

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1 of 2008**

- Vijay Singh Rathore S/o Lal Singh Rathore, Aged about 21 years, R/o Girwar, P.S. Pendra, Distt.-Bilaspur, C.G.

---- Appellant

Versus

- State of Chhattisgarh Through: the Station House Officer, Police Station Gourela, Distt.-Bilaspur, C.G.

---- Respondent

For Appellant	:	Shri Malay Shrivastava, Advocate
For Respondent-State	:	Shri S.K. Mishra, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****31/10/2017**

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by Special Judge {The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989}, Bilaspur in Special Criminal Case No.40/2007 on 22.12.2007, whereby the appellant has been convicted under Sections 452 & 354 of the IPC and sentenced to undergo R.I. for 1 year and to pay fine of Rs.500/-, on both counts, with usual default stipulation.
2. As per the prosecution case, on 03.03.2007 at about 11 pm, the complaint (PW-1) was sleeping in her house along with her great grand mother-in-law Itwariya Bai (PW-4) and great grand father-in-law Sitaram Singh (PW-6). Her husband Upendra (PW-2) had went for celebration of holy in the village. It is the further case of the prosecution that while the prosecutrix was

sleeping in her room at that time some one came inside the room i.e. the appellant, switched off the light and when the victim wanted to flee away, the appellant caught hold of her, threw her into the cot and tried to outrage her modesty. Thereafter, when she cried for help, the appellant fled away and at the same time, the husband of the prosecutrix Upendra (PW-2) also came there and he after chasing the appellant caught hold of him and thereafter brought the appellant before the villagers. Subsequently, the F.I.R. was lodged vide Ex.P-1 and investigation was carried out. Charge-sheet in this case was filed under Sections 452 & 354 of the I.P.C. read with Section 3 (1) (11) of the The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 and the case was committed for trial.

3. During the course of trial, the appellant abjured the guilt and claimed to be tried.
4. On behalf of the prosecution, it examined the victim as PW-1, her husband Upendra as PW-2, Munshi Ram as (PW-3), Itwariya Bai, who is the great grandmother-in-law of the victim, as (PW-4), Lallu, who is the great grandfather-in-law of the victim as (PW-5), I.O. Sitaram Singh as (PW-6), S.R. Dewangan as (PW-7) and Ram Singh Paraste as (PW-8). The learned trial Court after evaluating the statements and evidence, convicted the appellant as aforesaid. Hence this appeal.
5. Learned counsel for the appellant would submit that the appellant was falsely implicated, since there was previous enmity existed in between the husband of the prosecutrix Upendra (PW-2) and the appellant. It is further submitted that major contradiction & omission appears in the statements given by the prosecutrix before the Court and the statement recorded under Section 161 of the Cr.P.C.. The identity of the appellant has also been in

doubt because of the contradictory statement as has been given. He went through the statement of the prosecutrix PW-1 and the husband of the prosecutrix Upendra (PW-2) and would submit that except these evidence no other evidence is on record and their evidence cannot be relied to convict the appellant because of the omission & contradiction appears in the statements, therefore, the appellant may be acquitted of the charges leveled against him and the judgment of conviction and sentence may be set aside.

6. Learned State counsel opposes the arguments advanced by learned counsel for the appellant and submits that the judgment of conviction passed by the court below is well merited.
7. Perused the record of the Court below. The F.I.R. in this case is Ex. P-1 dated 04.03.2007, which was lodged by the prosecutrix PW-1, wherein the name of the appellant is present. In the FIR it was stated that while the prosecutrix was sleeping alone in the house at that time someone entered into the room and having asked who is he, the name of her husband was narrated by the present appellant and thereafter the light was switched off. Having realized that it was not her husband, the prosecutrix wanted to flee away but was caught by the appellant and was thrown into the cot and the appellant tried to outrage her modesty. It is further stated that when she cried for help, then the appellant fled away and while he was fleeing away in the moon light she could recognize the person was Vijay Singh Rathore. It is further narrated that at the same time her husband was coming and he has also seen that Vijay Singh Rathore was fleeing away.
8. Further in her statement the victim contended that at about 11 pm while her husband had gone to celebrate holy in the village, she was sleeping in her room at that time some person came near her cot and because of the smell

of alcohol, she woke up and saw that the said person was the present appellant Vijay Singh Rathore. Subsequently, he caught hold of the prosecutrix threw her into the cot and when she cried for help, the appellant/accused was fleeing away and hearing her cry, her husband came and after chasing him caught hold of the appellant/accused. It is further stated that even after hearing such noise nobody in the neighborhood came, thereafter in the morning the report was made. In the cross-examination, she stated that after switching off the light she slept and therefore, the person, who came inside the room, she could not recognize and the same was disclosed in her statement in the FIR (Ex. P-1) and the statement given under Section 161 of the Cr.P.C. which is marked as Ex. D-1. In the FIR (Ex. P-1), the name of Vijay Singh Rathore was disclosed.

