

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 263 of 2016**

State of Chhattisgarh, Through: Station House Officer, Police Station
Dongargarh, District Rajnandgaon, Chhattisgarh.

---- Appellant**Versus**

Vasudeo S/o Late Kanta Satnami, aged about 38 years, R/o Indranagar,
Dongargarh, District Rajnandgaon, Chhattisgarh.

---- Respondent

For Appellant/State	:	Smt. Smita Ghai, Panel Lawyer.
For Respondent	:	None.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Order on Board****Per Navin Sinha, Chief Justice****02/03/2016**

1. The State assails acquittal of the Respondent under Section 376(1) and 450 IPC dated 9.12.2015 by the Additional Sessions Judge, Dongargarh, Rajnandgaon, in Sessions Trial No. 15 of 2012.
2. PW-6, the prosecutrix lodged a police report on 21.2.2012 at 5:15 am that about 2:00 in the morning. Someone was throwing stones at her house. She stepped out alongwith her sister PW-7, Anjali while her five year old daughter slept inside. The Respondent caught hold of the prosecutrix and covered her mouth and sexually assaulted her. When her sister PW-7, Anjali came to her aid, the Respondent assaulted her also.
3. Learned Counsel for the State submitted that acquittal was not justified. The FIR was lodged with promptness. The prosecutrix was the informant herself. In such matters, it has repeatedly been held that the evidence of the prosecutrix

is entitled to great weight and conviction can be based upon on the same alone. Independent evidence or corroboration is not necessarily required as most times, it may not be available since such offences are normally committed in privacy. The Trial Judge has grossly erred in rejecting the evidence of PW-7, Anjali only because she was related to the prosecutrix. The evidence of a related witness may be required to be examined more closely but cannot be rejected simplicitor on that ground. PW-7 had also deposed that the Respondent had caught hold of the hands of the prosecutrix and threatened with a Tangiya.

4. We have considered the submissions and perused the judgment also.

5. In an offence under Section 376 IPC, criminal jurisprudence opines that the victim is similarly situated as an injured witness. Their credibility is always very high as it is presumed that having been injured in the same incident, the person was present and speaking the truth. Undoubtedly, conviction can be based on the sole testimony of the prosecutrix in appropriate cases. Much will therefore depend on the quality of evidence in a particular case and its reliability and inspiring of confidence. But it is not a universal principle of criminal jurisprudence to be applied across the board mechanically merely because the allegation may invoke Section 376 IPC, devoid of the facts of a case. There cannot be a presumption always that merely because the prosecutrix was the informant or she was deposing herself, she was necessarily speaking the gospel truth. The Court is not prevented from examining the veracity of the statement to satisfy itself if it was convincing and reliable in conjunction with other evidence available if any doubt arises in the mind of the Court. It is not as if merely because the prosecutrix is deposing and was the informant herself, the principles of criminal jurisprudence get reversed and the trial starts with presumption of guilt to be rebutted by the accused. It still remains with the prosecution to prove the charge beyond all reasonable doubt.

6. On 1.3.2016, in another Cr.M.P. No. 752 of 2014, we have already held that the version of the prosecutrix was not to be accepted as gospel truth relying upon (2014) 2 SCC 395 (Hem Raj v. State of Haryana).

7. There is no law that prohibits consideration of the evidence of a related witness. At times only relatives may be available to depose and there may be no independent witness. But because the witness is related, it may invite closer scrutiny of the evidence to test its veracity and corroborative material. In our opinion, the Trial Judge has not disbelieved the evidence of PW-7 Anjali but has doubted the correctness of the same by a close scrutiny, evaluation and appreciation of the evidence.

8. We have examined the evidence of the prosecutrix, PW-6 as discussed by the Trial Judge and find no reason to differ with the view taken by him that the allegations as made were completely improbable with regard to the manner the offence under Section 376 IPC is alleged to have taken place and find it completely against ordinary prudent common sense. This alone, in our opinion, is sufficient to hold that the acquittal calls for no interference.

9. According to Anjali (PW-7), sister of the prosecutrix the Respondent put their heads together and pinned both of them down. Thereafter, he separated their legs while he was holding each one of them with one hand. The Respondent simultaneously fondled the prosecutrix (PW-6) and took off her undergarments with his toe, after which the Respondent violated her. On the face of it the allegations are ludicrous and impossible and therefore merit no consideration.

10. The Trial Judge has also critically appreciated and analyzed the evidence of the prosecutrix and her sister otherwise also to come to the conclusion that they were highly contradictory and did not inspire confidence in the Court.

11. Both PW-6 and PW-7 deposed that because of darkness they could not see the person throwing stones but in their FIR, Exhibit P-6, named the Respondent. PW-7 deposed that the Respondent was carrying a Tangiya in his hand with which he threatened the prosecutrix but there was no reference of any Tangiya in the hand of the Respondent in the FIR lodged by the prosecutrix which was then sought to be introduced in the cross-examination. PW-11, the Investigating Officer, Girish Dhurve deposed that in her police statement also, the prosecutrix never mentioned that the Respondent was carrying a Tangiya. The Investigating Officer is stated to have recovered pieces of broken bangles from the alleged place of occurrence but PW-6 and PW-7 have not spoken anything about their bangles being damaged or broken during the occurrence which was also acknowledged by the Investigating Officer.

12. According to the prosecutrix (PW-6) and her sister (PW-7), the Respondent assaulted the prosecutrix into submission and also assaulted her sister when she came to protect her. But no external injury whatsoever was found on either of them. The medical report is inconclusive regarding the sexual assault and the FSL report is also in the negative even though it was carried out as early as about 5:00 pm the same day.

13. PW-6, the prosecutrix has acknowledged that her house is situated in a densely populated area and named some of them. Surely, if the Respondent had caught hold of her at the gate and was dragging her inside the house and she was not alone but was accompanied by her sister, at least one of them would have certainly shouted for help either from inside the gate or by stepping out on to the street and seeking assistance.

14. While in the FIR the prosecutrix states of a direct assault on her by the Respondent first in time in the Court statement, both PW-6 and PW-7 have stated to the contrary that first assault was made on PW-7.

15. The Respondent took the defence of false implication due to previous existing enmity. The Trial Judge has again discussed from the cross examination of the prosecutrix and arrived at a finding that there was previous enmity between the parties with regard to the Respondent defecating in the open next to the house of the prosecutrix and earlier also there had been another dispute between them for which they had also gone to the police station and were no more on talking terms with each other.

16. 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. Therefore, whether an order of acquittal should be interfered or not is to be examined in the facts and circumstances of each individual case.

17. The Trial Judge, as discussed, has critically analyzed, evaluated and appreciated the evidence to hold that the charge had not been proved beyond all reasonable doubt, we find no reason to come to any different conclusion or find any fault with the order of acquittal passed by the Trial Judge.

18. The application for leave to appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE