

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 289 OF 2012

Kamal Komra, S/o Hariram Komra, aged about 21 years, R/o Village Kurri,
Police Station Korar, District Kanker (C.G.)

... Appellant

Versus

State of Chhattisgarh, through the Police Station Korar, District Kanker
(C.G.)

... Respondent

For Appellant	:	Mr. P.P. Sahu and Mr. R.K. Pali, Advocates.
For Respondent-State	:	Mr. V.K. Netam, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

30/11/2016

1. The present appeal has been preferred by the Appellant assailing the judgment dated 7.1.2012 passed by the Sessions Judge, Uttar Bastar Kanker in Sessions Trial No. 65 of 2011, whereby the Appellant has been convicted and sentenced to undergo R.I. for 1 year and to pay fine of Rs.500/- with default sentence of R.I. for 1 month under Section 506 (Part-II) of IPC and also to undergo R.I. for 10 years and to pay fine of Rs.1000/- with default sentence of R.I. for 2 months under Section 376 of IPC.

2. Case of the prosecution is that the Prosecutrix, PW-1, has lodged an FIR (Exhibit P-1) on 21.3.2011 at around 15:20 pm at Police Station Korar, District Kanker informing that on the previous night, i.e., on 20.3.2011, at about 8:00 pm when she along with her friends, Ku. Sangeeta Korche (PW-4) and one Geeta Korche, were returning after answering the nature's call from the field, en route they were stopped by the Appellant and some other persons and they wanted to apply colour on the body of the three girls as it was the Holi festival on 20.3.2011. When the girls tried to avoid apply of colour by the Appellant, PW-4 Sangeet Korche and Geeta Korche ran to

their houses, but the Prosecutrix ran to the opposite direction and she was chased by the Appellant and it is alleged by the Prosecutrix that after forcefully dragging her down to the field the Appellant forcibly committed sexual intercourse with her after tearing the dress that she was wearing. It is alleged that after the commission of the offence the Prosecutrix somehow managed to escape from the clutches of the Appellant and ran away and straightaway came and informed her parents, and since it was already dark they decided to go and lodge a report on the next day, i.e., on 21.3.2011. Accordingly, on 21.3.2011 at around 15:20 pm an FIR (Exhibit P-1) was lodged at the behest of the Prosecutrix (PW-1).

3. After the investigation was completed, the prosecution had submitted a charge-sheet and the matter was put to trial before the Sessions Judge, Uttar Bastar Kanker where the case was registered as Sessions Trial No. 65 of 2011. During the course of trial, the prosecution examined as many as 11 witnesses. There were no witnesses examined on behalf of the defence. After the conclusion of the evidence, the Court below vide impugned judgment found the Appellant guilty of having committed the offence under Sections 506 (Part II) and 376 of IPC and convicting him for the said offences sentenced him for the period as narrated herein above in paragraph 1 of this judgment. It is this judgment of conviction and sentence which is under challenge in the instant appeal.

4. Shri Pali, learned Counsel for the Appellant, submits that it is a case where the entire case of the prosecution is based on assumptions and presumptions without there being any strong and cogent evidence for implicating the Appellant for the offence under Section 376 of IPC or even under Section 506(Part-II) of IPC. He further submits that it is a case where the Appellant has been falsely implicated with a sole intention of taking a revenge from the Appellant for having applied colour on the Prosecutrix on

the festival of Holi. It is further submitted by the Counsel for the Appellant that the prosecution in the instant case has miserably failed to establish its case beyond reasonable doubt against the Appellant and the benefit of which should go in his favour. It is also the contention of the Counsel for the Appellant that except for the statement of the Prosecutrix, the prosecution could not lay any supportive evidence to establish the commission of the offence. Counsel for the Appellant also submitted that even the parents of the Prosecutrix to whom she is said to have first confided the incident, have not supported the case of the prosecution and have been turned hostile. Likewise, it was also contended by the Counsel for the Appellant that the medical evidence also does not establish or prove the case of the prosecution inasmuch as the doctor who had physically examined the Prosecutrix immediately after the incident, could not find any act of intercourse to have been made on the Prosecutrix as there was no injury sustained by the Prosecutrix at her private parts. He thus prayed for the setting aside of the judgment of conviction and sentence and for acquitting the Appellant of the said charges.

5. Shri Netam, learned Counsel for the State, however referring to the statement of the Prosecutrix submits that it is a settled provision of law that in the case of rape where the evidence of the prosecutrix is most important even if there is no other witness supporting the case of the prosecution, yet the Court can convict the Appellant solely relying upon the evidence of the prosecutrix. According to the State Counsel, in the instant case though there is no supportive evidence of other witnesses, but the deposition of the Prosecutrix alone is sufficient to implicate the Appellant for the said offence. In addition, the State Counsel also submits that the evidence of PW-4 Sangeeta Korche further corroborates the occurrence to the extent that she (PW-4) admits the Appellant having chased the Prosecutrix on the night of

20.3.2011, and this part corroborates the statement of the Prosecutrix so as to believe that the incident had taken place at 8:00 pm on 20.3.2011. He thus prays for the dismissal of the appeal.

