

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on: 06/01/2017****Judgment delivered on: 02 /02/2017****CRR No. 279 of 2007**

1. Smt. Tulsa Bai, W/o Shri Sewakram Satnami, aged about 30 years, R/o village, Nawagaon Police Station-Berla Kumahari District-Durg (C.G.)

---- Applicant**Versus**

1. State of Chhattisgarh, through District Magistrate, Durg, District-Durg (C.G.)
2. Natwarlal, S/o Bhulwaram Satnami, aged about 21 years, R/o Dhaba, Police-Station-Kumhari, Distt-Durg,c.G.

---- Respondents

For the Applicant	: Shri Awadh Tripathi, Advocate.
For State/Respondent No.1	: Shri Vaibhav Gowardhan, Panel Lawyer.
For Respondent No.2.	: Shri Praveen Dhurandhar, Advocate.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice R.C.S. Samant****C A V JUDGMENT****Per R.C.S. Samant, J****02 /02/2017**

1. This revision has been brought against the judgment dated 25.01.2007 passed by 4th Additional Sessions Judge, Durg in ST

No.150/05, by which respondent No.2 was acquitted of the charges under section 363, 366 and 376 of IPC.

2. The case of prosecution is this, that prosecutrix PW/1 is daughter of applicant Tulsa Bai PW/2, resident of Village-Dhaba under the jurisdiction of District-Durg. One unnumbered FIR Ex.D/1 lodged in Police-Station Kumhari lodged by prosecutrix PW/1 on 22.1.2005, in which she stated that on 21.01.2005, at about 5:00 p.m. in the evening, she was going to answer the call of nature, at that time, respondent No.2 enticed her by promising to marry her and eloped with her. Her mother, maternal uncle and ex-sarpanch Phirobai PW/6 came to the house of respondent and took her back. Offence under section 363 and 366 of IPC were registered. Later on, numbered FIR Ex.P/4 was recorded in P.S.-Old Bhilai. While conducting investigation spot map Ex.P/8 was prepared and respondent No.2 was arrested. Statement of witnesses under Section 161 of Cr.P.C. were recorded.
3. Later on, on 28.02.2005 one written application Ex.D/4 was presented before S.P. Durg by Tulsa Bai PW/2 that on the date of incident i.e. 21.01.2005 prosecutrix PW/1 aged 14 years had gone to answer the call of nature in the field when respondent No.2 caught hold of her dragged her giving threats and forcefully committed rape with her. When Tulsa Bai PW/2 came to know of the incident. Prosecutrix PW/1 was threatened and influenced not to speak about the incident of rape, due to which, she did not narrate about commission of this offence. When she lodged the FIR for the first time at that time prosecutrix

PW/1 was in the house of respondent No.2. After lodging FIR ex-sarpnach Phirobai PW/6 brought back the prosecutrix PW/1. After sometime, on enquiring from prosecutrix PW/1, she came to know about the whole incident. On approaching the police station on 22.01.2005 and giving information about whole incident, she was assured that offence under section 376 of IPC had also been registered and prosecutrix PW/1 would be subjected to medical examination. No such action was taken by the concerned police-station, due to which she was compelled to file application Ex.D/4 before S.P. Durg. In further investigation, prosecutrix PW/1 was medically examined by Dr. Smt. Pratibha Dani PW/10 vide Ex.P/10. Respondent No.2 was also medically examined by Dr. V.R. Meshram PW/3 vide Ex.P/1. One underwear of prosecutrix was seized vide Ex.P/3. The seized underwear and the slides were prepared from the secretion of the private parts of the prosecutrix were sent for medical examination and report Ex.P/7 was obtained. Proof of date of birth of the prosecutrix Ex.P/8 was obtained and attached with Challan. On completion of investigation, respondent No.2 was charge- sheeted.

4. Respondent No.2 Natwarlal was charged under Sections 363, 366 and 376 of IPC, he denied the charges and demanded for trial. Prosecution has examined 10 witnesses. On examination under Section 313 of Cr.P.C., Respondent No.2/accused denied all the implicating circumstances against him in the prosecution evidence and pleaded innocence and false implication. He made his submission, that his father and maternal uncle of prosecutrix had some quarrel

between them, because of which he has been falsely implicated. On conclusion of trial, the impugned judgment was passed.

