

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 752 of 2014**

The State of Chhattisgarh, Through District Magistrate, Jashpur.

---- Appellant**Versus**

Phoolchand, S/o Ishwar Toppo, Aged about 26 years, R/o Ratamati, PS & District Jashpur.

---- Respondent

For Appellant/State	:	Smt. Smita Ghai, Panel Lawyer.
For Respondent	:	Shri J.K.Saxena, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****01/03/2016**

1. I.A. No. 1 of 2014 has been filed to condone delay of 174 days in filing the application for leave to appeal.
2. The Appellant seeks leave to appeal against acquittal of the Respondent dated 25.11.2013 of the charge under Section 376 IPC by the Additional Sessions Judge (FTC) Jashpur, in Sessions Trial No. 48 of 2013.
3. The prosecutrix was in a live-in relationship with her paramour John Minj. The Respondent was known to them and would often come and stay with his girlfriend. On 21.9.2012, John Minj had gone out. The Respondent came to her house and invited the prosecutrix to his place stating that John Minj would also be coming. The prosecutrix went to the Respondent's house. He then bolted the door and sexually assaulted her. The Trial Judge, after considering the evidence of the prosecutrix, her paramour John Minj and the defence, acquitted the Respondent.

4. The only argument made by the State to assail the acquittal is that in matters under Section 376 IPC, the offence takes place behind closed doors. Therefore, the law gives greater weightage to the evidence of the prosecutrix. Independent evidence may not necessarily be available, much less corroboration. Invariably, it would be the evidence of the prosecutrix alone coupled with other surrounding evidence exclusive to the accused and the victim. The prosecutrix had deposed that the Respondent bolted the door from inside when she came to his house at about 8:30 pm, tied her hands to the bed and then sexually assaulted her. The Respondent then called eight of his friends who also sexually assaulted her one after the other. They threatened her with a knife and also looted her mobile. The prosecutrix told her paramour John Minj (PW-2) about the incident also. The prosecutrix was the informant herself. If the police had not recorded her statement correctly, acquittal was not justified on that ground. The statement of the prosecutrix was also recorded under Section 164 CrPC. Her paramour John Minj (PW-2) had also supported the accusations stating that the Respondent had also called him at 10:00 pm and informed that he would outrage the modesty of the prosecutrix who was with him. Abusive words were used by the Respondent. The witness came home and did not find the prosecutrix there. She had called up in the night and was crying and that she did not come back home for two days. The acquittal is therefore required to be set aside and conviction ordered.

5. Learned Counsel for the Respondents submitted that the judgment under appeal is well reasoned and considered. The Trial Judge has found vital and material contradictions and omissions in the evidence of the prosecutrix which create serious doubt about the credibility of the prosecution case leading to the satisfaction that she was building up a case in the Court. The forensic report and the MLC of the victim also completely belies the allegations.

6. We have considered the submissions on behalf of the parties.

7. The Trial Judge has appreciated the primary principle in matters under Section 376 IPC that in appropriate cases, the statement of the prosecutrix alone may also be sufficient for conviction. If the statement of the prosecutrix inspires confidence in the Court and appears to be truthful and reliable it can alone be the basis for conviction without the need of any independent corroborative evidence. But it is equally true that the statement of the prosecutrix cannot be considered as a gospel truth in every case irrespective of the nature of evidence available, to shut out the defence blindly and convict. No principle of criminal jurisprudence provides that under no circumstances can the statement of the prosecutrix be tested and whether there be any merit or not, conviction must follow. Therefore, it will depend on the facts and circumstances of each case to determine the extent of reliability of the statement of the prosecutrix alone to maintain conviction.

8. Conviction was set aside in (2014) 2 SCC 395 (Hem Raj v. State of Haryana) holding that the evidence of the prosecutrix was unreliable and did not inspire confidence in the Court holding as follows:-

"8. It would be extremely dangerous to rely on such evidence. The prosecutrix obviously knew the appellant being her neighbour. It is her case that she used to write letters to him. In the examination-in-chief she stated at one stage that the appellant raped her and immediately thereafter retraced the statement and stated that he did not rape her but he attempted to rape her. She refused to acknowledge that the statement which was read over to her was made by her to the police. She expressed surprise as to how her signatures appeared on the said statement....Our conscience would not permit us to rely on such evidence. It would be hazardous to confirm the conviction on the prosecutrix's sole testimony.

