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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 30 of 2000

- Khullu alias Khulesh S/o Sukhru Ram, aged about 19 years, R/o Village Arkar, P.S. Gurur, Distt. Durg

---- Appellant

Versus

- State of Madhya Pradesh (Now State of Chhattisgarh) Through P.S. Gurur, Dist. Durg

---- Respondent

For Appellant :	Shri Adil Minhaz, Advocate
For State :	Shri Neeraj Jain, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

04/10/2016

1. This appeal has been preferred against the judgment of conviction and sentence dated 31st August 2000 passed by the Additional Sessions Judge, Balod, District Durg in Sessions Trial No. 244/99, by which the accused appellant Khullu @ Khulesh was convicted under Section 450 and 376(1) of Indian Penal Code and was punished with a sentence of rigorous imprisonment of 7 years for both the offences.
2. The prosecution case is that on the night of 25/03/1999 at about 11:00 p.m. in the house of prosecutrix in Village Arkar when prosecutrix Rajeshwari was sleeping in a room with her younger sister Domeshwari, Neera and younger brother Kunju and the door of the room was closed from inside. At the time of incident the appellant along with Sharda Rawat came inside the room and extinguished the lamp and thereafter appellant forcibly pressed



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mouth of the prosecutrix. He took off the clothes of the prosecutrix and committed rape with her. The FIR mentions that another man Sharda Rawat committed rape with younger sister of the prosecutrix. The appellant and his companion threatened Rajeshwari and her sister during the commission of rape. As soon as the appellant and Sharda Rawat left the house of prosecutrix, prosecutrix raised alarm on which Tuman Sahu, Madan Sahu came from the village and along with others and caught hold of Khulu Sahu and Sharda Rawat and brought them to the house of the prosecutrix. Thereafter prosecutrix narrated the incident to all the persons present there. Father of the prosecutrix Johrit Ram was out of station, who came back on next day at about 12 :00 p.m. in the afternoon, after which FIR was lodged in the Police Station, Gurur against Khullu and Sharda Rawat both. Investigation was completed and charge-sheet was submitted only against Khullu @ Khuleshwar. Separate charge-sheet was submitted against accused Sharda Rawat who has been tried separately.

3. After the completion of trial, the impugned judgment has been passed by the learned trial Court in which the appellant has been convicted and sentenced as mentioned above.

4. The ground of the appeal raised by the appellant is that rape was committed simultaneously with the prosecutrix of this case and her sister in the same room where her brothers and sisters were also sleeping, seems to be practically impossible. The medical report of the prosecutrix does not support the prosecution case. In this case any brother or sister of the prosecutrix have not been examined. The prosecutrix of another case who was in the same room has also not been examined. The contradiction and omission of the witnesses render their statements doubtful. On the basis of

these grounds, it is submitted that the impugned judgment is liable to be set-aside and the appellant be acquitted from the charge.

5. On the basis of points raised in this appeal, reliability and trustworthiness of the witnesses is in question and the question is whether the prosecution has succeeded in proving its case beyond reasonable doubt, for which the evidence for prosecution before the trial Court is perused and finding in this appeal is arrived at.

6. The main witness in this trial is Rajeshwari (PW-7) she has stated that at the time of incident she was sleeping with her sisters Domeshwari, Neera and brother Kunju. She awoke hearing the sound of Gujar and saw that appellant Khullu @ Khulesh and Sharda Rawat came inside the house and Khullu sat her on chest who thereafter committed forcible sexual intercourse with her. Khullu inserted cloth in her mouth to prevent her from shouting, later on when the cloth was taken out by appellant she raised alarm and on her shout Dashrath, Madan, Khilesh came to the spot. She lodged the report on the next day. In cross-examination she has admitted that her brothers and sisters were sleeping in the same room and the door was closed from inside by sankal. She has admitted that door can be opened only by releasing the sankal and there is no other method of opening the door. She has also admitted that appellant remained at her house for almost ten minutes and during that time she did not raise alarm. When appellant left to a distance about 200 ft. at that time she raised alarm. She has denied other suggestion made by the defense.

7. On behalf of the State it has been argued that the door was opened by the accused persons as prosecutrix awoke hearing the sound of gujar, hence it is a case in favour of the prosecution. This argument cannot be

accepted. It is admission of prosecutrix in cross-examination that the door was closed from inside with the help of sankal which can be released only from inside. Although there is no suggestion by defense that door was opened by prosecutrix herself but in the matter of opening the door, this another view is also possible that door might have been opened by some inmate of the room.

8. The argument on behalf of the appellant is that it seems to be improbable that the room in which incident took place, three other persons were sleeping in the same room with prosecutrix. Domeshwari who is prosecutrix of another case has not been made witness in this case neither brother nor sister have been examined by the prosecution. In the case of prosecution the only statement of Rajeshwari (PW-7) giving narration in her statement does not give the clear picture of natural occurrence of any incident.

9. In this case even the father of prosecutrix has not been examined neither he has been listed as a witness by the prosecution. The witnesses who arrived at spot are Madan (PW-4) and Khilesh (PW-5). Madan (PW-4) stated that on hearing the alarm of 'Pakdo Pakdo' he came out from the house and went to house of Joharit Ram, where Dashrath told that appellant Khullu @ Khulesh and companion Sharda Rawat had entered the house of Joharit, this is the only statement. He has not stated anything about the narration given by the prosecutrix with respect to commission of offence of rape. Khilesh (PW-5) has stated that appellant Khullu @ Khulesh and Sharda Rawat were brought before the house of Joharit and on inquiring them both answered that they came to ask for water and nothing else was sated by the witness. No other witness has been examined by the



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prosecution who could have supported the occurrence of the incident or circumstances before or after the incident, in a manner which could have been found relevant for the purpose of supposing the charge against the appellant.

10. Dr.(Smt.) P. Baghel (PW-1) who physically examined the prosecutrix Rajeshwari, on examining her body and private parts, has given opinion in report (Ex.P/1) that there were no marks of struggle and scratches or teeth bite on her body and the prosecutrix was habitual to sexual intercourse. Two slides was prepared from vaginal discharge which were sealed and given to Constable for chemical examination. She has also examined the petticoat seized from the prosecutrix on which some stains were present which appeared to be that of sperm were seen, for which the report (Ex.P/2) was given with the direction to send for chemical examination. Under garment of appellant was also seized as per (Ex.P/5) as deposed by Sub Inspector R.P. Shukla (PW-9). All these articles were sent for examination to Forensic Science Laboratory, Raipur. Report of Forensic Science Laboratory, Raipur is (Ex.P/13), according to this report article under garment seized from the appellant had stains of sperm and human spermatozoa, whereas other articles petticoat (Article 'A'), slide prepared from the vaginal discharge (Article 'C'), pubic hair of the appellant (Article 'D'), slide prepared of the appellant (Article 'E') did not have any stain of sperm or human spermatozoa. Presence of sperm and spermatozoa in the undergarment of the appellant does not implicate him in any way, because it is a undergarment used by him and this kind of presence is expected in natural course. Absence of sperm and spermatozoa in the clothes and vaginal slide of prosecutrix does matter, because it negates the allegation that sexual intercourse was committed with her. As per the Medico Legal Examination

there is no opinion that any recent sexual intercourse was committed with prosecutrix. Doctor has observed that there was no sign of struggle over body of the complainant. This report is against the statement made by the prosecutrix herself.

11. The evidence on which the prosecution relies does not inspire any confidence, there are serious lacuna in the investigation in this case, persons who could have been material witnesses in this case have not been examined, the place of incident and the presence of other witnesses in the same room at the time of incident needed some explanation. At the same time apart from the prosecutrix none of the witness examined have stated in support of charge even in the manner of hearsay statement. Hence, the case of prosecution is full of doubt. The appellant has succeeded to establish the ground raised in this appeal in the impugned judgment and it is required that the impugned judgment should be interfered with.

12. In the result, the appeal is allowed. The impugned judgment of the trial Court is hereby set-aside and the accused/appellant is acquitted of the charges leveled against him. He is reported to be on bail, his bail bonds shall continue to remain operative for six months from the date of this judgment in compliance of Section 437 A of Cr.P.C.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE