

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 598 of 2012**Reserved on 24.11.2016Delivered on 05.12.2016

Omprakash @ Bhuru Yadu S/o Girdhar Yadav, Occupation Cow Charana, R/o village Chulgahan, Police Station- Ranitarai, District Durg, CG

---- Appellant**Versus**

State of Chhattisgarh through the In-charge, Arakshi Kendra, Ranitarai, District Durg, CG

---- Respondent

For Appellant	:	Shri Rahul Tamaskar, Advocate
For Respondent/State	:	Shri Bhaskar Payashi, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**CAV JUDGEMENT**

The present appeal has been preferred against the judgment dated 17.04.2012 passed by the 2nd Additional Sessions Judge, Durg in Sessions Trial No.49/2011 whereby the appellant has been convicted for the offence under Sections 450, 506 Part-II, 376 & 392 of IPC and sentenced to undergo RI for seven years with fine of Rs.2,000/- u/s 450, RI for three years u/s 506 Part-II, RI for seven years with fine of Rs.2,000/- u/s 376 and RI for five years with fine of Rs.1,000/- u/s 392 of IPC with default stipulations.

2. The case of the prosecution in brief is that on 31.12.2010 around 9 p.m. the prosecutrix was all alone at her home and after having her dinner she closed the door and went to sleep. At about 10 p.m. someone knocked the door and upon opening the door, the prosecutrix found the appellant standing near the door. She asked the appellant to run away from there and immediately closed the door. But the appellant forcefully pushed the door and

is said to have forced the prosecutrix inside the house. It is alleged that on the threat of life by a knife the appellant committed rape with her and also taken Rs. 500/- from her. Immediately after the incident, the prosecutrix is said to have informed PW-1 Jethuram and PW-2 Taran Das the Kotwar of the village and later on, they had also gone to the house of the village Sarpanch PW-3 Purendra Sahu. Thereafter, an FIR was lodged at Police Station Ranitarai registered as Crime No. 1/2011. The Police Authorities initially lodged the offence under Sections 450, 376, 506B & 384 of IPC. After investigation was conducted, charge sheet was filed for the offence under Sections 450, 506 Part-II, 376 and 392 of IPC. The matter was put to trial before the 2nd Additional Sessions Judge, Durg which was registered as Sessions Trial No. 49 of 2011.

3. The prosecution examined in all 11 witnesses. There was no witness examined on behalf of the defence. After recording of the evidence and completion of the pleadings, the Court below vide impugned judgment dated 17.04.2012 found the appellant to be guilty of having committed the offence under Sections 450, 506 Part-II, 376 and 392 of IPC and accordingly convicted him for the said offences and sentenced as mentioned in paragraph 1 of this judgment.

4. Assailing the impugned judgment of conviction counsel for the appellant submitted that it is a case where the prosecution has not been able to establish its case beyond reasonable doubt so as to convict the appellant for the offence under Section 376 of IPC. According to the counsel for the appellant, the entire story of the prosecution is doubtful as there are much contradictions and omissions in the statement of the witnesses examined on behalf of the prosecution. Further, the deposition of these witnesses also does not inspire sufficient confidence so as to believe it to be true for the purpose of convicting the appellant herein. According to the appellant, the witnesses examined on

the part of the prosecution are weak witnesses and lacks credibility and therefore, the same cannot be taken into consideration detrimental to the interest of the appellant. It was submitted that the evidence of the prosecutrix PW-5 does not inspire confidence for more than one reasons; firstly from the entire deposition of the prosecutrix it does not reflect that any sign of resistance to have been provided by the prosecutrix while she was being subjected to rape as alleged. Secondly, the story of the prosecutrix of being threatened of life with the help of a knife by the appellant is also hard to believe for the reason that the prosecution has not been able to recover the knife which was used by the appellant for inflicting threat under the influence of which he had committed rape. In the absence of any recovery of the knife, the statement of the prosecutrix becomes doubtful. It was submitted that the prosecutrix herself in her statement has said that the appellant was drunk when he had come to her house and if the appellant had drunk, the story of rape as alleged by the prosecutrix further becomes doubtful. According to the counsel for the appellant, if the appellant as alleged was drunk or under the influence of alcohol, efforts should have been made by the prosecutrix to escape from the clutches of the appellant but in the absence of any statement being given by the prosecutrix in this regard the story becomes doubtful. It was also submitted that the place of incident was surrounded by large number of houses and large number of neighbours also resided near the vicinity. If at all if the appellant was drunk and had forcefully entered into the house of the prosecutrix, she could have raised alarm so that the neighbours could have reached the spot to her rescue. According to the counsel for the appellant, there was no resistance shown by the prosecutrix during the course of rape nor did she raise alarm calling for help from the neighbours which again creates doubt in the prosecution story. Therefore, the case of the prosecution gets collapsed and the judgment of conviction deserves to be interfered with by quashing the same and further acquitting the appellant from the alleged offence. Lastly, it was

contended that the case of the prosecution also is not established from the medical evidence so far as the commission of rape is concerned.