5. Tulsabai PW/2 not satisfied with the judgment of acquittal passed by the trial Court, has brought this revision. The grounds in this revision are these, that trial Court has failed to appreciate the evidence of prosecution. The trial judge has held that the age of prosecutrix was below 16 years. On this basis, the offence of abduction of prosecutrix was clearly made out. Trial Court has wrongly disbelieved the statement of prosecutrix PW/1. The finding of trial Court that prosecutrix PW/1 went along with respondent No.2 without being subjected to any force and of her freewill is totally wrong. On these grounds, it is prayed that the impugned judgment be set aside and suitable order be passed.
6. Considering the material on record and the arguments submitted from both the sides the question in this revision is, whether the acquittal the respondent No.2 is based on proper appreciation of evidence on record ?
7. Prosecutrix PW/1 was present before the Court. The trial Court made an assessment, that her age is below 18 years. She has stated that on the date of incident when she went to the fields to answer the call of nature and was returning, she met with respondent No.2, who enticed her by saying that he will marry her and pulled her to his place of residence, where respondent No.2/accused kept her in a room and bolted the door. On the same day, at about 8:00 p.m. in the night ex-

sarpanch Phirobai PW/6 came to the house of respondent No.2/accused and she counseled her and took her to her house. Further she stated that she was scared, and after she overcame her fear she told her mother that respondent No.2/accused had raped her on the date of incident. In cross examination, she denied that she had any affair with respondent No.2/accused. She did not raise any alarm when respondent No.2/accused was taking her, she denied that she did not want to go back to her mother's house though, she has admitted that she came back with Phirobai PW/6 on her counseling and advising. She was confronted with her previous statement Ex.D/2, in cross examination, in which, she had clearly stated that respondent/accused did not commit rape with her. Further she admitted that after a complaint lodged by her mother before S.P. Durg her statement was not recorded for the second time and denied all the adverse suggestions given by counsel for defence.

8. Tulsa Bai PW/2 stated that on the date of incident, she was informed by Manmohan (nephew) that respondent No.2 has taken prosecutrix PW/1 with him. On hearing this, she went to her brother-in-law Dujeram and with him she went to the house of Kotwar, along with them she went to the house of ex-sarpanch Phirobai PW/6, who advised her to go to police-station. Thereafter, she went to the police-station and informed that respondent No.2/accused has taken her daughter. On this information, she was told to go back with assurance that police will be coming shortly. When she came back in her house she saw that Phirobai PW/6 had brought her daughter prosecutrix

PW/1 back to her house, she narrated about the incident to her brother Tulsiram PW/5 then she went to the police-station and lodged the report. After a month or so, her daughter told her that on the date of incident, respondent No.2/accused had committed rape with her by taking her to the hut of Bansi. On knowing this, she informed S.H.O. of police-station but he did not lodge her report. Then she gave one application to Superintendent of Police alleging about offence of rape was committed by respondent/accused with prosecutrix PW/1.

9. In cross examination, Tulsa Bai PW/2 has stated that she was not told by Jagmohan that prosecutrix was not coming even after he counseled her. She stated, that she does not know whether Jagmohan went for counseling or not. Later on, she admitted that Jagmohan and Dhujeram PW/4 had been to the house of respondent/accused and requested prosecutrix to come back but prosecutrix stated that she wants to reside there. She had not been to the house of respondent/accused, but Phirobai PW/6 had been to there and she does not know there counseling was given by her to prosecutrix PW/1. She was confronted with her previous statement Ex.D/3 in which she had stated, that no offence of rape took place with prosecutrix PW/1 and further stated that after giving written application to Superintendent of Police, no further statement was recorded. Further she has admitted that her daughter had love with respondent/accused and wanted to marry him, due to which, she went to the place of respondent/accused. Later on, she resiled from this statement saying that she does not know about it.

