

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 268 of 2010**

Human Lal S/o Guharam Burendra, Halwa, aged about 39 years, R/o village Kamta, PS Daundi, District Durg, (Chhattisgarh).

---- Appellant**Versus**

State of Chhattisgarh, Through Police Station Daundi, District Durg, Chhattisgarh.

---- Respondent

For Appellant : Shri Santosh Bharat, Advocate.
For Respondent : Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**Judgment on Board****23/12/2016**

1. This appeal by the convicted accused/Appellant is directed against the judgment dated 26.12.2009 delivered by the learned Additional Sessions Judge, (FTC) Balod, District Durg, in Sessions Trial No. 50 of 2008 whereby he convicted the accused/Appellant for having committed an offence punishable under Sections 450, 376(1) and 506-B of the Indian Penal Code and sentenced him as follows:

Conviction Under Section	Sentence
450 IPC	Rigorous imprisonment for 10 years and fine of Rs. 500/-. In default of payment of fine, three months rigorous imprisonment.
376(1)	Rigorous imprisonment for 7 years and fine of Rs. 500/-. In default of payment of fine, three months rigorous imprisonment.
506-B IPC	Rigorous imprisonment for 1 year and fine of Rs. 200/-. In default of payment of fine, 1 month rigorous imprisonment.

2. The prosecution story, briefly stated is that in the night intervening 23.11.2008 and 24.11.2008, the prosecutrix (name withheld) and her sister Domeshwari (PW-3) were alone at home in village Kamta. Their parents had gone to village Sakra where they had another house. The girls were all alone at home

and at about 1:30 am, the accused committed criminal house trespass as he entered into the house by breaking open the door and thereafter he committed rape upon the prosecutrix. He also threatened the prosecutrix that if she disclosed this fact to anybody, he would kill her. It is alleged that the girls kept quiet and on the next day, when their parents returned, they reported the matter to the parents. Thereafter, the girls alongwith the parents went to Police Station, Daundi where the FIR (Exhibit P/1) was lodged on 25.11.2005, at 12:10 pm. After the FIR was lodged, the prosecutrix was medically examined. The police, after carrying out other investigation, filed a report under Section 173 CrPC against the accused-Appellant and charged him of having committed an offence of rape. He denied the charges and prayed for trial. After the trial, the accused-Appellant has been held guilty and has been convicted and sentenced, as aforesaid. Hence, this appeal.

3. It is not disputed that the prosecutrix was over 16 years of age on the date of occurrence. The case of the accused is that this is a case of consensual sex and therefore, he is not guilty of rape. The only thing which has to be considered is whether the prosecutrix was a consenting party to the act of sex or not.

4. The statement of the prosecutrix has been recorded as PW-1. She states that she was alone at her home with her sister. Her parents had gone to village Sakra which is their ancestral village. Both the prosecutrix and her sister Domeshwari (PW-3) were sleeping on one cot. According to her, she had locked the outer door of the house from inside. As far as the door to the room where they were sleeping is concerned, that did not have any bolt and therefore, it was just shut. At about 2:00 am, the accused came from the side of the kitchen garden and entered their room. The prosecutrix was sleeping with her sister. The light was on. The accused forced the prosecutrix to get off from the cot and he made her lie down on the ground. He then took off her clothes, his own clothes and then committed sexual intercourse with her. The prosecutrix states that she tried to scream but the accused had put his hand on her mouth preventing her from

screaming. She then states that after the rape had been committed, she switched on the light and saw that the accused was wearing his pants. Then she stated that when the accused came to the house, she switched off the lights. As she was crying, her younger sister got up. They abused the accused who told them not to tell anybody about the occurrence and that even if people come to know of the occurrence, it would be the girl's reputation which would be spoiled and nothing would happen to him. According to the prosecutrix, when she had tried to scream, the accused had threatened to kill her. She further states that at 9 am in the morning, she informed Horilal (PW-4), a boy of their village about the occurrence. When her mother came back she informed her mother about the occurrence then the village Panchayat met. Her father was also informed telephonically about the occurrence and he reached the village at 12 noon. Next day, they went to the police station to lodge the report (Exhibit P/1).

