

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 387 OF 2001

Kumar Singh alias Kumar Baba, S/o Mehar Singh, aged about 60 years,
R/o Village Gatapar Kala, P.S. Kheraghat, District Rajnandgaon (C.G.)

... Appellant

Versus

State of Chhattisgarh, through P.S. Rajnandgaon, District Rajnandgaon.

... Respondent

For Appellant	:	Mr. Adil Minhaj, Advocate.
For Respondent-State	:	Mr. S.R.J. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

16/02/2017

1. The Appellant stands convicted for the offence punishable under Section 376(1) of IPC and has been sentenced to undergo R.I. for 10 years and to pay fine of Rs.5000/- and in default of payment of fine, to undergo additional R.I. for one year, as ordered on 12.4.2001 by the Additional Sessions Judge, Rajnandgaon, in Sessions Case No. 172 of 2000.

2. Case of the prosecution in brief is that an FIR (Exhibit P-3) was lodged by PW-5, the Prosecutrix herself on 5.9.2000. In the FIR, it was alleged that on the previous night of 4.9.2000 the Appellant, who used to practice exorcism, had come to the house of her neighbor Chamru and where the Prosecutrix had also shown some interest for curing some ailment which she was suffering, for which the Appellant had told her that he would be coming to her house tomorrow. Accordingly, the Appellant is said to have visited her house early morning of 5.9.2000 and started performing the act of exorcism and in the process it is said that he had got a lemon cut and after performing the act he had given it to the husband of the Prosecutrix for throwing it at a faraway place so that it could not come in contact or crushed by other human being. That after the husband had left

the Appellant is said to have ravished the Prosecutrix and left the place. Subsequently, when the husband of the Prosecutrix came back she informed him about the incident and then they came to the police station and reported the matter. In due course of time, after completion of the investigations, the police authorities filed the charge-sheet and the matter was put to trial before the Additional Sessions Judge, Rajnandgaon, where the case was registered as Sessions Case No. 172 of 2000.

3. During the course of trial, the prosecution examined as many as 8 witnesses in support of its case and there were no witnesses examined on behalf of the defence. After conclusion of the trial, the Court below vide its impugned judgment found the Appellant to be guilty of having committed the offence punishable under Section 376(1) of IPC and on convicting him for the said offence, he was sentenced to under R.I. for 10 years and to pay fine of Rs.5000/- with default stipulation.

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

5. Learned Counsel for the Appellant submits that the entire case of the prosecution is highly improbable and the entire prosecution story does not inspire any confidence whatsoever and it is a case where the conviction of the Appellant has been made on highly improbable statement and therefore the impugned judgment deserves to be set aside/quashed. According to the Counsel for the Appellant, it is a case where the incident is said to have taken place at an open place, is totally unbelievable, as the house of the Prosecutrix was a two room house with a verandah and the place where the incident is said to have occurred was an open place. Further, there were other members of the family available in the house at the time of incident and therefore it is quite hard to believe and accept the version of the Prosecutrix.

6. It is further contended by the Counsel for the Appellant that the Prosecutrix herself in her deposition before the Court below has accepted the fact that when the incident had occurred she had not raised any alarm to call attraction of the other neighbors, neither had she protested when the Appellant tried to rape her. Neither had she opposed him during the course of alleged sexual intercourse. This also is highly improbable. It was also the contention of the Counsel for the Appellant that the case of the prosecution has not been supported from the medical evidence which have come on record, i.e., the evidence of PW-3, Doctor Madhuri Khute, who had examined the Prosecutrix. In addition, it was also contended that the clothes which the Prosecutrix was wearing on the date of incident were also not sent for examination. This also creates a great element of doubt.

7. Counsel for the Appellant further submits that it is a case of false implication, as the incident had occurred because of the differences which the husband of the Prosecutrix had with her. According to the Counsel for the Appellant, it is a case where the husband had doubted the character of the Prosecutrix and that when he had come home after throwing of the lemon he found the Appellant having left the house, he had suspected the Prosecutrix of having a physical relationship and he is said to have assaulted the Prosecutrix first and then went in search of the Appellant and when the Appellant was found on the square of the village he is said to have assaulted him (Appellant) also and the Appellant is said to have fallen unconscious on the ground. According to the Counsel for the Appellant, to save the husband from being prosecuted on a complaint to be lodged by the Appellant, the Prosecutrix is said to have filed a false complaint in the police station and that is the motive and reason behind the false implication of the Appellant. He thus prayed for the setting aside/quashment of the impugned judgment.

8. Learned Counsel for the State however opposing the appeal submits that it is a case where the prosecution has in fact been able to prove its case beyond reasonable doubt. He further submits that the statement of the Prosecutrix alone is sufficient to prove the offence punishable under Section 376 of IPC. He also submits that there are no variations, contradictions or omissions in the statement of the Prosecutrix when compared to the statement made at the time of lodging of the FIR as also compared to the statement made under Section 161 of CrPC. Thus, according to him, the impugned judgment does not warrant any interference and the appeal deserves to be rejected.

9. Having considered the total facts and circumstances of the case and on perusal of the record, the facts which are reflected from the statement of the Prosecutrix are that, the Appellant used to visit frequently to her neighbour Chamru's house for performing exorcism. It is also not in dispute that the Prosecutrix (PW-5) had also called upon the Appellant to perform the act of exorcism on her, as she was also suffering from some ailments. It is also not in dispute that when the Appellant had reached the house of the Prosecutrix at the early morning of 5.9.2000, the husband of the Prosecutrix and her children were also present in the house. The deposition of the Prosecutrix shows that her daughter and son-in-law were also present in the house on the said date, as they had come for celebrating the Teeja festival. Further, from the deposition of the Prosecutrix it also reflects that the place of incident is the house of the Prosecutrix which is a two rooms' house with a small verandah which is an open area. In the said circumstances, if the Appellant was performing the act of exorcism in the verandah it was definitely viewable from the room as well as from outside also. Therefore, if at all, if the Appellant would have committed rape upon the Prosecutrix in the verandah in the course of performing the act of

exorcism, there was all possibility of they being witnessed by others from the neighborhood or at least by the children who were present in the house at the relevant point of time. However, if at all, if the statement of the Prosecutrix would had been true there was no necessity for her to make a statement that her husband had doubted her character and had assaulted her by giving a couple of slaps, which also makes the story of the prosecution very doubtful. Likewise, the fact that the Prosecutrix in the course of performing of the act of exorcism surrendering herself to the Appellant even to the extent of permitting him to even have sexual relationship with her is highly improbable, as there were other inhabitants also in the house and there was all possibility of theirs to have witnessed the incident if it would have occurred or at least if she could have raised an alarm.

10. In view of the highly improbable story of the prosecution not supported by any medical evidence or, for that matter, the clothes which the Prosecutrix was wearing also not being sent to a Doctor to ascertain whether there was any stain available on the clothes, on the basis of which it could be sent for forensic examination, also gives rise to a great element of doubt on the prosecution story.

11. 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..."

12. 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."

13. 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.”

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

15. 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.

16. The appeal stands allowed accordingly.

Sd/-
(P. Sam Koshy)
Judge

/Sharad/