9. Though, the appellate Court has the power to re-appreciate the evidence and facts also in an acquittal appeal but it is not to be done casually and lightly. The acquittal of an accused cannot be interfered in a routine and casual manner by the appellate Court to arrive at its own independent conclusion on the same

set of evidence unless there has been gross mis-appreciation of evidence, perverse findings have been arrived at or the findings were such that on the same materials, no prudent person would have come to such a conclusion.

10. The occurrence is stated to have taken place on 21.9.2012 at about 8:30 pm. The FIR has been lodged three days later on 24.9.2012. In the FIR, the prosecutrix stated of having been assaulted sexually by the Respondent alone as also in her statement under Section 164 CrPC. But in her Court statement, she mentioned of having been assaulted sexually by eight other friends of the Respondent when she was tied to the bed and threatened with the knife. She then alleged to have been thrown out of the house but reached her own house three days later. In her police statement, she stated that she walked to the bus stand and informed her paramour John Minj. In her 164 CrPC statement, she stated that she was taken to the market while in her statement under Section 161 CrPC and in the Court statement, she talked of going home.

11. In her cross-examination, she further spoke of not only her hands even her feet being tied but there was no reference to the same in her police statement. She talked of her mobile having been looted, but makes no such statement under Section 161 CrPC. Her statements under Section 161 and 164 CrPC were therefore limited to the Respondent while in her Court statement she spoke of gang rape. The forensic report was never produced by the prosecution. Dr. P.Kerketta (PW-6) who carried out the medical examination of the prosecutrix internally and externally, in her report (Exhibit P-5) stated that the prosecutrix did not complain and did not tell her that she was unconscious for two days or was suffering in any manner from weakness or otherwise. No signs were found of any tying of her hands. Surely, if the prosecutrix had been violated by the Respondent and eight of his friends one after other, there would have been some tell-tale signs of gang rape but which are completely missing and which to

the Court appears suspicious. The Doctor was unable to give any specific opinion of the prosecutrix having been violated.

12. The following extracts from (1977) 3 SCC 41 (Pratap Mishra v. State of Orissa) in the nature of allegations of rape by eight persons is considered relevant:

"8...A false accusation of rape may sometimes be exposed by marks of violence being wholly inadequate or absent. Bruises upon the arms or the neck may be considered to constitute some evidence of struggle; and impressions of finger nails are also significant. Bruises or scratches about the inner side of the thighs and knees may be inflicted during attempts to abduct the legs forcibly, and care must also be taken to examine the back, for the victim may have been pinned against the wall or floor. It is important to record these in detail, and to say, if possible, how fresh they are. The ageing of bruises is, as was indicated in Vol. 1, a matter of some uncertainty in the absence of microscopy..."

13. The conduct of her paramour John Minj (PW-2) also does not inspire confidence. Both were in a live in relationship. He came home and did not find the prosecutrix at the home. She called him up and was crying. She told him that she was at Karbala Road. It is difficult to accept the statement that he could not understand the place and therefore quietly went to sleep. Even though he had heard the prosecutrix crying for help over the phone. He admits of having made no efforts to locate her or otherwise approach the authorities for help. In the aforesaid facts and circumstances, it becomes important to notice that the prosecutrix in her cross-examination has acknowledged that in the previous month, there had been an altercation between the Respondent and John Minj at Jashpur Bus Stand when they had beaten up each other. DW-1, Vimal Bai and DW-2, Chahmani Bhagat, the land lord of the Respondent have denied that any such occurrence had taken place in their house.

14. The order of the Trial Judge is very well reasoned, considered and contains critical analysis and appreciation of the evidence displaying application of mind to the material contradictions and omissions emerging in the statement

of the prosecutrix rendering her evidence unreliable as also unusual conduct of her paramour in the nature of the allegations.

15. We find no reason to grant leave to appeal. Delay is condoned, the application for leave to appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Anu