5. In cross-examination, the prosecutrix admits that the accused belongs to her village and she knows him for a long. She also admits that one of the legs of the accused is damaged and when he has to stand, he has to put his hand on that leg.

6. Domeshwari (PW-3) is the sister who was allegedly sleeping on the same cot with the prosecutrix. She states that sometime in the middle of the night, she heard the sound of her sister crying. She got up. The light was switched off at that time. She asked her sister why she was crying and then the prosecutrix informed her that the accused had dragged her from the cot to the floor and then raped her. She also says that the prosecutrix told her that somebody entered into the room and committed rape with her. She switched on the light and saw the accused who was putting on his pants. Then they pushed the accused who went away. In cross-examination, she admits that the room in which they were sleeping was not a big room but a small room. She also states that both of them were sleeping on one cot and that cot was also not a large cot. She also admits that both of them

were sleeping close to each other. She states that she did not realise when the prosecutrix got up and went away. According to her, she was sleeping. She also states that she knows Horilal (PW-4) and on the previous evening, they had got a video cassette from Horilal and in the night, she, her sister and Horilal had seen a movie. After that, she went to sleep. She also states that at night, she could not state who came and who left from the room at night.

7. Dr. Smt. S. Claudius (PW-10) is the Doctor who examined the prosecutrix on 26.11.2008 i.e. 2-3 days after the occurrence had taken place. She found no injuries on the private parts of the prosecutrix but there were swelling. She found one abrasion near the vagina. She also came to the conclusion that the prosecutrix was not habituated to sex but within a day or two of her examination, she had been subjected to sex.

8. The defence of the accused is that he has been falsely implicated. According to him, the accused had an affair with Horilal (PW-4) and she may have had sex with him and not the accused. This story is not possible. There is no reason why the prosecutrix would falsely implicate the accused. There is no enmity between the family and therefore, I do not accept the defence that the prosecutrix has falsely implicated the accused.

9. Having held so, the evidence on record does not support the version of the prosecutrix. No doubt, law is well settled that in case of rape, the accused can be convicted on the sole testimony of the prosecutrix. However, such testimony must inspire confidence in the Court and if the same is believable, then no corroborative evidence is required.

10. The question is whether we should believe the statement of the prosecutrix or not. In my view, the story set up by the prosecutrix is not believable. Admittedly, she and her sister were sleeping on a small cot clinging to or hugging each other. Nobody could have forcibly made the prosecutrix leave the company of her sister and that too, without making any noise and without the sister coming

to know. This would only be possible if the prosecutrix herself had slowly and quietly slipped away from the arms of her sister. Admittedly, the sexual act was committed on the floor next to the cot. It cannot be believed that the accused who is physically disabled could have held the prosecutrix in such a manner that she could not raise any alarm. Even if she had made the slightest attempt to struggle, and even if the accused had shut her mouth, the sound of struggle would have woken up the sister. The prosecutrix was above 16 years and the act of sex was consensual, the accused could not be held guilty of rape.

11. As far as the facts in the present case are concerned, it is very difficult to believe the version of the prosecutrix that the accused could enter into the room without waking up the sister. It is not possible to believe that he could switch off the lights without waking the sister or that he could move the prosecutrix from the cot on which she was sleeping with her sister without her sister getting disturbed and the act of forcible sex could be performed in a room without the alarm being raised. The sister is not a small child. She was aged 12 years on the date of occurrence. It is more than obvious that when the sister woke up and saw what was happening, then a false case was made out.

12. In view of the above discussion, I am clearly of the view that the act of sex was consensual in nature. The judgment dated 26.12.2009 passed by the learned Additional Sessions Judge (FTC) Balod, District Durg, in Sessions Trial No. 50 of 2008, is set aside. The Appellant is acquitted of the charges. He be set at liberty forthwith subject to the conditions in Section 437-A CrPC, unless he is wanted in any other case.

13. The appeal is allowed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE