

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 100 of 2000

- Dinesh Sahu, aged 20 years, son of Shankar Sahu, resident of Village Belhadih, P.S. Baradwar, Distt. Janjgir-Champa (CG)

---- Appellant

Versus

- State Of C.G. through PS Baradwar, Distt. Janjgir-Champa (CG)

---- Respondent

For Appellant	:	Shri Ramakant Pandey, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

24/11/2017

This appeal arises out of the judgment of conviction and order of sentence dated 16.12.2000 passed by the Additional Sessions Judge, Sakti, Distt. Bilaspur in S.T.No.214/2000 convicting the accused/appellant under Sections 376 & 450 of IPC and sentencing him to undergo RI for 7 years, pay a fine of Rs.5000/- and RI for 5 years, pay a fine of Rs.3000 with default stipulations respectively.

02. As per prosecution case, on 7.7.1999 FIR (Ex.P/3) was lodged by prosecutrix (PW-2), aged about 19 years, alleging therein that on 29.6.1999 at about 10 pm she was sleeping along with her neighbour PW-7 Umabai, aged about 14 years and sister PW-13 Khemlata, aged about 13 years, her grand-mother was sleeping in the verandah and her parents had gone to another village. At that time, the appellant

entered her house, upturned her clothes and after gagging her mouth committed forcible sexual intercourse with her. After commission of the offence while the appellant was moving away she raised her cries and upon hearing her cries her sisters woke up and saw the appellant running away from the place of occurrence. She stated that after return of her parents she narrated the incident to them and thereafter, report was lodged. Based on this report, offence under Sections 376 and 450 of IPC was registered against the appellant. The prosecutrix was medically examined on 7.7.1999 vide Ex.P/2 by PW-1 Dr .Smt. SD Kanwar who found that secondary sexual characters were well developed, one abrasion at the angle of left mandible with crust present, multiple interrupted abrasions on back and buttock side, hymen old torn and healed and vaginal orifice admitted one finger with pain. However, he expressed his inability to give definite opinion regarding the time of commission of rape and advised for referring the prosecutrix for age determination to radiologist. After investigation charge sheet was filed and the trial Court framed charges under Sections 450 & 376 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 17 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as

mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

- that there is inordinate delay of nine days in lodging the FIR and the said delay has not been explained properly by the prosecutrix. As per evidence of the prosecutrix, on the second day of incident her parents returned to their house and they were apprised of the incident by her, yet the report has been lodged after 9 days.
- That the statement of the prosecutrix, if read as a whole, does not appear to be truthful and as such, she is not a reliable witness.
- That according to the prosecutrix, the prosecutrix was sleeping in a room along with PW-7 & PW-13 and her grand-mother was also sleeping in the veranda and in such circumstances, it is almost impossible for anyone to commit forcible sexual intercourse with a girl and if any such act was committed, the possibility of the prosecutrix being a consenting party to that act cannot be ruled out.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-2 prosecutrix has stated that as she is not literate she cannot

tell the date and time of the incident but on the date of incident during day time the appellant had entered her house and then she improves and states that at about 9-10 pm he entered her house and committed rape with her. She states that she was sleeping along with Umabai and Khemu whereas her parents were not there. The appellant having entered her house, inserted a piece of cloth in her mouth and then committed forcible sexual intercourse with her. She states that after removing the cloth from her mouth when she raised cries both Umabai and Khemlata saw the appellants fleeing from the spot. She states that on the second day her parents returned to whom she narrated the entire incident and then the report was lodged. She has further stated that after the above incident the appellant also came to her house carrying stone in his hand and threatened her.

In cross-examination she has further stated that she was sleeping in the same cot along with Khemlata (PW-13). There are material contradictions and omissions in the statement of the prosecutrix as compared to her diary statement as to the manner in which the offence took place. She has further stated that her grandmother was also sleeping in the veranda and that her eyesight is weak. She has stated that prior to the incident there was some quarrel with the appellant for which a village panchayat was convened, however, thereafter she states that the village panchayat was called after the present incident. She has denied the suggestion that she was having any affair with the appellant.

09. PW-1 Dr. Smt. SD Kanwar medically examined the prosecutrix vide Ex.P/2 on 7.7.1999 and noticed that secondary sexual characters

were well developed, one abrasion at the angle of left mandible with crust present, multiple interrupted abrasions on back and buttock side, hymen old torn and healed, vaginal orifice admitted one finger with pain. However, he expressed his inability to give definite opinion regarding the time of commission of rape and referred the prosecutrix for age determination to radiologist. In cross-examination he has stated that the injuries found on the buttock, jaw and back of the prosecutrix could be caused due to fall or scratching by nails.

10. PW-5 Thanuram, father of the prosecutrix, has stated that on the date of incident he along with his wife had gone to other village and returned on the next day. Seeing them the prosecutrix started weeping and on being asked informed them about commission of rape by the appellant with her and then report was lodged. In cross-examination he has stated that her daughter/prosecutrix and his wife went to police station on Wednesday to lodge report and in para-7 states that the report was lodged on Thursday. He admits the suggestion that earlier a report was lodged by him against the appellant for commission of marpeet. PW-6 Pritambai, mother of the prosecutrix, has made almost similar statement as has been made by PW-5. In para-4 she states that she went along with the prosecutrix to police station for lodging report on Tuesday and then states that she went to police station along with the prosecutrix and her husband on Thursday for lodging report and the report was lodged on that day. However, she has denied the suggestion that there was any incident of marpeet between the appellant and themselves prior to the incident.

