

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRIMINAL APPEAL NO. 100 OF 2001**

1. Badan @ Rambadan, S/o Rambrichh, aged 29 years.
  2. Munna @ Muneshwar, S/o Brichhram, aged 26 years.
- Both are R/o Village Kardih, Police Station Chando, District Surguja.

**... Appellants**

**Versus**

The State of Chhattisgarh.

**... Respondent**

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| For Appellants       | : | Mr. R.V. Rajwade, Advocate.   |
| For Respondent-State | : | Mr. Lav Sharma, Panel Lawyer. |

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**Hon'ble Shri Justice P. Sam Koshy**

**Judgment on Board**

**15/02/2017**

1. Each of the two Appellants stands convicted under Section 376(2)(g) of IPC and sentenced to undergo R.I. for 10 years, as ordered 17.1.2001 by the First Additional Sessions Judge, Ambikapur (Surguja), in Sessions Case No. 348 of 1998.
2. Brief facts of the case are that an FIR (Exhibit P-4) was lodged on 18.8.1998 by the Prosecutrix (PW-3), alleging that on the previous day i.e. on 17.8.1998 at around 6:30 pm while she was returning home after working in the field en route she came across the Appellants who initially asked her to have sex with her and when she refused then the Appellants is said to have caught hold of her and then have forcefully dropped her on the ground and Appellant No.1, Badan @ Rambadan, is said to have committed rape upon her and in between when she raised alarm, her Aunt (मौसी), PW-4 Rupmati, came to spot and the Appellants is said to have fled from the scene. Prosecutrix is said to have gone home along with PW-4 Rupmati and on the next day the FIR was lodged. After the completion of the investigations, the Appellants were taken into custody and the matter was

put to trial before the Court of First Additional Sessions Judge, Ambikapur, where the case was registered as Sessions Case No. 348 of 1998.

3. During the course of trial, the prosecution examined as many as 10 witnesses and there were no witnesses examined on behalf of the defence. After conclusion of the trial, the Court below vide impugned judgment reached to the conclusion that the prosecution has been able to prove the case beyond reasonable doubt and convicting the Appellants for the offence under Section 376(2)(g) of IPC, they were sentenced to undergo R.I. for 10 years each.

4. It is this judgment of conviction and sentence which is under challenge in the present appeal.

5. Learned Counsel for the Appellants assailing the impugned judgment submits that the impugned judgment is bad in law and is not sustainable, for the reason that the deposition of the Prosecutrix is not worth relying as there are major discrepancies, contradictions and omissions in the FIR and in the Court statement. He further alleges that the FIR and the statement rendered by the Prosecutrix are entirely different from the statement of her Aunt, PW-4 Rupmati, who had reached the spot immediately. It was further contended by the Counsel for the Appellants that the deposition of the Prosecutrix alone would reveal that it is a case of false implication of the Appellants or even if the contents are taken as it is, then it would clearly reflect it to be a case of consent. It was also contended by the Counsel for the Appellant that in the course of examination of the Prosecutrix, the Court itself put certain queries/questions to her and the answers which have been given by her itself falsify the entire case of the prosecution and only on this the Appellants deserve to be acquitted. He further submits that the case of the prosecution does not stand proved medically neither has the forensic

report given a positive report which could substantiate the case of the prosecution. It was also contended by the Counsel for the Appellants that the conduct of the Prosecutrix is also doubtful, for the reason that in her cross-examination she has specifically mentioned that in the event if the Appellants had paid some money she would have been ready for compromise. Thus, the Counsel for the Appellants prayed for setting aside of the impugned judgment relying upon the decision of the Hon'ble Supreme Court rendered in the case of *Dilip & Anr. v. State of M.P.* [2001 (9) SCC 452].

6. Per contra, learned Counsel for the State opposing the appeal submits that it is a case where the prosecution has in fact led ample evidence by which the case of the prosecution stands fully established and there is no scope of interference with the impugned judgment. According to the State Counsel, there is no reason to doubt the deposition of the Prosecutrix and that she has in her deposition specifically narrated the entire incident that has transpired which inspires sufficient confidence. It was also the submission of the State Counsel that there is not much variance in the statement made by the Prosecutrix at the time of lodging of the complaint with the statement that she had made before the Court. State Counsel submits that so far as the offence under Section 376 of IPC is concerned it is the deposition of the Prosecutrix which has to be given due weightage and considering the statement of the Prosecutrix wherein she has directly implicated the Appellants for the commission of the offence, there is no reason to disbelieve her version, neither is there any reason or motive for false implication of the Appellants. State Counsel also argued that even if the prosecution has not been able to produce any medical evidence so far as the commission of the offence is concerned even then

the case of the prosecution can be established and proved only from the statement of the Prosecutrix. He thus prayed for the rejection of the appeal.

7. Having considered the rival contentions put forth on either side and perusal of the record, when we look into the facts of the case the relevant facts which are necessary for reaching to a proper conclusion is that the FIR was lodged on 18.8.1998 at Police Station Chando, District Surguja. There is an allegation made by the Prosecutrix (PW-3) of she being subjected to rape by the Appellants. In her deposition, she makes a statement that while she was returning home after working in the field en route she came across the Appellants who initially asked her to have sex with her and when she refused them to do so they had forcefully caught hold of her and had dropped her on the floor and forcefully the Appellant No.1 had committed rape and when the Appellant No.2 was about to rape with her PW-4 Rupmati reached the spot and then the Appellants immediately fled from the occasion. This fact when compared to the statement of the Prosecutrix made before the Court would show that there are certain major contradictions which she had stated to the police authorities at the time of lodging of the complaint and also her statement under Section 161 of CrPC. The first discrepancy is the fact that, in her statement under Section 161 she states that she was earlier married to a person from village Ghodasut and who had later on died and subsequently she got married to Letan Nagesia with whom she has three issues and for the last 4-5 years Letan Nagesia also deserted her and she is residing with her three children. In the Court statement however she makes an entirely different statement stating that she has three children born from the first marriage that took place at village Ghodasut and with Letan Nagesia there were no issues born. Further, from her deposition it also reflects that in the Court statement she does not state anything in respect of the fact that the

Appellant No.2 was about to rape when the PW-4 Rupmati had reached and saw the Prosecutrix going home weeping and when the PW-4 asked her about the details she informed her. Whereas, in the FIR as also in the statement under Section 161, she has made a statement that the Appellant No.2, after the Appellant No.1 had committed rape, was about to rape her when her Aunt (Rupmati) had reached the spot. No proper explanation has been given for the said discrepancy by the Prosecutrix. In her cross-examination, in paragraph 14, the Prosecutrix has stated as under:

“यह सही कि जब पकड़ रहे थे तब मैं नहीं चिल्लायी थी। मैं घटना के बारे में मौसी को नहीं बतायी थी बल्कि जब मैं खड़ी थी तो मौसी ने ही पूछी थी”

Further, to a question in her cross-examination she further admits of being acquainted to Appellant No.1, Badan @ Rambadan. In paragraph 17.3 of her cross-examination, she has admitted to a question of having the affair with Appellant No.1. In the cross-examination, she has also admitted the fact that if she would have raised alarm her Aunt, PW-4 Rupmati, could have easily reached the spot and the incident could have been averted. She further makes an observation that if she would had been given money then she would have considered for compromise of the case. It was also her statement in the cross-examination admitting to the query in respect of the complaint being made to take revenge and to which she has given an affirmative answer of the matter having been reported to take revenge.

**8.** Now when we compared the statement of PW-4 Rupmati who is said to have reached the spot, from her statement it clearly reflects that she had made a statement that she was crossing the road when she found the Prosecutrix weeping and when she enquired she was informed about the incident by the Prosecutrix. This fact is in contradiction to the statement made by the Prosecutrix both in the Court statement as well as while

lodging the FIR and the statement under Section 161 being recorded, where the Prosecutrix has stated that after the Appellant No.1 had committed offence the Appellant No.2 was about to commit the offence of rape and then PW-4 Rupmati had reached the spot. That shows that she was still lying on the floor when the Aunt (PW-4) had reached the spot, which is in total contradiction to the statement of PW-4 Rupmati and therefore the version of the Prosecutrix becomes doubtful. Further, in the cross-examination, PW-4 Rupmati also makes a statement of she being informed by the Prosecutrix in respect of the incident and the Prosecutrix asked the PW-4 to support her on this issue. Further, from the evidence of PW-4 Rupmati, it also reflects that the Prosecutrix as well as PW-4 Rupmati were returning home together and the Prosecutrix was just ahead of PW-4 Rupmati by a few yards. Thus, the story of the commission of the offence becomes more doubtful.

9. 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..."

10. 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."

11. In one of the recent decisions rendered by the Hon'ble Supreme Court in the case of *Mohd. Ali alias Guddu v. State of Uttar Pradesh* [2015 (7) SCC 272], it has also been held as under:

"29. 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. In fact, it would not be inappropriate to say that whatever the analysis in the impugned

judgment, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished a number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. 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.”

**12.** Thus, for the foregoing reasons, this Court is of the opinion that for the circumstances and the doubts that have been created as narrated in the preceding paragraphs, the prosecution has not been able to prove its case beyond all reasonable doubts which is required for conviction of the Appellants 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 persons and thus for the series of doubts which have been crept in the mind of the Court in the circumstances in the preceding paragraphs, the Appellants are entitled for the benefit of doubt.

**13.** Accordingly, the judgment of conviction and sentence passed against the Appellants does not sustain and deserves to be and is accordingly set aside. The Appellants are acquitted of the charge they were found to be guilty. The Appellants are on bail. Their bail-bonds shall remain in operation for a period of six months from today in view of provisions contained in Section 437-A of CrPC.

**14.** Appeal allowed.

Sd/-  
**(P. Sam Koshy)**  
Judge