5. State counsel on the contrary opposing the appeal submitted that if we look into the charge sheet and the documents enclosed with it clearly establishes the fact that the prosecution has in fact been able to prove its case beyond all reasonable doubt. State counsel emphasized on the fact that promptly lodging of the FIR itself is a first sign of the incident to have occurred. According to the State counsel, the incident is said to have occurred on 31.12.2010 around 10 p.m. and the FIR was lodged at around 12.30 mid night. The fact that the prosecutrix had immediately lodged the FIR in the mid night itself goes to show sufficient indication towards the reliability of the said witness. State counsel referred to the deposition of PW-1 & PW-3, the two main witnesses in the present case who have supported the case of the prosecution so as to submit that the incident did occur on the fateful night of 31.12.2010. Referring to the statement of PW-1 Jethuram the State counsel submitted that PW-1 has accepted the fact that at around 10.45 p.m. the prosecutrix reached his house crying for help and narrated the entire incident to him. The fact that there was no delay whatsoever for the prosecutrix to reach the house of PW-1 inspires sufficient confidence to believe the case of the prosecution. The statement of PW-1 also stands corroborated from the evidence of PW-2 Taran Das, the Kotwar of the village who has also narrated the same fact as has been disclosed by PW-1. He has further proved the fact that after the prosecutrix had disclosed this fact to PW-1 & PW-2, both of them took the prosecutrix to the house of PW-3 Purendra the village Sarpanch. PW-3 has deposed that after the incident was brought to his knowledge he had advised the prosecutrix to lodge an FIR and they immediately went to the Police Station and lodged an FIR. So the commission of offence according to the State counsel stands proved beyond all reasonable doubt by the statement of the prosecutrix which stands corroborated from the statement of PW- 1, PW-2

and PW-3. It was further submitted by the State counsel that so far as the conviction under Section 376 IPC is concerned, the statement of the prosecutrix cannot be taken so lightly and that the statement of a victim has to be given more weightage than a normal witness and that from the cross examination of PW-5 also the defence has not been able to extract much so as to doubt the credibility of the said witness. The FSL report in respect of the clothes recovered from the possession of the prosecutrix also supports and establishes the case of the prosecution. State counsel further laid emphasis on the fact that in the entire evidence there has been no suggestion made by the appellant to show that there was some inimical term between the appellant and the prosecutrix to falsely implicate him. State counsel highlighted the fact that at the time of commission of offence the appellant was a 20 years youth whereas the prosecutrix was about 60 years. Thus, there was no reason whatsoever for the prosecutrix to falsely implicate the appellant in a criminal case. Hence, state counsel prayed for rejection of the appeal.

6. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the record it would be trite at this juncture to take into consideration the circumstances prevailing in the case to assess whether the statement of the prosecutrix is trustworthy or not. Foremost what is to be seen is the time of accident which in the instant case is somewhere around 10 – 10.30 in the evening and the immediate reaction of the prosecutrix is rushing to the house of PW-1 Jethuram and PW-2 Taran. PW-2 was the Kotwar of the village who was the right person to whom the old prosecutrix could have gone to report the matter first. What is also to be seen is the fact that both PW-1 and PW-2 have corroborated the statement of the prosecutrix and there is no ambiguity or contradiction in the version that has been made by the prosecutrix at the first instance and the version of PW-1 & PW-2 that they had made during the course of investigation as also during the course of evidence before the Court below. It is pertinent to note that the

defence has not been able to extract anything from the deposition of the prosecutrix, PW-1 Jethuram and PW-2 Taran Das by which their deposition could be doubted. Another relevant factor which is also to be considered is the fact that the incident took place around 10.30 p.m. and the FIR was lodged around 12.30 mid night which itself is a strong fact and also a reason not to doubt the credibility of the prosecutrix. One should not forget that the prosecutrix was staying alone in the house and she was a 60 years old lady. The defence has not been able to bring out any strong reason to doubt the prosecutrix nor has the defence been able to bring any evidence to show that there was an inimical term between the appellant and the prosecutrix so as to falsely implicate the appellant. So far as the non availability of medical evidence is concerned, the same may not be of much relevance taking into consideration the age of the prosecutrix.

7. So far as the contention of non recovery of weapon and also there being no sign of resistance is concerned, the same is of inconsequence taking into consideration the fact that at the time of incident the appellant in the instant case was a youth of around 20 years and the prosecutrix was an old lady of 60 years and at mid night if somebody barges into the house where an old lady residing alone, she is bound for some moment to lose all her senses and in the process the appellant having committed the offence cannot be ruled out. Under the said circumstances, the non offering of any resistance becomes inconsequential. The Supreme Court as well as various High Courts have repeatedly held that if the sole testimony of the prosecutrix alone is unimpeachable and beyond reproachable, a conviction can be based on the sole testimony of the prosecutrix. In the instant case also, no strong reason has been brought by the defence to doubt the acceptability and reliability of the testimony of the witnesses. The testimony of a prosecutrix in a case of rape has to be placed on the higher pedestal than a normal injured witness. When on the close scrutiny of the evidence which has come on record particularly the

version of the prosecutrix which is unimpeachable and beyond reproachable coupled with the fact that PW-1 & PW-2 the two witnesses to whom she immediately confided have also supported the case of the prosecution, the statement of these witnesses does inspire sufficient confidence to hold that it was the appellant alone who had committed the offence. It should also not be ignored that a lady who was around 60 years of age is not expected to make a false allegation of sexual offence, more particularly, against a young boy aged about 20 years risking her own prestige inviting social stigma etc.

8. For the foregoing reasons, this court does not find any strong case made out for interfering with the impugned judgment. Thus, the present appeal being devoid of merit deserves to be and is accordingly dismissed.

**Sd/-
P. Sam Koshy
Judge**