11. PW-7 Umabai, neighbour of the prosecutrix, has stated that she was sleeping in the same room where the prosecutrix was sleeping and that sister of the prosecutrix Khemlata (PW-13) was also sleeping there. At about 10 pm upon hearing the screams of the prosecutrix when she woke up she saw the accused/appellant fleeing from the spot and then the prosecutrix informed her that she was subjected to rape by him. She has stated that in the veranda grand-mother of the prosecutrix was also sleeping. She has admitted the suggestion that the door of the room where they were sleeping was bolted from inside.

PW-10 Dr. J. Singh medically examined the appellant and found him capable of performing sexual intercourse vide Ex.P/8. PW-12 Chandan Singh, Patwari, prepared the spot map. PW-13 Khemlata, sister of the prosecutrix, has stated that on the date of incident the prosecutrix, Umabai (PW-7) and herself were sleeping in one room and on hearing the cries of the prosecutrix she woke up and was informed by the prosecutrix that the appellant has committed sexual intercourse with her after gagging cloth in her mouth. She saw the appellant running away from there. According to her the incident took place on Tuesday and not on Monday night and that her parents returned to home on Wednesday and her mother went to police station on 6th and at that time her sister prosecutrix was at home and that when the police came to enquire about the matter in the village, thumb impressions of the prosecutrix were obtained on some papers on 6th only. She has also admitted previous animosity between the appellant and her family. In para-14 she has denied the fact that the report was lodged on Tuesday by her mother and the prosecutrix. She has admitted the fact that at the time of commission of rape she was sleeping along with the

prosecutrix. PW-15 Pramod Sharma is the investigating officer. PW-16 Dr. S. Chhatterjee, Radiologist, has opined that the prosecutrix appears to be aged between 18 and 19 years. PW-17 Dr. Smt. CK Singh examined the seized clothes of the prosecutrix and advised for its chemical examination vide Ex.P/14.

12. As per the statement of the prosecutrix, she was subjected to rape by the appellant on 29.6.1999 and on the second day after arrival of her parents she narrated the incident to them and report was lodged whereas father of the prosecutrix PW-5 Thanuram states that they returned on Wednesday and the report was lodged on that day. He further states that the report was lodged on Thursday. Likewise, PW-6 Pritambai, mother of the prosecutrix, at one place states that the report was lodged on Wednesday and at another place states that it was lodged on Thursday. As per FIR (Ex.P/3), it was registered on 7.7.1999 on Tuesday. Apparently, there is an inordinate delay of nine days in lodging the FIR and there is no satisfactory explanation regarding this delay. The explanation offered by the lodger is that as the parents of the prosecutrix were not present, the report could not be lodged. Whereas as per statements of the prosecutrix and her parents they had returned to their village on the next day of incident on Tuesday or Wednesday, even then the report was not lodged promptly. This apart, statements of the prosecutrix and her parents regarding the date of lodging of FIR runs contrary to each other.

13. Further, according to the prosecutrix, her neighbour PW-7 Umabai and sister PW-13 Khemlata, they all were sleeping in one room and PW-13 was sleeping with the prosecutrix on the same cot

and on the adjacent cot PW-7 was sleeping and that grand-mother of the prosecutrix was also sleeping in the verandah. It has also come in the evidence that the door of the said room was bolted from inside. In such a situation, it appears highly improbable that any person would commit such an offence, particularly in the manner as described by the prosecutrix without any disturbance to the persons sleeping nearby. There are material contradictions and omissions in the statement of the prosecutrix as compared to her diary statement with regard to the manner in which the offence was committed. Medical evidence though show that some injuries were there on the person of the prosecutrix but it is not conclusive in nature. The doctor (PW-1) has stated that no definite opinion can be given regarding date and time of the offence. In the given facts and circumstances of the case, particularly the fact as has come in the evidence of the prosecution witnesses that there existed animosity between the appellant and the family of the prosecutrix due to some previous incident of marpeet, the possibility of false implication of the appellant on that count cannot be ruled out.

14. True it is that ordinarily the evidence of the prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if her evidence is reliable, no corroboration is necessary. While rape causes the greatest distress and humiliation to the victim, a false allegation of rape causes equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication. Indisputably, in a case of rape, the evidence of the prosecutrix must be given predominant consideration, but to hold that

this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.

15. Thus, keeping in mind the aforesaid principles of law, on close scrutiny of the entire evidence, in particular of the prosecutrix, her conduct during the alleged offence and subsequent thereto, the inconsistencies in the statements of the prosecutrix, her neighbour, her parents and sister as also the nature of medical evidence coupled with previous enmity between the family of the prosecutrix with that of the appellant, this Court is of the opinion that the prosecution has not been able to prove its case against the appellant beyond all reasonable doubt on the basis of evidence adduced and being so, he is entitled to be acquitted of the charges by giving him benefit of doubt.

16. In the result, the appeal is allowed. The impugned judgment is set aside and the appellant is acquitted of the charges under Sections 450 & 376 of IPC by giving him benefit of doubt. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/

(Pritinker Diwaker)
Judge