same is not sustainable.
22. Accordingly, the appeal is allowed. The judgment impugned dated 19.06.2001 is set aside. The appellant is acquitted of the charges. His bail bond shall remain in operation for a further period of six months in view of provisions contained in Section 437-A CrPC.

Sd/-

(P. Sam Koshy)
Judge