10. Dujeram PW/4 has stated that on the date of incident, he was informed that respondent No.2/accused has taken prosecutrix PW/1 to his house then he went to the house of respondent No.2/accused and asked prosecutrix PW/1 to go to her house but she did not reply. Later on, he saw Tulsa Bai PW/2 and informed about her about the happening and went with her to P.S.- Kumhari, where Tulsa Bai PW/2 informed the incident but no report was lodged. When he and Tulsa Bai PW/2 came back, by then Phiro Bai PW/6 had brought back the prosecutrix PW/1 to the house of Tulsa Bai PW/2. He has not stated exactly the version of statement compared to his previous statement Ex.P/2, for which, he was declared hostile and questioned by prosecution, then he stated that prosecutrix PW/1 did not narrate on the date of incident, that respondent/accused had committed rape with her. It is admission, that the information about rape was given by prosecutrix PW/1 about after a month. In cross examination by defence, he has stated that when he went to the house of respondent/accused and asked prosecutrix PW/1 to go back to her home, she did not reply or said anything on which, he gathered that she herself does not want to go to her own residence. He also found prosecutrix PW/1 normal at that time.
11. Tulsi Ram PW/5 has narrated that on the date of incident, prosecutrix PW/1 has informed him about this incident, that respondent/accused had forcefully taken her to his house and she informed after a month, that on the date of incident respondent/accused had behaved wrongly

with her, she did not explain the form of wrong manner in which he behaved with her. Phiro Bai PW/6 has stated that on the date of incident, Tulsa Bai PW/2 informed her that her daughter had gone to the house of respondent/accused and asked her to bring her back, she went along with Kotwar to the house of respondent/accused where prosecutrix PW/1 was present. On her asking, prosecutrix PW/1 came back with her. Later on, she came to know that Tulsa Bai PW/2 has lodged a report in the Police-Station. In cross examination, she has stated that prosecutrix PW/1 did not narrate her anything about the incident, on her asking about incident, she kept quiet and no information has given by her that she was raped.

12. ASI R.K. Rai PW/7 has recorded the numbered FIR Ex.P/4, he has not further investigated this case. Inspector K.C. Kadam PW/8 has conducted some part of the investigation. S.H.O. R.P. Mandavi PW/9 recorded the unnumbered FIR Ex.D/1 and as per the information given, he registered offence under section 363 and 366 of IPC and further investigation was conducted by him. No question has been put to him by the prosecution about registration and charge-sheet of offence under Section 376 of IPC. Dr. Pratibha Dani PW/10 examined prosecutrix PW/1 on 02.03.2005 vide her report Ex.P/10, she has reported that no opinion can be given about any recent sexual intercourse having been committed with prosecutrix PW/1. Dr. V.R. Meshram PW/3 has examined respondent/accused person vide Ex.P/1.

13. Considering all the evidence produced by the prosecution, it is very clearly made out, that firstly the information vide Ex.D/1 was recorded after a delay of one day on 22.01.05 at 16:55 p.m. by the prosecutrix PW/1 herself, in which, no information was given about commission of offence of rape by the respondent/accused. The application to S.P. Durg Ex.D/4 was given on 28.02.2005 author of which is Tulsa Bai PW/2 alone. This application is not by prosecutrix PW/1. Ex.D/4 is on record exhibited in defence. Apart from conducting medical examination of prosecutrix, medical examination of respondent/accused and seizure of undergarments of prosecutrix, no other investigation was conducted. It is admission in the statement of witnesses, that after the submission of application Ex.D/4 their statement was not recorded again.
14. It is also clear from the evidence of witnesses, and prosecutrix PW/1 admission in their cross-examination that prosecutrix PW/1 went of her own will to the house of respondent/accused and had shown her willingness to stay in the house of respondent/accused, who came back only on being made to understand by the witnesses.
15. In conclusion it is found, that the statement of prosecutrix PW/1 and Tulsa Bai PW/2, do not inspire confidence. The improvement of statement by Tulsa Bai PW/2, during investigation, itself, was not sufficient to substantiate the offence of rape as it was not supported by the medical evidence neither circumstances narrated in the evidence by other witnesses show convincingly that offence of rape was committed with prosecutrix PW/1. The contradictions and

discrepancies in the statement of prosecution witnesses, as well could not establish this allegation that prosecutrix PW/1 was forcefully taken by the respondent No.2/accused person to his residence.

16. Considering all these facts and findings, it is found that this revision is without any substance and merits. There is no infirmity in the judgment of acquittal passed by the trial Court. Hence, this revision is dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(R.C.S. Samant)
JUDGE