6. Having considered the rival contentions put forth by the Counsel appearing on either side and on perusal of the records, what is undisputed is the fact that though there is an FIR lodged on 21.3.2011 by the Prosecutrix (PW-1) but what is primarily noticed is the fact that PW-2 Sukhdeo Mandavi, father of the Prosecutrix, and PW-3 Rameshwari Bai, mother of the Prosecutrix, both have not supported the case of the Prosecutrix rather have turned hostile. There was not much which could be extracted from their cross-examination done on behalf of the prosecution. Thus, the case of the prosecution gets weakened on the statements of these two important witnesses who were also the witnesses to whom it is alleged that the Prosecutrix had rushed and for the first time reported the incident. Another aspect which cannot be brushed aside is the fact that PW-7 Dr. Priti Singh in her deposition also in a very categorically term stated that there were no external injuries on the body of the Prosecutrix, and while examining the vagina of the Prosecutrix the doctor gave a specific report that the hymen of the Prosecutrix was intact and was not torn. She (PW-7) has also given a report that there was difficulty even inserting one finger into the vagina of the Prosecutrix. This also suggests that there was no intercourse taken place in the recent past with Prosecutrix. The doctor while giving her opinion had also expressed the uncertainty as to whether the Prosecutrix has been subjected to sexual intercourse or not. During the cross-examination, the doctor (PW-7) also has admitted the fact that during examination she did not find any sort of blood at the private parts of the Prosecutrix nor did she find any swelling or reddishness at her (PW-1)

private parts. All of this further strengthens the case of the defence of the Prosecutrix not having been subjected to rape.

7. The Supreme Court in a recent decision rendered in the case of *Manoharlal v. State of Madhya Pradesh*, (2014) 15 SCC 587, held as under :

“8. Though as a matter of law the sole testimony of the prosecutrix can sufficiently be relied upon to bring home the case against the accused, in the instant case we find her version to be improbable and difficult to accept on its face value. The law on the point is very succinctly stated in *Narender Kumar v. State (NCT of Delhi)* reported in (2012) 7 SCC 171, to which one of us (Dipak Misra, J). was a party, in following terms:

"20. It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.

21. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject-matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial which may lend assurance to her testimony."

9. Having found it difficult to accept her testimony on its face value; we searched for support from other material but find complete lack of corroboration on material particulars. *Firstly*, the medical examination of the victim did not result in any definite opinion that she was subjected to rape..."

8. The Jharkhand High Court in the case of *Chinta Sinku v. State of Jharkhand*, decided on 7.11.2007 in Criminal (Jail) Appeal No. 1515 of 2003, held as under :

“8. The learned trial court appears to have been carried away by the statement of the prosecutrix, on the presumption that a lady is not expected to make false allegations of sexual assault against any person risking her own prestige, inviting social stigma. The trial court has apparently ignored the fact that the testimony of the prosecutrix does not have the intrinsic quality of inspiring confidence for placing exclusive and implicit reliance. The finding of the guilt against the appellant is apparently not based on appreciation of the evidences in proper perspective.”

9. The Supreme Court also in the matter of *Md. Ali @ Guddu v. State of U.P.*, decided on 10.3.2015 in Criminal Appeal No. 2238 of 2010, dealing with the issue of delay in the lodging of the FIR by a rape victim in paragraph 21 held as follows :

“21. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. ...The delay in FIR, the non-examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon. True it is, the grammar of law permits the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a Court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely do not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial judge has erroneously convicted the accused-appellants for the alleged offences.”

10. The Supreme Court again in the case of *Rajesh Patel v. State of Jharkhand*, 2013 (3) SCC 791, in paragraph 23 held as under :

“23. The trial court as well as the High Court should have appreciated the evidence on record with regard to delay and not giving proper explanation regarding delay of 11 days in filing FIR by the prosecutrix and non-examination of the complainant witnesses viz. the doctor and the IO which has not only caused prejudice to the case of the appellant but also the case of prosecution has created reasonable doubt in the mind of this Court. Therefore, the benefit of doubt must ensure to the appellant. As we have stated above, the testimony of the prosecutrix is most unnatural and improbable to believe and therefore it does not inspire confidence for acceptance of the same for sustaining the conviction and sentence.”

11. For the foregoing reasons, this Court is constrained to reach to the conclusion that the conviction of the Appellant for the offences charged is not made out and the prosecution has not been able to prove its case beyond all reasonable doubts which is required for conviction of the Appellant for the offence. Even the slightest doubt if created in the mind of the Court, the benefit of which should be given to the accused person and thus for the series of doubts which have been crept in the mind of the Court in the circumstances narrated in the preceding paragraphs, the Appellant is entitled for the benefit of doubt.

12. Accordingly, the judgment of conviction and sentence passed against the Appellant does not sustain and deserves to be and is accordingly set aside. The Appellant is acquitted of the charges he was found to be guilty. The Appellant is in jail. He shall be released forthwith, if not required in any other case.

13. Appeal allowed.

Sd/-
(P. Sam Koshy)
Judge