

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.518 of 2012**

Chhannu Tiwari @ Prahlad Tiwari S/o Balaram Tiwari, aged about 37 years, R/o Ward No.4, Near Ganesh Chowk, Krishna Nagar, Supela, Tehsil and District Durg (CG) permanent address Gol Bazar, Thakurpara, PS Khairagarh, District Rajnandgaon (CG).

---- Appellant

Versus

State of Chhattisgarh, through Police Station, Supela, Tehsil and District Durg (CG).

---- Respondent

For Appellant
For respondent/State

Shri Shrawan Kumar Chandel, Advocate.
Shri Bhaskar Pyasi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

01/12/2016

1. The appellant in the instant case stands convicted for the offence under Section 376 IPC and have been sentenced to undergo RI for 10 years with fine of Rs.500/- with default stipulation vide judgment dated 24.12.2011 passed by the Illrd Additional Sessions Judge, Durg, in Sessions Trial No.39/2011.
2. The case of the prosecution in brief is that, an FIR has been lodged by the prosecutrix herself on 25.10.2010 at 8:10 am in the morning. In the FIR, the prosecutrix has stated that on the intervening night of 24-25/10/2010 at around 1-1:30 am the appellant, who is stepfather of the prosecutrix, ravished her which was witnessed by PW-2, Lata Bai, mother of the prosecutrix. On alarm being raised by the prosecutrix

and her mother, PW-3, Savita, next door neighbor, also reached the spot and has witnessed the incident.

3. On the basis of said complaint, Crime No.743/2010 was registered at Police Station, Supela, Durg and the appellant was subjected to trial before the court below for the offence under Section 376 IPC. The prosecution, in all, has examined as many as 14 witnesses. There was no witness examined on behalf of the defence.
4. The trial court finally found the appellant to be guilty of having committed an offence under Section 376 IPC and sentenced him for the period as enumerated in the first paragraph of this judgment which lead to the filing of this appeal.
5. Learned counsel appearing for the appellant assailing the judgment submits that the entire judgment of court below is totally bad in law for the reason that the court below has not appreciated the evidence in its proper perspective. It is a case where the appellant has been falsely implicated in the case and that the prosecution has not been able to establish its case beyond reasonable doubt. It is a case where the appellant was in habit to consuming alcohol frequently and assaulting the prosecutrix and PW-2. The fact that the appellant used to assault PW-1 & 2 under the influence of alcohol also stands corroborated from the statement of PW-3, Savita, the neighbour, who has also accepted the fact that PW-1&2 for quite sometime now intended to live separately away from the appellant.
6. It is also contended that it is a case where the case of the prosecution

also is not supported so far as the medical evidence is concerned as the doctor who has examined the prosecutrix has not found any injuries on the body of the prosecutrix much less on the private part of the prosecutrix so as to establish the offence of rape to have been committed with the prosecutrix. Thus, the story of the prosecution becomes highly improbable and prays for quashing of impugned judgment of conviction and also sought for acquittal of the appellant from the charge levelled against him.

7. Learned counsel appearing for the State however opposing the appeal submitted that it is an open and shut case on the part of the prosecution in as much as the case of the prosecution was intact right from the stage of lodging an FIR as would be proved from the fact that the contentions made in the FIR and the statement of the prosecutrix during investigation is the same what she has made in the court and there is no reason to disbelieve the statement of the prosecutrix. It was also submitted that it is a case where the prosecution story seems to be natural on account of fact that the appellant was the stepfather of the prosecutrix as PW-2, Lata Bai, the mother of the prosecutrix, was the second wife of the appellant and that they were all staying together and for this reason also there is no reason why the prosecutrix would falsely implicate the appellant. State counsel has referred the statement of PW-2, Lata Bai, the mother of the prosecutrix, who is said to have seen the accused committing the said offence as she was also sleeping in the same room.
8. In addition, the State counsel further submits that the statements of

PW-1 & 2 further stand corroborated from the evidence of PW-3, Savita, a neighbor, who rushed to the house of the appellant on hearing the cry for help raised by PW-1 & 2. It is also submitted that even the FSL which has come on record proves the fact that semen were found on the undergarment of prosecutrix as well as on the underwear of the appellant herein. However, the semen were not found sufficient enough for being sent for further examination. Thus, the case of the prosecution has been proved beyond all reasonable doubts and the judgment of conviction of the appellant does not call for any interference and prayed for rejection of the appeal.

9. Having considered the contentions put forth on either side and on perusal of record what clearly reflects from the evidence which have come on record is the fact that the incident occurred at around 1-1:30 am in the intervening night of 24-25 October, 2010 and the FIR was lodged in the morning at 8:10 am on 25.10.2010 which itself is sufficient indication that it could not have been an afterthought or an unnatural conduct on the part of the prosecutrix. When the incident occurred, she raised an alarm and on account of hue and cry that took place, PW-3, Savita also rushed to the spot and thereafter it was decided that the matter should be reported to the police immediately.
10. Another aspect which is pertinent to mention is the deposition of PW-1, the victim and PW-2, Lata Bai, the mother of the prosecutrix, the eyewitness to the incident, who was also sleeping in the same room. To further fortify the statements of these two witnesses, the deposition of PW-3, Savita is relevant. From deposition of PW-3, Savita, it is

clearly reflected that when she heard an alarm from the house of the prosecutrix, she rushed to the spot and found the appellant in halfnaked condition and also found the prosecutrix dressing up which further strengthen the case of the prosecution. Prompt lodging of an FIR as well as corroborative statements made by the independent witness PW-3, Savita further strengthen the case of the prosecution. In the cross examination of these three witnesses, the defence has not been able to extract much on the basis of which the prosecution story could be doubted or disbelieved. That, from the evidence which have come on record it also does not show that there was any inimical relationship between the prosecutrix or her mother, PW-2 with the present appellant. This fact also stands established from the statements of PW-1 & PW-2 of the appellant accepting the fact that he was staying and sharing the same bedroom that was occupied by PW-1 & PW-2 which further strengthen the case of the prosecution.

- 11.** In addition, what also to be seen by this court is the relationship the prosecutrix had with the appellant i.e. the prosecutrix was the stepdaughter of the appellant. From the evidence which have come on record, it is difficult for this court to presume why the prosecutrix and her mother would go to extent of falsely lodging such complaint against the present appellant with a malafide intention or with an intention to somehow eliminate him from the house in which the prosecutrix and her mother were residing.
- 12.** Further, it is a settled position of law that the deposition of the prosecutrix has to be given more weightage than any other witnesses

examined. In a case where the allegation is that of rape, the statement of the prosecutrix is of paramount importance. In the factual background of this case where the allegation is that the appellant being stepfather has taken an advantage of his position that he has in the family and the fact that they were sharing the same bedroom has ravished the prosecutrix, the stepdaughter, is one of the most unlikely allegation which can be made in the society.

13. All these facts go against the appellant. There is nothing which has been brought on record either in the cross examination or in the nature of defence or also in the statement under Section 313 CrPC by which the prosecution story has to be disbelieved or doubted. In the absence of any doubt created in the mind of the court, this court is of the opinion that no illegality or infirmity to have been committed by the court below while reaching to the conclusion holding the appellant guilty for having committed the said offence under Section 376 IPC and the judgment of conviction therefore stands affirmed.
14. Thus, for the foregoing reasons, the appeal being devoid of merits deserves to be and is accordingly dismissed.

SD/
(P. Sam Koshy)
Judge