9. The I.O. Ram Singh Praste (PW-8), who recorded the FIR had stated that as per the statement given by the prosecutrix (PW-1), the same was recorded.
10. In the FIR it is stated that while the prosecutrix was sleeping, a person came inside the room and having asked who is he, the name of her husband was taken and thereafter the light was switched off. While in the statements given before the Court it is stated that while she was sleeping in the dark, a person came inside the room and therefore, she could not recognize him. But in the statement to police, the identity of accused was disclosed. Therefore, with respect to the identity serious contradiction appears in the statements given before the Court and the FIR (Ex. P-1) and the statements given under Section 161 of the Cr.P.C. (Ex. D-1). Further in the cross-examination it is stated that the person who came inside the room slept beside her in the cot, which shows that she was lying in the cot at the time when the person came and slept beside her. Having given suggestion

whether she got up, she denied it. In the statement given under Section 161 of the Cr.P.C. (Ex. D-1) again the contradiction exists. Wherein it is stated that the appellant came inside the room and thereafter switched off the light. When confronted with the statement given under Section 161 of the Cr.P.C. that she got down from the cot, she denied the suggestion.

11. Further the evidence of the prosecutrix PW-1 would show that she stated that she had not chased the accused to catch hold of him, but it was her husband who caught hold of the appellant at a distance of 15 to 16 meters from her house and she could recognize the present appellant after he was caught hold of by her husband. She further stated that it is not so when she cried for help then her husband reached there and thereafter her husband caught hold of the accused. This statement that after hearing the cry her husband chased and caught hold of the accused is further contradicted by her husband Upendra (PW-2), wherein he stated that after hearing the noise of her wife, he ran towards his house and saw Vijay Singh Rathore i.e. the present appellant was coming out from his house and was fleeing away, thereafter he chased him and caught hold of him.

12. The statement of Upendra (PW-2), the husband of the prosecutrix, would further show that in the cross-examination it is stated that when he reached to the spot, at that time he saw the accused outside the house and not coming from inside the house. He further stated that he chased the accused and after running upto 10-15 minutes he caught hold of him and while he was running he also cried to catch "*pakdo-pakdo*" but nobody came. The wife i.e. the prosecutrix (PW-1) has stated that she did not know the accused/appellant earlier to the incident. Upendra (PW-2), however, has denied the same and stated that her wife used to go for labour job in the house of the appellant and he further stated that her wife knew the

name of the appellant before the incident. Therefore, the serious contradiction & omission appears in the statement with regard to the identity of the accused/appellant. The prosecutrix (PW-1) at the one hand has stated that she did not know the name of the accused but her husband has denied the same. So the doubt remains unanswered that if she knew the accused why it was suppressed in statement before the Court.

13. Comparing the statements of the victim PW-1 given under Section 161 of the Cr.P.C. with the statements given in the FIR (Ex. P-1) and the statements given before the Court, it would show that in the FIR she stated that the appellant came inside thereafter switched off the light whereas in the Court statement it was stated that it was all dark and she could not recognize the appellant when he came inside the room, which also raises a serious doubt on the testimony of the prosecutrix (PW-1). The husband of the prosecutrix Upendra (PW-2) has also not corroborated the statement and only proved the fact that he saw the appellant outside of the house, but he had not heard cry of wife for help. The fact that the statement of the husband that he chased the accused 15 to 20 minutes in the village line and nobody came for help, no evidence has been adduced by the prosecution to corroborate such fact, which also raises doubt in the conduct and the nature of allegation attributed to the appellant.

14. The map which is filed as Ex. P-2 would show that the house wherein the alleged incident happened there are adjacent houses are also present. No neighbour has been examined and the statement of the father-in-law Lallu Chaudhary (PW-5) would show that he was a hearsay witness and Itwariya Bai (PW-4), in her examination-in-chief she has stated that she was sleeping in the other room and after hearing the noise she got up and thereafter her daughter-in-law, the prosecutrix, had disclosed the incident

that the appellant had come inside the room and caught hold of her. In the cross-examination, she tried to improve the statement that she has seen the appellant coming out from the room of the daughter-in-law, therefore, there is also a serious contradiction about the veracity of the statement of the witnesses.

15. Taking into the totality of the facts of this case, I am of the opinion that the statement given by the prosecutrix PW-1 cannot be accepted as a gospel truth as serious contradiction and omission appears along with the statement of the husband Upendra (PW-2) about the identity of the accused consequent to it his presence inside the room is placed in doubt. So after careful evaluation of evidence, I am of the opinion that the conviction cannot be solely sustained on such statements. In view of this, the benefit of doubt leans in favour of the appellant.

16. In a result the the appeal is allowed and the conviction & sentence imposed on the appellant is set aside. He is acquitted of the charges leveled against him by giving him benefit of doubt. The appellant is on bail. His bail bonds shall continue for a period of 6 months in view of provision contained under Section 437-A of the Cr.P.C.

Sd/-

Goutam Bhaduri
Judge

Ashu