

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 365 of 2008**

- Vakil Bhatari S/o Shri Keshav Ram Bhatari, aged about 34 years, R/o village Aheri, P.S. Nandani, District Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through P.S. Nandani, District Durg (C.G.)

---- Respondent

For Appellant	-	Shri Vivek Sharma, Advocate.
For Respondent	-	Smt. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board**Per Pritinker Diwaker, J****15/05/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 24.01.2008 passed by XI Additional Sessions Judge (F.T.C.), Durg in Sessions Trial No.168/2007 convicting the accused/appellant under Sections 376, 354, 450 of IPC & sentencing him to undergo R.I. for 12 years with fine of Rs.10,000/-, R.I. for 1 year with fine of Rs.10,000/- and R.I. for 3 years with fine of Rs.1,000/- respectively, plus default stipulations.

02. Brief facts of the case are that on 30.07.2007 (it should have been 31.07.2007) at 1.00 PM in the night, F.I.R. (Ex.P/10) was lodged by the Prosecutrix (PW/5), married lady aged about 35 years, alleging in it that in the night intervening 30-31/07/2007 her husband had gone out of village to see her sister. When she was sleeping in her house

along with her two children, the accused/appellant entered her house, gagged her mouth, gave fist blow on her head, removed her saree, petticoat and his own clothes and committed forcible sexual intercourse with her. It has been further alleged that when she raised cries, her son Avon Joshi (PW/6) who was sleeping in the nearby room came there and after seeing him and her daughter, the accused/appellant fled away from the spot. Based on this, FIR (Ex.P/10) for the offence under Sections 456 and 376 IPC was registered against the accused/appellant. The prosecutrix was medically examined vide Ex.P/1 on 30.07.2007 at 6.45 pm by Dr. (Smt.) Ujjwala Dewangan (PW/1), however, no external and internal injury has been found on her body. The accused/appellant was also medically examined vide Ex.P/5 on 01.08.2007 and found to be capable of performing sexual intercourse.

03. After investigation, charge sheet was filed against the accused/appellant under Sections 450 and 376 IPC, however, while framing the charge the trial Court has framed the charge under Sections 450, 376 and 354 IPC against the accused/appellant.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 09 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. Specific defence has been taken by the accused/appellant that a day prior to the incident, a panchayat meeting was convened in which the husband of the prosecutrix was punished and that is why on account of previous dispute the accused/appellant has been falsely implicated in the crime

in question.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits as under:

- that the accused/appellant has been falsely implicated in the crime in question on account of old family dispute;
- that number of cases were registered against the husband of the prosecutrix at the instance of Savitri Bai, wife of the accused/appellant;
- that a day prior to lodging the FIR, there was some dispute between the twos, a panchayat meeting was also convened and this fact has been admitted by the husband of the prosecutrix as also by the sarpanch Uttam Kumar Patel (PW/7);
- that as per the FIR (Ex.P/10) and 161 Cr.P.C. statement of the prosecutrix Ex.D/1, the accused/appellant gave a fist blow on her head and then committed sexual intercourse, whereas as per the Court statement of the prosecutrix, after sustaining fist blow on her head, she became unconscious and when she regained consciousness by that time the accused/appellant had committed rape upon her. It has been further argued that the court statement of the prosecutrix does not tally with her FIR and diary statement and, therefore, the benefit of doubt may be extended to the appellant.
- that the medical report Ex.P/1 of the prosecutrix does not support the prosecution case;

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/appellant is strictly in accordance law and there is no infirmity in the same.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Prosecutrix (PW/5) has stated that on the date of incident she was sleeping in her veranda. At about 1.00 AM in the night, the accused/appellant came there, gave fist blow on her head as a result of which she became unconscious and she remained in the said condition for one and half hour. She has further stated that when she regained consciousness, she noticed that no clothes were on her body except petticoat and that her blouse was torn. By that time the accused/appellant had already committed rape upon her. She is saying so because stain of sperm has been found on her petticoat. She has also stated that at the relevant time the accused/appellant was already sleeping there on her cot and that he was wearing only underwear. This witness has also stated that she raised her cries upon which her son came there and he started shouting “चोर चोर” and then the accused/appellant fled away from the spot. This witness has further stated that at the time of incident her husband was not in house and had gone to her sister's house. In cross-examination, this witness has admitted that on account of blow being given by the accused/appellant on her head she became unconscious, however, she has stated that while she was being subjected to rape by the accused/appellant she was semi-conscious and upon hearing her cries both her son and daughter came there and then she informed them that she has been subjected to rape by their uncle. She has further stated that when her son was

looking watch to know the time, the accused/appellant had already left her house. In para 18 of her cross-examination, she has denied the fact that there was previous enmity between the two families. When she was confronted with her diary statement and the FIR, she states that she did not inform the police about the fact that she became unconscious and also about the fact that when she regained consciousness there were no clothes on her body but if the said fact has not been recorded she cannot tell the reason. She states that the relation between two families were cordial and that they used to visit house of each other.

