

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 97 OF 2001

Sarswati Bai D/o Moti Singh, aged about 19 years, R/o Dumariya, PS Sahaspur Lohara, Distt. Kawardha (CG).

... Applicant

Versus

1. State of Chhattisgarh
2. Santosh Singh alias Chhotu Singh, aged about 32 years S/o Khaman Singh R/o Dumariya PS Sahaspur Lohara, Distt. Kawardha (CG).

... Respondents

For Applicant	:	Ms. Prabha Sharma, Advocate.
For Respondent/State	:	Shri YS Thakur, Deputy Advocate General.
For respondent No.2	:	Shri RN Jha, Advocate.

Hon'ble The Chief Justice

Hon'ble Shri Justice P. Sam Koshy

CAV JUDGMENT

Reserved on 28/09/2016

Delivered on 29/09/2016

Per, P.Sam Koshy, J.

1. The instant revision petition has been preferred by the applicant-complainant against the judgment of acquittal dated 14.12.2000 passed by the Additional Sessions Judge, Khairagarh, Distt. Kawardha in Sessions Trial No. 38 of 2000.
2. The case of the prosecution in brief to the extent necessary for deciding the present revision is that, an FIR was lodged on 17.12.1999 at around 4:15 pm by the complainant in respect of an incident which is said to have been taken place two days earlier i.e. on 15.12.1999. As per prosecution, the complainant/victim is a Polio disease. On account of said disease, she is crippled and she moves around the house with the aid of her two hands. As per complainant,

in the afternoon of 15.12.1999, the respondent No.2 is said to have entered into the house of the complainant from the courtyard where she was sitting and is said to have dragged her into the Varanda of her house and had ravished her.

3. Based on the said complaint, a charge sheet was filed and the matter was put to trial before the Sessions Court at Khairagarh where the case was registered as Sessions Trial No.38 of 2000 for the offence punishable under Sections 454,376 and 506-B IPC.
4. In the course of trial, the prosecution examined as many as seven witnesses whereas, the defence examined two witnesses.
5. After conclusion of trial, vide impugned order the court below found the prosecution case to be doubtful and accordingly acquitted the respondent No.2 from the charges levelled against him.
6. Assailing the said judgment of acquittal, the applicant-complainant has preferred this revision seeking for reconsideration of the case and for remittance of the same back to the trial court for deciding the case afresh.
7. According to the complainant, the court below has not properly appreciated the evidence of the prosecutrix and have passed the judgment of acquittal applying a hyper-technical principles of law whereas, in a case relating to rape and crime against woman, the court ought to had been more pragmatic. The court below should have considered the fact that there was no reason for the complainant herself to file a false case against the respondent No.2. She highlighted the issue of complainant being physically challenged and

therefore, there was all the more no reason for her to make a false allegation against the respondent No.2 nor was there any reason to falsely implicate him.

8. It was further argued that a perusal of the medical evidence of the prosecutrix would reveal that the prosecution has established its case so far as the other injuries that were found on the body of the complainant is concerned. These injuries corroborated the deposition of the prosecutrix of her being dragged from courtyard to the Varanda (Parchhi) of the house.
9. Lastly it was also contended that the complainant had infact made correct deposition before the court, which the court did not believe. There was no reason to disbelieve the version of the brother of the prosecutrix also as it would be hard to believe that any brother would put his sister in an embarrassing and awkward position by making her to file a false complaint more particularly a complaint of being physically ravished. Thus, the impugned order deserves to be set aside and the respondent No.2-accused be convicted for the said offence.
10. Per contra, learned counsel appearing for the respondent No.2-accused submitted that the prosecution has failed to prove its case beyond all reasonable doubts. According to him, a perusal of evidence which have come before the court below would itself create a great element of doubt on the prosecution story. It was also submitted that the entire case of the prosecution gets falsified from the deposition of PW-4, Dr. Leela Ramteke, who in her evidence, in

very categorical terms has said that she does not remember any crippled person being brought to her for examination as a rape victim. In her evidence, she has categorically mentioned about the fact that no Polio affected person was brought to her for being examined. She has also stated that she does remember that during the said period any crippled person brought to her and who had called herself to the clinic for getting examination. Neither was there any such person brought to her being lifted by third party to the clinic. In addition, the report of the doctor shows that the person who had been examined was habituated to sexual intercourse whereas, the complainant in the instant case was a teenaged unmarried girl in addition being crippled. Another vital facts which is reflected from the deposition of the doctor is the fact that the Maxi and undergarments which the prosecutrix was alleged to have been wearing on the date of incident were not brought to the clinic for examination in a sealed condition but had been brought in an open condition. Thus, with all such discrepancies, learned counsel for the respondent No.2 prayed for rejection of the present revision petition.

11. Having heard the rival contentions put forth on side and on perusal of the records what clearly reflects is the fact that an FIR was lodged on 17.12.1999 in the evening by the complainant in respect of alleged rape committed upon her by the respondent No.2 in the afternoon of 15.12.1999 i.e. more than two days earlier. What further reflects from the record is the note made by the trial court after recording evidence of the prosecutrix which itself shows that she had entered the court

scrolling with the help of her hands as she was badly crippled because of Polio disease. It was also noted by the court below that she had to be lifted by two persons and made her sit on chair with arms and even on the said chair she could not sit for a long and she had to be given support by the Peon in the court. This being the physical state of affairs of the prosecutrix, it is hard to believe that the doctor who had examined this witness would not remember it more particularly when the examination by the doctor was being conducted showing her to be a rape victim.

- 12.** The deposition of doctor clearly reflects that she does not remember at all any such crippled patient being subjected to medically examined by her. This fact itself disproves the entire case of the prosecution and gives rise to a great element of doubt on the version of the prosecutrix and the stand of the prosecution. To add further doubts, the report of the doctor further reflects that the person to whom the doctor had medically examined was a person who was habitual to sexual intercourse, which again is a case hard to believe in respect of a person whose physical conditions has been described in the preceding paragraphs.
- 13.** In addition, the other factor which leads to doubt on the prosecution story is the unexplained delay caused in filing the FIR. It was also revealed by the doctor that the articles which were brought before her for testing, particularly the garments which the prosecutrix were wearing, were not brought in a sealed cover but was brought in an open condition.

- 14.** All these facts when taken into consideration and the trial court having acquitted the respondent No.2, it cannot be said that the view of trial court was bad in law or was contrary to the evidence.
- 15.** So far as the requirement for a convicted person is concerned, it has to be a case where the prosecution has proved its case beyond all reasonable doubts and in the event if there is a slightest of doubt created, the benefit of said doubt has to go in favour of the accused person. In the instant case, it is not just one factor alone on the basis of which the order of acquittal has been passed by the trial court, but there are series of factors reflected in the course of evidence which creates great element of doubt on the prosecution story, and therefore, in the opinion of this court, no strong case is made out by the applicant/complainant calling for any interference with the order of the trial court acquitting the respondent No.2-accused from the charges which have been levelled against him.
- 16.** Thus, the revision fails and is accordingly dismissed. No order as to costs.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(P.Sam Koshy)
JUDGE