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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 397 of 2001**

- Jag Ram S/o Dauram, Aged about 30 years, R/o Village – Seoni, District – Janjgir-Champa (C.G.)

---- Appellant

Versus

- The State Of Chhattisgarh through P.S. Champa, District – Janjgir (C.G.).

---- Respondent

For Appellant:
For State :

Mr. S.P. Sahu, Advocate (Legal Aid)
Mr. S.R.J. Jaiswal, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Judgment on Board****16.02.2017**

1. At the outset, it is necessary to mention here that as there was no representation on behalf of the Appellant or by the Counsel engaged by the Appellant, for the whole week, considering the seniority of the case particularly, the appeal being of the year 2001 and in view of the judgment of the Supreme Court rendered in the case of **Surya Baksh Singh v. State of Uttar Pradesh** [2014 (14) SCC 222], the appeal has been taken up for hearing with the assistance of Shri S.P. Sahu, a Lawyer in the Panel of High Court Legal Services Authority.
2. Shri Sahu, appearing for the Appellant, has meticulously taken us through the judgment under appeal, the evidence and the exhibits on record which has facilitated us in consideration and adjudication of the appeal on merits.

3. The Appellant in the instant case stood convicted for the offence under Section 376(1) of the IPC and have been sentenced to undergo R.I. for 7 years with fine of Rs. 500/- by the Additional Sessions Judge, Janjgir in Sessions Trial No. 211/96. The case of the prosecution is that in the night of 22.04.1996 the present Appellant along with one Vishram is said to have visited the house of the Prosecutrix for treating husband of the Prosecutrix who was suffering from same ailment by performing an act of exorcism. It is said that in the course of performing the act of exorcism the present Appellant had instructed the husband of the Prosecutrix Arjun, the son of the Prosecutrix Sitaram and the person who had accompanied the Appellant Vishram to remain inside the room until and unless he calls them. Thereafter he took the Prosecutrix outside the house and said to have raped her and left the house of the Prosecutrix. It is only after some time that she is said to have informed her husband about this and an F.I.R. was lodged on the next day. After that investigation was conducted and the Appellant was arrested and the matter was put to trial before Additional Sessions Judge, Janjgir vide Sessions Trial No. 211/96. In the course of recording of the evidence the prosecution examined as many as 13 witnesses and there was no witness examined on behalf of the defence witness. Finally the Trial Court vide the impugned judgment reached to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubts and has found the Appellant guilty of committing offence under Section 376(1) of the IPC and ordered to undergo R.I. for 7 years with fine of Rs. 500/-.

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4. The Counsel representing the Appellant appointed from Legal Aid Department of the High Court submits that it is a case of false implication. The entire case of the prosecution is highly improbable. He further submits that neither the statement of the Prosecutrix nor the evidence of the prosecution witness inspire confidence with which it can be said that the case of the prosecution stood established beyond all reasonable doubts.
5. Learned Counsel for the Appellant further submits that even the case of the prosecution has not been established from the medical evidence nor the same has been established from the forensic report received and therefore the impugned judgment being erroneous deserves to be set aside and prayed for quashing of the same.
6. Learned State Counsel on the contrary submits that it is a case where the prosecution has in fact led sufficient evidence before the Court below with which it can be said that the case of the prosecution has been fully established. He further submits that the case of the prosecution stands established from the deposition of the Prosecutrix herself which has been further corroborated from the statement of the other prosecution witnesses examined and that there is no reason to disbelieve the version of the Prosecutrix. Thus, prayed for rejection of the Appeal holding it to be devoid of merits.
7. Having heard the rival contention put forth on either side it would be necessary at this juncture to refer to the relevant witness led on behalf of the Prosecutrix to establish the offence. The three

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important witnesses in the instant case is the Prosecutrix herself PW-4, the husband of the Prosecutrix PW-1, Arjun Lal and the brothers of the Prosecutrix PW-3, Lakhanlal. The statement of the Prosecutrix if is taken into consideration what reveals is the fact that the husband of the Prosecutrix PW-1 was not keeping well for quite some times and he was undergoing treatment at different places. Then finally they thought of getting treatment by way of exorcism. The present Appellant was an exorcist staying in the same village. Therefore, the son of the Prosecutrix Sitaram was sent for calling the Appellant and who came along with one Vishram. Subsequently in the course of the act of exorcism the Appellant is said to have asked the husband and son of the Prosecutrix and also the person who had accompanied the Appellant Vishram to remain sitting inside a room and took the Prosecutrix outside the house and it is said that he then raped her.

8. From the evidence which have come on record particularly the evidence of the Prosecutrix as well as her husband PW-1 and brother of the Prosecutrix PW-3 it reveals that the house of the Prosecutrix is situated surrounded by other houses. In the evidence it is also reflected that there is admission on their part that it was around 11o'clock at night and the place where they reside, sufficient villagers keep on moving around and in the said circumstances it was totally improbable for a person to commit rape forcefully that to outside the house. Said prosecution story seems to be highly improbable. Further from the evidence it also

reflects that during the course of sexual intercourse she did raise any alarm nor any sort of objection. Another fact which cannot be brushed aside is the fact that the person who accompanied the Appellant Vishram Yadav, husband of the Prosecutrix Arjun Lal, PW-3 Lakhanlal brother of the Prosecutrix, Son of the Prosecutrix Sitaram were all present at the place where exorcism was going on. Therefore if at all such an incident would have occurred the Prosecutrix would have raised an alarm and the aforementioned persons could have easily reached and have averted the incident if any. It would be trite to mention that the version as has been stated by PW-3 brother of the Prosecutrix also contradicts the entire version of the prosecution. As per PW-3 he was in the house during the course of exorcism and it is only after considerable period of time when he had gone to the house for sleep and after sleeping for a while the husband of the Prosecutrix came to his house whereas from the statement of the Prosecutrix as well as statement of the husband of the Prosecutrix the presence of the PW-3 at the place of incident has not shown. Neither a reference to the brother of the Prosecutrix reflects in the F.I.R. Though a weak piece of evidence but in the given factual circumstances the medical evidence as well as forensic evidence which have been conducted on the Prosecutrix as well as the clothes that she was wearing particularly for the reason she had straightway from the place of incident gone to the Police Station yet the report of the Doctor as well as forensic expert did not suggest of any evidence of either forceful intercourse or for that matter having any sort of presence of

semens on the clothes of which the Prosecutrix was wearing. The non-examination of the son of the Prosecutrix Sitaram also raises great element of doubt on the prosecution story as he was the person who had gone and called the Appellant and accompanied him to the house and was present all along. In addition prosecution themselves examined Vishram Yadav, PW-8 the person who had accompanied the Appellant in the present case and also has totally demolished the case of the prosecution and which further weakens the prosecution case completely.

9. In the aforesaid facts and circumstances of the case particularly the statement of the Prosecutrix as well as that of PW-3 her brother in addition the place of incident being outside the house and there are houses surrounding the place at close vicinity yet the Prosecutrix did not raise alarm not put any resistance neither did she call for help from her husband and son who were inside the room adjacent to the place of incident gives raise to a great element of doubt on the prosecution story.
10. 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..."

11. 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

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against the appellant is apparently not based on appreciation of the evidences in proper perspective."

12. 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."

13. 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 Appellant for the offence. Even the slightest doubt if created in the mind of the Court, the benefit

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of which should be given to the accused person and thus for the series of doubts which have crept in the mind of the Court in the circumstances narrated in the preceding paragraphs, the Appellant is entitled for the benefit of doubt.

14. 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 charge under Section 376(1) of IPC. The Appellant is on bail. His 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.

15. Accordingly, the present Appeal stands allowed.

Sd/- P. Sam Koshy Judge
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