10. Kapil Bhatari (PW/2), husband of the prosecutrix, while deposing in the Court has stated that on 31.09.2006 report was lodged by Savitri Bai, wife of the accused/appellant, against him and others and on the basis of said report, the case has been registered against him. As many as on 10 occasions wife of accused/appellant has lodged report and for which several village meetings have been convened including that of maarpeet . He has admitted the fact that on the date of incident at about 5.00 pm a village meeting was convened in which both the accused/appellant and his wife were fined, however, he has denied the fact that in the said meeting allegation was levelled against him that he was found roaming naked and for which he was punished by the panchayat with fine of Rs.300/-. Avon (PW/6) is son of the prosecutrix. He has deposed that after hearing the cries of her mother, he entered the room and saw the accused/appellant near his mother wearing only underwear. He has further stated that when he and his sister raised cries by calling “चोर चोर”, the accused/appellant fled away from the spot. This witness has admitted the fact that on the report lodged by her aunt (wife of the accused/appellant) a case has been registered against his

father and 29th July was a date given by the Court, which was not attended by his father. This witness has further admitted the fact that on the previous evening of incident, there was village meeting which was attended by his father. He has further admitted the fact that he is not on talking terms with the accused/appellant and his wife. Statement of this witness and the statement of PW/2 clearly reveal the fact that the relation between two families were not cordial and that cases were registered against the husband of the prosecutrix at the instance of wife of accused/appellant, however, in the Court statement of the prosecutrix she has deposed that relation between the two families were cordial and they used to visit house of each other.

11. Uttam Kumar Patel (PW/7) is sarpanch of the village. He has stated that number of cases are pending between two brothers, on which, a panchayat meeting was also convened and in the said meeting fine of Rs.300/- had been imposed upon husband of the prosecutrix. Dr. (Smt.) Ujjwala Dewangan (PW/1) conducted the medical examination of the prosecutrix vide Ex.P/1. According to her report, no external or internal injury has been found on the body of prosecutrix and she opined that she was habitual to sexual intercourse. Indrapal Singh Painkra (PW/9) is Investigating Officer who has duly supported the prosecution case. As per FSL report Ex.P/22, stain of sperm has been found on the petticoat of the prosecutrix and undergarment of the accused/appellant.

12. Evidence of the prosecutrix makes it crystal clear that though she has levelled allegation of rape against the accused/appellant but she is not consistent while deposing in the Court. As per her diary statement and contents of FIR, the accused/appellant after entering her room, gagged her mouth, removed her and his clothes and committed forcible

sexual intercourse with her, whereas as per her Court statement, after sustaining fist blow on her head she became unconscious and remained in said condition for one and half hour and during this period she was subjected to rape. That apart, husband PW/2 and son PW/6 of the prosecutrix have admitted the fact that the relation between the family of accused/appellant and theirs were not cordial and as per PW/2, as many as 10 reports have been lodged by wife of the accused/appellant and that they are not on talking terms with each other. Further, evidence on record goes to show that on the previous evening of the incident, there was village panchayat to resolve the dispute between the appellant and husband of the prosecutrix. As per the prosecutrix, when her son PW/6, after hearing her cries, entered the room, by that time appellant had already fled away from the spot, whereas as per the evidence of PW/6, he saw the accused/appellant wearing underwear nearby her mother. Thus, there is contradiction and omission in the statements of prosecutrix PW/5 and her son PW/6. All that apart, as per the FSL report Ex.P/22, stains of sperm has been found on the petticoat of the prosecutrix and the underwear of the accused/appellant. In the present case, both prosecutrix and the accused/appellant are married persons and therefore presence of stains of sperm on their clothes, in the given facts and circumstances of the case, is of no help to the prosecution. Taking into consideration all the aforesaid facts, the possibility of accused/appellant being falsely implicated in the crime in question cannot be ruled out.

13. The findings recorded by the Court below thus appear to be beyond proper appreciation of the evidence adduced by the prosecution which cannot have affirmation from this Court. Since, the prosecution

has failed on all fronts to prove its case beyond shadow of doubts, the benefit, of course, has to go to the accused/appellant. The appeal is thus allowed, judgment impugned is hereby set aside and the accused/appellant stands acquitted of the charges levelled against him. As the appellant is reported to be on bail, his bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(R.C.S. Samant)
JUDGE